

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 15, 2007, 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, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor (Gerry Krieser absent). Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Tom Cajka, Christy Eichorn, 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 August 1, 2007. Motion for approval made by Strand, seconded by Carroll and carried 7-0: Carlson, Carroll, Cornelius, Larson, Strand, Sunderman and Taylor voting 'yes'; Esseks abstained; Krieser absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

August 15, 2007

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 07041, SPECIAL PERMIT NO. 06032A, SPECIAL PERMIT NO. 07030 and COUNTY SPECIAL PERMIT NO. 07032.**

Ex Parte Communications: None.

Item No. 1.4, County Special Permit No. 07032, was removed from the Consent Agenda and had separate public hearing.

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

Note: This is final action on Special Permit No. 06032A and Special Permit No. 07030, 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.

COUNTY SPECIAL PERMIT NO. 07032
FOR A YOUTH ATHLETIC CLUB AND SEMI-PUBLIC BUILDING,
ON PROPERTY GENERALLY LOCATED
AT S.W. 14TH STREET AND WITTSTRUCK ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 15, 2007

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval.

This application was removed from the Consent Agenda for further discussion.

Staff presentation: **Mike DeKalb of Planning staff** advised that this is an application for a club on a 20-acre parcel in the southwest portion of the County a couple miles north of Sprague/Martell, zoned AG. There is an approved CUP on the property today that includes the cluster of houses. That CUP is being amended administratively to remove this 20-acre parcel to allow the special permit for the athletic club. Access will be from Wittstruck Road. The conditions of the special permit will change the configuration as shown due to the signage. They will need to move the road to the west and reconfigure to move the signs.

Esseks inquired whether the developer got any bonus for maintaining this outlot as open space when the CUP was approved. DeKalb answered, "yes". The administrative amendment will remove one unit and it will be removed from the density calculations.

Proponents

1. Mike Eckert of Civil Design Group appeared on behalf of the applicant, suggesting that it is somewhat rare in our community where we have some really good things going on like this. We have really worked hard with staff to make this a reality. There was an outlot for agricultural use only. The operator of the club lives in one of the houses in the CUP and was intent on doing this club adjacent to his house. There are several young people here today that have been through the camp.

2. Doug Barry, the operator of the camp, testified in support. He has been working with young people for 19-20 years. He began this in his back yard three years ago. This is a type of camp that approaches young people who are already striving for good things in their lives, giving them a real challenge to raise the bar. It is very positive, motivational and

challenging. The camp emphasizes that they will be leaders of communities, families and businesses in the future. This special permit will provide the opportunity to do this on a little bit larger scale to make it more conducive for further development of virtue, character and leadership ability.

3. Sam Pynes, a veteran of “Radix Day Camp” for three years, testified in support. It is a very good camp for building character and physical and mental capacity. He is very excited about its growth.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

August 15, 2007

Carroll moved to approve the staff recommendation of conditional approval, seconded by Strand and carried 8-0: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson voting ‘yes’; Krieser absent. This is a recommendation to the Lancaster County Board.

ANNEXATION NO. 07002,
CHANGE OF ZONE NO. 07044,
FROM AG AGRICULTURAL TO R-4 RESIDENTIAL,
and
PRELIMINARY PLAT NO. 07003,
CEDAR COVE TOWNHOMES,
ON PROPERTY GENERALLY LOCATED
AT N. 89TH STREET AND LEIGHTON AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 15, 2007

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

Ex Parte Communications: None.

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

Additional information for the record: **Brandon Garrett of Planning staff** submitted an e-mail from Dave Butler in regard to the traffic situation at 84th & Leighton, questioning whether there would be a right turn lane in the future or a traffic signal. Garrett believes that there would be a traffic signal at some point in time. He did not know about the right-turn lane.

Staff presentation: **Brandon Garrett of Planning staff** presented the staff recommendation, indicating that the staff has been in conversation with the applicant and they have expressed some concern about Condition #1.1.7 on page 64, which addresses the block length issue. There is a proposed LPS school site in the middle of the 40 acres and the block length issue occurs from Kinzie Street all the way around the east and to the south all the way to N. 89th Street. The staff is requesting a stub street into that LPS property in the event that it does not develop as a school. However, in the interim, the staff would agree to allow the stub street to remain as an outlot reserved for future r.o.w. or future development. Staff also believes that LPS would be willing to work with this applicant to revise the layout. Compliance with Condition #1.1.7 would result in there being sufficient space for 60' r.o.w. and additional space for front yard setbacks in the event that it is a street. In total, at minimum, it would be 100', i.e. 60' for the r.o.w. and 20' additional for setback reasons. The width of the lots averages around 37'. They are attached single family lots. Garrett added that if the school does develop, that street would not be required and the applicant could develop the outlot, reaching the total of 28 attached single family lots, which is what they are showing today, plus one additional single family lot with a pedestrian easement to satisfy the block length requirement. If the school is not built and they do have to dedicate the r.o.w., they would end up with one less unit than what they are currently showing.

