MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, December 6, 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, Lynn Sunderman and Tommy Taylor (Mary Strand absent); Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Brandon Garrett, 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 November 22, 2006. Motion for approval made by Carroll, seconded by Esseks and carried 7-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson and Sunderman voting 'yes'; Taylor abstained; Strand absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: December 6, 2006

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 06078; MISCELLANEOUS NO. 06017, Van Dorn Redevelopment Area Declaration of Blight and Substandard; and MISCELLANEOUS NO. 06018, Fairway Park Plat Vacation.**

Ex Parte Communications: None.

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

All items are recommendations to the City Council.

CHANGE OF ZONE NO. 06079
TO AMEND TITLE 27 OF THE LMC
TO ADUST THE ACREAGE COMPONENT
COVERAGE AREA AND TO ADJUST THE
SIZE WHEN A CONVERSION PLAN IS REQUIRED
FOR BTA COMMUNITY UNIT PLAN.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 6, 2006

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Mike DeKalb of Planning staff** presented the application, requested by Civil Design Group, to adjust the minimum size of lot not required to provide a conversion plan (ghost plat) from one-third acre to one-half acre, and to reduce the total coverage area by 20%. Staff added language to the applicant's proposal to provide that "no lot in the acreage development component coverage area exceed one acre".

Esseks asked for an explanation of the 20% reduction. DeKalb stated that there is a separate provision in the section that talks about total footprint of the acreage component versus the urban reserve component. This is intended to provide that they can go up to ½ acre lots without a ghost plat if the footprint previously set out is in fact reduced 20%, resulting in a tighter package with bigger lots without the ghost plat. In allowing a larger lot without ghost plats, it reserves a bigger area of urban reserve and the staff was satisfied with that tradeoff.

Carroll noted that Public Works and the County Engineer are opposed to this change from one-third to one-half acre lots. DeKalb was not aware of their rationale but contended that this still accomplishes all that was intended to be accomplished in the build-through ordinance.

Cornelius confirmed that there is no technical reason with regard to roads, sewer or water that this should be denied. DeKalb agreed. If we in fact get more land available for full urban utilities, it should more than make up for any downside.

Proponents

1. Mike Eckert of Civil Design Group, Inc., testified as the applicant for this text amendment. As we continue to process development under the new regulations on build-through, we discover more and more scenarios that we like to discuss. The staff has been very flexible to "buff up" that minimum lot size from one-third to one-half acre. Ironically,

none of the R-1 through R-6 districts in the urban environment have a lot size limit. If you take 100 acres in the AGR District, the maximum coverage is now 40%, and what this amendment does is take that down another 20% so that you can cover 32 acres, leaving 8 more acres for that future urban density.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: December 6, 2006

Carroll moved approval, seconded by Esseks and carried 8-0: Larson, Krieser, Carroll, Esseks, Taylor, Sunderman, Cornelius and Carlson voting 'yes'; Strand absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1989A
AN AMENDMENT TO REVISE THE
LIGHTING PLAN FOR SID DILLON AUTO
ON PROPERTY GENERALLY LOCATED
AT S. 27TH STREET AND KENDRA LANE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 6, 2006

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval.

Staff presentation: **Tom Cajka of Planning staff** gave a brief history of the area:

> Special Permit No. 1989 for Sid Dillon was approved in March 2003. That special permit required that all outside lighting meet the city of Lincoln design standards for parking lots and that at least two-thirds be turned off after business hours.
>
> In November 2003, another special permit was issued for Williamson Auto at 27th and Yankee Hill Road with the same requirements.
>
> In March 2005, Williamson requested an amendment to their lighting plan. Planning agreed to the amendment if their amended lighting plan was similar to the lighting at DuTeau Chevrolet, also in the same area. The amended lighting for Williamson was approved on March 15, 2005, with new conditions stating that the vehicle display lighting shall not exceed average of 10 foot-candles, and 2/3 of all outside lights shut off 30 minutes after business hours.

> In or about March 2005, Sid Dillon was informed that their lighting was in violation of their special permit, which required that all of their lighting meet the parking lot lighting requirements, which has a maximum average of 4 foot-candles. Sid Dillon was then given the same opportunity as Williamson to submit an administrative amendment to their lighting plan. That amendment would need to have matched what was approved for Williamson.
>
> Sid Dillon then applied for an administrative amendment, but did not match the Williamson amendment and proposed something different. Sid Dillon had proposed average foot-candles of 28.18 during business hours, nearly three times that of Williamson. That administrative amendment for Sid Dillon was denied. Therefore, Sid Dillon has requested this amendment.

This proposed amendment would reduce the average foot-candles during business hours to 11.27, and from closing to 10:00 p.m. to 3.96. These readings for the foot-candles are taken over the entire premise, not just the display area. Planning does not support this proposal because it exceeds the Williamson and DuTeau permits. The 10 foot-candles approved for Williamson is only on the display lighting area. By using the entire premise, Sid Dillon is able to take other dark spots and average it out over the entire lot, which brings down that average foot-candle. We do not know what the lighting of the display area would be.

All three car dealers are in close proximity and abut residential districts. There should be consistency between all three dealers. Planning has also received complaints about the lighting from neighbors abutting the Sid Dillon property. There is also a letter from the neighborhood association in opposition to the existing light intensity.

Carroll inquired about the limitation after business hours for Williamson and DuTeau. Cajka advised that the Williamson and DuTeau permits do not quantify it by business hours – it just states that their display area has to have an average of 10 foot-candles. The average of 10 is during business hours, but only on the display area. There is no foot-candle provision for after hours. The permit just states that 2/3 of their lights have to be turned off.

Cajka believes there is confusion about what was approved and what was not approved. He referred to the comments from Building & Safety and LES, wherein Building & Safety specifically says that the “parking lot” lighting plan is approved, and LES also specifically states that this approves the “parking lot” lighting plan. The Planning staff does not consider where you sell cars as a parking lot. Maybe they were thinking the entire premise was a parking lot and therefore it was approved. The parking lot design standards require maximum foot-candle of 4. Sid Dillon is well in excess of that, probably around 30 for the entire site.

Proponents

1. Peter Katt appeared on behalf of the applicant, **Sid Dillon.** He suggested that this is a unique situation in terms of some of the issues. He requested that this matter be deferred for two weeks. First of all, he disagrees with the history provided by the staff and he does not believe the facts are accurately reported by the staff. This is a lighting problem and it does need to be fixed. It is a policy question: What is the appropriate lighting standard to be applied? Staff has decided it is done. Katt believes there is more to that story since the city has invented money in a lighting task force study which incorporates a lot of this proposal. Katt received a draft of the consultant's report this morning. He has not had the opportunity to review and compare that report with this application. He noted that the staff report makes no mention of this lighting task force. Therefore, he is requesting a two week deferral.

Katt submitted two exhibits. He made corrections to the history set out in the staff report, and suggested that what the staff left out is what the terms meant and how they intended it to apply in connection with Williamson. In paragraph 8 on page 4 of the staff report, in the second sentence, staff notes: "When the initial permit was approved, it was not the intent to have auto display area lighting the same as parking lot lighting." Katt believes that is true. Then the question becomes: What do people think the standard was? The city did not have a standard. DuTeau had a very good lighting level set because it had a change of zone to commercial next to existing residential homes and the lighting level was set very low. In paragraph 9 on page 4, the staff told Williamson to go do a study on DuTeau and meet that standard, and that is how that standard for Williamson was created. Then they told Sid Dillon they had to live by that standard. The administrative amendment was filed in May of 2005. By January of 2006, a specific amendment was proposed, not meeting exactly the 10 foot-candle requirement, but trying to improve the situation as best could be done without huge capital costs. After that meeting, staff was inflexible and would not approve anything but the 10 foot-candle standard.

It was about this time that the task force was being created and started and Katt understood that we would let that process work through to see what the community's standard might be as a part of that process. From January of 2006 to August of 2006, when the task force was disbanded because they ran out of money, his client was involved in that process. Curiously enough, then, the lighting task force consultant delivers its report to the Planning Department on September 20, 2006. On September 26, 2006, Sid Dillon receives the letter denying the administrative amendment, stating that the city will be enforcing the special permit requirements – end of story.

Katt noted that the consultant recommended 30 foot-candles for automotive display lot areas. Katt does not believe that his client has not tried to help solve the problem. They are here to solve the problem. It is relevant to look at the work that has been done by the lighting task force, and he will discuss that in two weeks.

Motion: Taylor moved to defer for two weeks, with continued public hearing and action on December 20, 2006, seconded by Krieser and carried 7-0: Larson, Krieser, Carroll, Esseks, Taylor, Cornelius and Carlson voting 'yes' (Sunderman declared a conflict of interest, Strand absent).

There was no testimony in opposition.

Staff response:

Marvin Krout, Director of Planning, suggested that the Planning Commission might think about the question of how this task force report plays into this issue. The staff probably has an obligation to provide the Commission with the report and then the question becomes: What is that report? It is a draft report, and how do you use it and do you make a decision on this case that in fact sets the standard for that particular aspect of the report or not? This case has now become more complicated.

The lighting task force worked for over a year, and it was a very broad-based committee that met about 25 times. They finally reached a point where they were going over issues again and again and the Planning Department thought the consultant should bring the report to some sort of conclusion and let the process be carried out from there. This may be discussed for a number of months. His expectation is that there will be a final draft report in mid- to late January, and then we would be going into a several month process of public review and discussion. It is complicated and it needs public education. There are many more issues than just the issue of display lighting for automobile lots. Staff does not agree with the recommendation in the consultant report for 30 foot-candles. That is the Husker auto lot. It does represent some kind of a national standard that we want to learn more about. Krout suggested that the consultant come to the hearing in two weeks. There are lots of questions to be asked about the consultant's recommendation in terms of the right standard, should there only be one standard or different standards in different locations? We are opening up a pandora's box here of looking at a lot of lighting issues and the Commission may decide that they cannot resolve that issue with regard to this property in two weeks. Krout anticipates that the discussion of that standard will undergo an awful lot of scrutiny before there are some proposed amendments to the design standards.

Carroll pointed out that the standards have not been adopted so the Planning Commission must rely on the precedent and existing standards. He requested that Rick Peo be available in two weeks to answer questions.

SPECIAL PERMIT NO. 06065
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
AT S. 3RD STREET AND GARFIELD STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 6, 2006

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

Ex Parte Communications: None.

Staff recommendation: Deferral until the applicant has fully evaluated all Preferred Sites in the area.

Staff presentation: **Brian Will of Planning staff** explained that this is a special permit for a 118' tall monopole for a wireless facility at 3rd & Garfield. Staff is recommending deferral of this application at this time because the staff does not believe there is a finding that this is the best location for the facility or that other possibilities have been eliminated for consideration. The burden is on the applicant to eliminate all other possibilities. There is a tower located near A Street. The surrounding neighborhood is zoned I-1 and is predominately industrial and commercial uses. There are two wireless carriers on the existing tower located near A Street, which was approved for three carriers. Because this is a "limited preference site" and across the street from a residence, the staff is taking the position that there are potentially other more appropriate sites and is asking the applicant to go through the process to eliminate those other sites.

Proponents

1. Ralph Wyngarden, Faulk & Foster, 2680 Horizon Drive, SE, Suite E, Grand Rapids, Michigan 49546, presented the application on behalf of the applicant. Faulk & Foster is doing the site acquisition, zoning and permitting for Alltel.

The design of this facility does comply with the Lincoln ordinance. If this site were standing alone without the other alternative alleged locations, he believes it would have a positive recommendation. The key issue is whether this location is a "preferred site" or a "limited preference site". Alltel does have a tremendous amount of time and resources invested in this site based on their confidence in it being a preferred location site. All of the regulatory approvals have been completed. To abandon this location leaves those resources on the table and results in a substantial delay.

With respect to qualification as a preferred location site, Wyngarden stated that it is important to notice that this site is in an area that is planned as an industrial area in the Comprehensive Plan. It is zoned industrial, and, for the most part, is built industrial. There are many tall structures such as the elevator, power lines and poles in existence. In fact, paragraph #6 in the staff report analysis notes that,

> "There is another tower in the vicinity, power transmission line to the south, and a grain elevator to the southwest. If necessary, a new wireless facility in this area would not be out of scale with existing development."

In addition, Wyngarden pointed out that paragraph #7 in the staff report analysis notes that,

> "This tower is not within a capitol view corridor or other significant viewshed. .... There are several tall features in existence including power lines, an existing monopole, and a grain elevator and this monopole would not be out of place."

Wyngarden suggested that staff's argument that this location should be treated as limited preference hinges on consideration of the existing global signal tower and the presence of a single residence in this industrial area. The structural report of the owner of that existing global signal tower indicates that the existing tower is over-stressed.

With respect to the existing residence, Wyngarden noted that the records show ownership in Ira Walker. The applicant did send plans and letters and tried to establish contact with the property owner more than once. The applicant does not believe it to be an owner-occupied residence. Wyngarden also submitted that the property is zoned I-1 and the zoning ordinance specifically prohibits a residence from being built or reconstructed in an I-1 district. Therefore, Wyngarden believes the residence is really a nonconforming use and should be phased out over time. The house is in poor condition and is not owner-occupied. The proposed fencing and landscaping of this tower site would shield the residence from the other types of intensive industrial uses that could be located on this site.

Wyngarden contended that, based upon unavailability of collocation at the global signal tower, this proposed site should be classified as a preferred location site and not as a limited preference site. The applicant did provide an evaluation of the Sawyer Snell park location. The applicant knows that the proposed site is going to work and is environmentally clean. The park area has a lot of uncertainty, including whether the proposed location in the park would even qualify as a preferred location site. It is about a block away from the same residence. The site being proposed in this application is across the street from the residence and set back.

Other concerns with the park location include the whole approval process – Alltel has certain design requirements for the antenna and Parks has indicated they could accept that design, but it is up to the Urban Design Committee and the Parks Board to make that decision. That stands to be a lengthy process. The other concern is from an

environmental standpoint. The proposed location in the park is near a well and they do not know the underground piping. It is also near the railroad tracks and a lot of times the railroad areas do have environmental contamination concerns. The environmental situation is uncertain and there are significant risks to that park location.

Wyngarden also pointed out that Alltel does have a good track record. They do try to work to locate on city park property wherever possible. They also collocate wherever possible. They are not trying to avoid the city's preferences. But in this particular location, it was not feasible. From a policy standpoint, this is the type of area where the city has directed these facilities. It is isolated from the residential neighborhoods to the north and east.

Wyngarden requested that this location be considered a preferred location site, in light of the existence of a residence as a nonconforming use and the unavailability for collocation on the existing tower.

Carroll inquired whether the proposed tower will accommodate other carriers. Wyngarden stated that it is designed to accept two additional carriers. The global signal tower may accept other occupants with smaller antennae than that of Alltel. It just does not meet the needs of Alltel in this location.

Carroll inquired whether this location substantially increases Alltel's coverage area. Wyngarden stated that it is not so much the coverage but the quality – Alltel is not looking for new areas of coverage but to improve issues where there are overcapacity problems.

Esseks inquired as to what is at stake for the homeowner or resident with a tower like this across the street. Wyngarden suggested that the impact needs to be considered at the point of view from their windows. In this case, there is a power pole with overhead lines located right on the property and that is their view from the windows. You also have a situation where they will be looking at a chain link fence where now there are dump trucks, machinery and overgrown grass. Alltel is proposing a wooden board fence around the compound with landscaping, and would agree to upgrade the landscaping shown on the site plan. The frequencies would not interfere with any kind of household appliances or radios. In fact, it would bring more benefits to that area from a public safety standpoint. A resident in that house could be assured of better service.

Carroll wondered whether Alltel has considered or evaluated the tower which Verizon is putting in this same area. Wyngarden stated that they did look at a location with Verizon in Cooper Park, but that did not work from a radio frequency perspective. Because of the proximity of the Alltel sites in this area, they have very little flexibility. He does not believe that the Verizon site is within the immediate proximity of this particular area. Carroll believes it is within 5 blocks.

There was no testimony in opposition.

Staff Response: Will clarified that the other tower discussed in the report was on a light pole in Cooper Park and the applicant has addressed this site and determined that it is not feasible. The staff is talking about other possibilities in this general area – the Sprint tower which is approximately two blocks away or some other commercial industrial lot within this area not across the street from a residence. It is true that this residence is located in an industrial district, but the ordinance contemplated those uses and that is why the preferences talk about being an appropriate distance from residential land uses. By virtue that it is a special permit, it gives the Commission the opportunity to review on a case-by-case basis. Across the street is not appropriate, but perhaps Sawyer Snell Park would be an appropriate distance.

One of the frustrations is that we already have a tower in the area required to accommodate three carriers and now we're finding out that it cannot. One possibility is a show cause for that applicant to address that issue. The owner of that tower says it cannot accommodate this facility.

Esseks confirmed that staff did speak with the occupant of the residence. Will confirmed that to be true. The residence is owner-occupied. She was informed of this hearing. She did not express outright opposition, but expressed concern and was curious what effect it would have on her television and radio.

Carroll inquired whether the staff's request for deferral is asking the applicant to look in the park as opposed to this industrial land. There are not a lot of possibilities. Will's response was that this industrial area is the sort of location where the city would direct a facility. But, in this situation, we are trying to be objective. The intent is to limit these towers and respect the surrounding land uses. This is the only house in this particular industrial area and staff believes that there are other open areas for location in this area that are more appropriate than the lot right across the street from the only house.

Carroll inquired whether the staff is requesting that the applicant show all the reasons why this is the only site. Will concurred. We are asking them to eliminate all other possibilities. Parks is interested in them locating in Sawyer Snell Park. We want them to fully investigate that possibility. We would also ask them to determine whether there is anything else that can be done to locate on the existing Sprint tower or other undeveloped lots that are not right across the street form a residence.

Will pointed out that if the applicant wants a vote today, the staff would recommend denial, but has provided conditions of approval in the staff report should the Commission vote to approve the special permit.

Carlson wondered how the issue will be addressed for the existing tower that cannot accommodate three carriers as permitted. The intent of the ordinance is to put multiple carriers on the pole. Will acknowledged that this circumstance doesn't come up very often and generally we find that the carriers can collocate and are cooperative. If it came down

to some technical issue, at that point we may have to have some expert advice. It has not come to that prior to this time.

Taylor pointed out that there has been no opposition to this proposal.

Response by the Applicant

Wyngarden requested that the Commission take action today. He believes the applicant has already addressed some concerns about the park location, but in order to determine whether it will work, they will be required to work through the Urban Design Committee and Parks Board, etc. Alltel needs that guarantee. The park area would require environmental and soil testing. We can't stand here and say that that site will or will not work without proceeding to pursue that site. When we do site acquisition we do talk with numerous land owners in the area. This particular property was not chosen because of the residence across the street, but because there is a lot of space to meet the fall zone requirements. As far as eliminating towers or preventing proliferation, Wyngarden pointed out that different types of users have different loading requirements. That is part of the problem at the global signal site.

Wyngarden assured that the proposed tower will support three "comparable" installations.

Wyngarden also pointed out that location in the park does not eliminate a tower. The impact on the greater surrounding area or residential area would be the same.

The applicant agreed with the conditions of approval provided in the staff report and requested that the Commission take action today.

ACTION BY PLANNING COMMISSION: December 6, 2006

Taylor moved approval, with conditions, seconded by Carroll.

Esseks commented that the Planning Department has done a good job of trying to respect the interests of the nearby residence. He is glad that the resident was contacted and informed. The resident did not choose to appear today or make any other type of communication. The city has done the best it can to respect the resident's interest and in the absence of their opposition, he believes the Commission can proceed to provide an important service to the greater community.

Carroll believes that the applicant has evaluated all the areas and the fall zone fits inside this property. It is too bad there is an older residential house in an industrial zoned area, but he does not believe that Alltel should be held up because we have told them to put these towers in industrial areas.

Carlson stated that he will vote against the motion. He believes the professional staff has

done a premier job of saying why the application is not complete, and that there is additional information that should be provided. He does not believe it will be overly burdensome on the applicant. Alltel has chosen a relatively high risk property in terms of what is available and what the ordinance calls for. Their interpretation is that this should be easy to approve and staff has said it is not easy to approve, and that is the burden they bear, i.e. to investigate and evaluate all other sites. The ordinance clearly defines the areas. This is a perfect example of when an application is incomplete. Since the applicant does not want a deferral, he will vote to deny because it is an application that is incomplete.

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

*** Break ***

CHANGE OF ZONE NO. 04086
FROM AGR AGRICULTURAL RESIDENTIAL
TO R-3 RESIDENTIAL
and
SPECIAL PERMIT NO. 04072,
MULLER ESTATES COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 56TH STREET AND CUMBERLAND DRIVE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 6, 2006

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

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone and conditional approval of the community unit plan.

Staff presentation: **Brian Will of Planning staff** presented the proposal, which is just south of the Trade Center. The applicant is requesting some adjustments relative to setbacks and to allow lot lines not perpendicular to the street. Staff is supportive of the setback adjustments, but does not agree to the adjustment to the rear setback on some of the lots, as set forth in the staff report and the conditions of approval.

Esseks noted that the grading plan shows fill across the site, including within the floodplain. Is this not a new growth area? Will indicated that this is not a new growth area. It is within the existing growth area. There is no requirement not to allow that fill. Esseks wondered whether any compensatory storage actions are recommended. Will stated that the staff is

not requiring it but the applicant has indicated a willingness to do that to the extent possible and to provide that information to Public Works. Esseks wondered whether there is any way that this can be monitored by Public Works. The development is at the beginning of the watershed. The more we can store up there, the less that goes downstream and causes trouble. Will responded that it is not a regulatory requirement.

Esseks wondered whether approval from the Army Corps of Engineer is necessary in order to put fill in the floodplain. Will acknowledged that the applicant will be required to get a floodplain permit from the city, a map amendment will have to be approved by FEMA and the City, and a grading permit is going to have to be approved by the City.

Carroll inquired whether the existing house will still have street access to 56th, and whether that will change when that house goes away. Will indicated that the access exists at this point in time and will go away when that house goes away. The access will be internal once that house is gone.

Carlson inquired about the quantity in terms of the borrow and the fill. Will indicated that there is not anything quantitative. We don't know those amounts and that is the concern expressed by Public Works. There are still approvals that will need to be done before streets and houses are built, and staff is asking the applicant to work with staff.

Proponents

1. Tim Gergen of Olsson Associates presented the proposal on behalf of the applicant. He showed the minimum flood corridor on the map, which is the area protected by the city regulations. The minimum flood corridor takes up a good portion of what they can take out of the floodplain. They are trying to get the borrow and fill as equal as possible.

As far as the driveway access to 56th Street, Gergen indicated that when the streets are built, it is their intent to remove that driveway access.

There was no testimony in opposition.

CHANGE OF ZONE NO. 04086
ACTION BY PLANNING COMMISSION: December 6, 2006

Carroll moved approval, seconded by Larson and carried 8-0: Larson, Krieser, Carroll, Esseks, Taylor, Sunderman, Cornelius and Carlson voting 'yes'; Strand absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 04072

ACTION BY PLANNING COMMISSION: December 6, 2006

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

CHANGE OF ZONE NO. 06072
FROM AG AGRICULTURAL TO
AGR AGRICULTURAL RESIDENTIAL
and
SPECIAL PERMIT NO. 06068,
THE BRIDGES COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S.W. 27TH STREET AND W. DENTON ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 6, 2006

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

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone and conditional approval of the community unit plan.

Staff presentation: **Mike DeKalb of Planning staff** presented the proposal for change of zone from AG to AGR situated on West Denton Road and S.W. 27th Street, on 181.4 acres, which is in conformance with the Comprehensive Plan as low density residential. The CUP is for 70 single family dwelling units with community sewer system, giving additional 20% bonus, and individual wells. Staff is recommending denial of the sidewalk, street trees, street lighting and stormwater detention waiver requests so that these improvements are located on the residential lots. It is believed that the proposal will meet the city requirement for stormwater detention if the calculations are provided by the applicant, and that waiver will no longer be necessary.

Carroll noted that the water needs to be treated and one condition of approval is that the developer give the purchaser a copy of the water report. Carroll is not confident that the purchaser will read the water report and may not be aware that the water needs to be treated. DeKalb's response was that the developer is required to provide the purchaser with a copy of the water report, which says that the water must be treated. It is not a health risk issue but there are side effect issues. Our hope is that people will review that information.

Esseks noted that 20-25% of this property is in the floodplain. It looks as though they are building pretty close to the Salt Creek. Esseks is concerned about on-site detention and

effects downstream. DeKalb believes that the floodplain is confined primarily to the Cardwell Creek bank on the north side and all of the lots on the north edge are outside of the floodplain. All houses are out of the floodplain. There is extensive grading being used to build the lots even higher. They have met the city standard to not increase flow.

Proponents

1. Mike Eckert of **Civil Design Group** testified on behalf of the applicant. This is one of the few remaining parcels shown in the Comprehensive Plan as acreage AGR density. The applicant is proposing 70 lots. The CUP is named "The Bridges" because of the series of pedestrian bridges that are going to exist across some of the storage ponds. This development achieves a density and an acreage development component coverage area that is smaller than normal, but it complies with the text amendment recommended for approval by the Planning Commission today (Change of Zone No. 06079). There are ½ acre lots, using a community sewer system which will actually be a full retention system. This system will treat the water, disinfect it and put it into holding ponds. There will be no discharge into the creek. This proposal layout also benefits from the extensive floodplain study that has been done by the USDS with more modern mapping and hydrologic modeling. All of the lots, roadways and other items are located out of the floodplain. It is a new growth area, so we are dealing with compensatory storage. The ponds will also function as stormwater detention facilities.

Eckert noted that the water report shows sufficient quantity of water.

There is a trail system throughout this entire project, and the developer is also agreeing to dedicate a 20' trail easement for the city on the south side of the creek. This development will have full hard surface roads with rollover curb.

Eckert agreed with the staff recommendation and conditions of approval; however, he did propose two amendments for clarification based on the approval of the text amendment (Change of Zone No. 06079):

1. This approval permits 70 dwelling units, with waivers/modifications to design standards, and yards as listed below:

   11. Sidewalks in locations that abut urban reserve outlots.

3. ~~that Lots in Blocks 1-6 may be subdivided to the density of approximately twice the number of initial dwellings when the sanitary sewer and water are extended to serve said Lots and are annexed and rezoned~~ **(This paragraph shall be deleted if Change of Zone No. 06079 is approved by the City Council**)**

   4.1.1.1 ~~Show the "Shadow Plat" for lots in Blocks 1 - 6 with average splits at least two times the number of lots.~~ **(This paragraph**

shall be deleted if the City Council approves Change of Zone No. 06079)**

Carroll asked whether the applicant could somehow be specific about disclosure to purchasers that the water needs to be treated. Eckert suggested putting a note on the final plat. Carroll suggested it be included in the covenants to somehow require them to read the water report and sign something that says they received it. Eckert agreed to integrate that into the covenants.

There was no testimony in opposition.

DeKalb agreed with the applicant's proposed amendments.

CHANGE OF ZONE NO. 06072
ACTION BY PLANNING COMMISSION: December 6, 2006

Carroll moved approval, seconded by Cornelius and carried 8-0: Larson, Krieser, Carroll, Esseks, Taylor, Sunderman, Cornelius and Carlson voting 'yes'; Strand absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 06068
ACTION BY PLANNING COMMISSION: December 6, 2006

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

COUNTY SPECIAL PERMIT NO. 06058
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
AT N.W. 126TH STREET AND ALVO ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 6, 2006

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

Ex Parte Communications: None.

Staff recommendation: Revised from conditional approval to deferral.

Staff presentation: **Brian Will of Planning staff** submitted additional information for the record, including a notice of a public meeting that was held on November 30th at the

Malcolm Village Hall with a letter from Wesley Jones of Valcom Wireless Construction, Inc., in opposition. Will also revised the staff recommendation from conditional approval to deferral. Since staff reviewed this application and prepared the report, additional information has come forward that should be considered. The application originally appeared to have met the requirements and eliminate possibilities within ½ mile. There are, however, other facilities in the area that should be at least looked at and analyzed by the applicant. Will suggested that ½ mile in the county is different than ½ mile in the city, and the staff believes that the other tower in Malcolm, which is 1.5 miles away, in concert with a tower outside the county, potentially provide collocation possibilities.

Proponents

1. Michele Roth, US Cellular, 10343 Military Avenue, Omaha, Nebraska, explained that US Cellular is proposing this 199' communications facility located near N.W. 126th & Alvo Road in the County. She did receive the revised staff recommendation and stated that the applicant is prepared to provide the additional information being requested.

2. Jeremy Schroeder, radio frequency manager for **US Cellular,** provided additional testimony and provided additional background information as to why US Cellular needs this site. On January 1, 2006, US Cellular took control of Western Wireless/Cellular One, receiving the 800 MHz licenses for all of Nebraska with the exclusion of Lancaster County and Douglas County. It is licensed in geographic areas as defined by the FCC.

In this situation, US Cellular was a PCS license, which is the next frequency box opened up to wireless carriers, i.e. 1900 MHz. But with the acquisition of the network from Western Wireless, they ran into a unique problem. They got a new market from Cellular One. They needed to expand coverage out to the edge of Lancaster County and US Cellular is proposing to build a number of sites for the Lincoln and rural markets. US Cellular has proposed a new site in Sprague, Walton, Davey, Pawnee Lake and Blue Stem Lake. If they are not allowed to build these sites, they will be in a situation where they have two idle networks and no way to carry a call from Lincoln towards Seward.

Schroeder showed maps of the levels of coverage. The objective of this site is to cover the stretch of Hwy 34 and the area to the south to link up the existing PCS network to the existing cellular network. This raw land tower is probably the best option as far as covering what they would like to cover.

US Cellular was asked to examine collocation on an existing tower near Malcolm, but they have determined that it would require extending that tower from 195' to 250' to get the desired coverage and this would not provide adequate coverage along Hwy 34.

US Cellular also evaluated a tower located in Garland. The coverage would be adequate but the owner of the tower is not interested in their collocation (Capital Tower). They are

using it as a training facility and they are not interested in accommodating US Cellular.

US Cellular has evaluated all of the surrounding towers and believes the proposed raw land location is probably their best option for covering their objectives. US Cellular believes that it is a disservice to their customers by ending their service at the County line.

Opposition

1. The Malcolm Village Clerk submitted e-mails and petitions in opposition. They have had two meetings in Malcolm with the applicant, and Malcolm does not want this tower in the middle of no place when there are other locations which they could use.

2. Wesley Jones, Valcom Wireless, testified in opposition. He is a resident of Malcolm. There are currently five structures available for collocation along Hwy 34. It is very good coverage for the Village of Malcolm and the Village of Garland. The proposed location does not give good coverage in our churches, gathering halls and restaurants in these towns. We are volunteer fire and rescue teams. This is a good tool that could be used by them but they are not bringing it to Malcolm. Their objective for the proposed site is to provide a link from Lincoln to Seward. In the past, primarily on Hwy 2, from Lincoln to I-29 in Iowa, along that 42-mile corridor, they placed one brand new site and continued building 7 brand new sites to cover 42 miles of highway. This will be #6 in a 12.5 mile stretch. They are putting it 10.5 miles away from their site in Seward. It will make a hard change of frequency while handing off. Everything else they build brand new they only do 6 miles apart, resulting in the need for another additional facility.

Jones also suggested that someone needs to make sure that Capital Tower is not interested in their collocation. If there is no regard for using the Capital Tower site, another self-supporting tower could be built right there beside it. It would bring coverage to Garland and to Malcolm. Everybody needs to build their network. The framework was in place from Western Wireless. They do not need to rebuild the framework. To build this one, it will be #6 – then their next objective would be to cover Malcolm which would be #7, and then Garland will be #8. This is not good land use planning. It is self-serving to US Cellular only. Jones believes US Cellular should locate on the Malcolm water tank. If there is a need for a new site, it should be at Garland. They do not need this structure at the proposed location.

Cornelius asked Jones whether he is disputing the coverage maps being shown by the applicant. Jones reminded the Commission that the coverage map they show is generated on their own computer and they put all the information into it. Jones wants US Cellular to come up with a comprehensive plan for the area that works for everyone involved. He is opposed to extending the tower in Malcolm to 250'. He does not believe they have put

together enough alternatives. This is the second site on N.W. 126th from Hwy 34 to O

Street. These are improved roads. They have only looked at this site. There is also a power substation at 112th Street which is already industrial use.

3. Denise Saathoff, attorney for the Village of Malcolm, reminded the Commission of the handout she provided at the last meeting showing the requirements for collocation. She also noted that included in today's exhibits submitted by the Village Clerk are two pieces of the federal law showing the requirements for collocation. § 47 CFR 51.100 provides that each telecommunication carrier has the duty (not option, not the recommendation, not the suggestion, not the right) but the duty to interconnect directly or indirectly with facilities and equipment of other telecommunication carries, with no mileage requirement within which to look. US Cellular is representing that they are following federal law when they are siting these towers and she does not believe they have done that.

At the meeting on November 7th, US Cellular agreed to review options, including collocating on a combination of towers, and they today showed one of the very green maps, which is a propagation study. That study shows that they will achieve their objective of interconnecting their PCS system with their cellular system, and they would also be able to cover Garland, which currently has no coverage, and Malcolm, which is also covered by several other providers. But they are showing their coverage only. Saathoff requested that the Comprehensive Plan and wireless facilities ordinance be considered. It is important to maintain our agricultural land. It is important to make people take the time to collocate. It may be more costly and require more study. US Cellular is trying to conveniently use Lancaster County radiuses intended for commercial and industrial areas. They do not have a right there. They have a duty to collocate and we do not believe they have done their job. They have to use good faith efforts to look for collocation. The Village of Malcolm received an e-mail from Laurel Mitchell saying that they would look in a 13-mile radius of Malcolm, but they did not. They looked at one site in Garland and one site in Malcolm. Saathoff requested that the special permit be denied.

Response by Staff

Esseks asked staff to reiterate the reason for the revised recommendation of deferral. Will stated that it is because there is the possibility that this carrier could collocate on the tower in Malcolm or the tower near Garland and not need this facility. The requirement in the ordinance is within ½ mile. Will is suggesting that as a practical matter, the intent of the ordinance is to limit the number of new towers by encouraging this type of collocation. We want to minimize the number of towers from an aesthetic standpoint and it relates to efficiency. We don't want them everywhere and every carrier having all their own towers. It is more efficient to get multiple carriers on one tower. As far as public safety benefits, Will agreed that they are generally low risk and low hazard.

Larson inquired as to who sets the rental rates if they do collocate. Will could not address this question. It is by private agreement between the property owner and the tower owner. Larson observed that collocation could possibly be discouraged by the amount charged for

the lease.

Carroll inquired whether the staff has had an opportunity to review the information submitted by the applicant today. Will stated that he had not seen anything that was submitted today prior to this meeting.

Response by the Applicant

Roth stated that US Cellular does have the letter from Capital Tower and they have maps that could be submitted today showing the coverage areas.

Schroeder showed a map from FCC of the Antenna Structure Registry. Any tower over 200' must be registered with the FCC and this is used to examine the towers that are currently located in the area. They have looked at a lot of these towers, including the Valcom facility in Malcolm and the city water tank in Malcolm. Between finding a willing landowner and a tower that would work, US Cellular could not find anything to meet their needs. Since Capital Tower is not interested in letting them collocate, that excludes a two-site solution for this area.

Schroeder also has prediction studies of all the towers to the south. None of the towers provided the coverage needed because they are 8-10 miles away from the area that needs to be covered. There are no other tower structures that are feasible either because of the propagation of the tower itself or the owner.

The Malcolm water tower is inadequate because it is only 125' tall, leaving some considerable coverage holes west of the Lancaster County border along Hwy 34 which is one of the areas that they are trying to cover. Esseks suggested adding to the height of the water tower.

Motion. Carroll moved to defer for four weeks, to give staff an opportunity to review the new information and respond, with continued public hearing and action scheduled for January 3, 2007, seconded by Taylor.

Esseks stated that he supports the deferral and that he would like to see whether the Malcolm tower could be adapted for this purpose.

Carlson stated that he will support the motion, particularly when we get into situations where we are presented with specific engineering technical data at the public hearing. That needs to be demonstrated to staff. He encouraged those who testified to provide their information to the staff as well.

Motion to defer until January 3, 2007, carried 8-0: Larson, Krieser, Carroll, Esseks, Taylor, Sunderman, Cornelius and Carlson voting 'yes'; Strand absent.

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 December 20, 2006.

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