Strand confirmed that the 25' setbacks would still apply to the people that build on the lots next to the easement. Garrett suggested that it would depend on how the applicant wants to approach it. If you had an outlot reserved for r.o.w. or future development, you could have an outlot where you could have that space reserved for the future 60' r.o.w. and provide for the setbacks. If the school is built, they could do the same thing with the larger outlot reserved for future development and then split it up appropriately without the r.o.w., maintaining the proper spacing for a pedestrian easement.

Strand did not realize that an easement for a side yard setback could be there if they did not own the land. **Ray Hill of Planning staff** explained there would only be a side yard next to the outlot. It would not be a front yard unless the street is developed, and the street would only occupy the center 60'. Staff's main concern is that when the street would go through, there would be enough space to create a lot that would accommodate the 25' front yard from that new street.

Proponents

1. Mark Palmer of Olsson Associates, gave an overview of the history of this property. It was owned by the University Foundation years ago. It was land-banked by the University and they declared it surplus sometime in the 1990's, when LPS picked it up as a potential elementary school site and has held the property ever since. The developer has worked with LPS. The intent was for sidewalk access to 90th and 91st Street and to provide for some utility conduits.

Palmer advised that the developers of Waterford Estates have entered into agreement with Cameron Homes to purchase this property. This plan respects the two outlots that access 90th Street and 91st Street. The stub access being required by Condition #1.1.7 will result in the developer losing some units. The applicant will need to have Condition #1.1.7 amended to make it conditional upon LPS agreeing to a land swap. The two finger outlots would be combined into one. This developer would carve off and create two lots on either side of the access for LPS. If a road is required in the future, the requirement could then be met. The developer can agree to Condition #1.1.7; however, they need to make sure of the needs of LPS. Palmer believes they can reach a compromise where there is a plan for the future if this piece of property does not become a school site. Palmer suggested that Condition #1.1.7 be amended to add language that, "This condition satisfies the block length requirement and will not be enforced if LPS does not agree to cooperate with the land swap agreement."

Carroll sought to clarify that if LPS says "yes", they will do the swap. But if LPS says "no", then staff wants an outlot available for a street. Palmer explained that there are two 30' outlots to allow for sidewalk access. If LPS says "no", then this developer is back to square one where they would like to say that the sidewalk access at the moment is an LPS school site. Carroll believes LPS would hold the 30' outlot until the point in time that they decide whether this will be a school site. Palmer suggested that if LPS goes with a school site, they would be left with one 60' swath for an access. That is the issue the developer we will have to work out with LPS.

Carroll believes that Condition #1.1.7 is pretty general. He suggested that the Planning Commission would probably leave it intact and let the developer work out an agreement with LPS and not add any other conditions. Palmer's response was that "it is a tricky situation". If LPS agrees, the developer can make it work. If LPS does not agree, the developer's back is up against the wall. The lot layout was worked out with LPS, but they could change their mind and sell it in the future. Carroll suggested that if LPS sells that site to a developer, then access to that area is even more important. He believes that is staff's concern. Palmer is hopeful that LPS will cooperate, but they have not yet had that meeting. If Condition #1.1.7 is upheld, the developer would want LPS to agree. LPS has to agree to move their boundaries in order to make this plan work.

Esseks believes it is important to maintain the principle of connectivity. He believes that Condition #1.1.7 is so general that the developer should be able to work within it. This is only a problem if LPS fails to develop it. Palmer understood and agreed. If it was a clean 40-acre parcel with a single owner, this would not even be a discussion point. The developer hopes to have a good solution if they can reach agreement with LPS

If LPS is not amenable to the land swap, Cornelius wondered whether there are any contingency plans. Palmer indicated that the development is off the table if they cannot develop this many lots.

2. Breck Collingsworth, Cameron Townhomes, stated that he has a purchase agreement to do this number of lots. If the outlot is required for the street stub, they lose a unit, causing the need to renegotiate the purchase price with the owner due to the loss of one lot. Collingsworth is of the opinion that if there is any question that LPS may sell the land, they will make it more valuable and make it have access. If this developer provides the outlot, they can make the connection work with the existing boundaries today, but the developer loses a duplex unit and that would have to be worked out with the owners of the property.

Palmer suggested that if Condition #1.1.7 is left in place, the developer knows they will lose a duplex lot and will need to renegotiate the purchase agreement with the owner.

There was no testimony in opposition.

ANNEXATION NO. 07002

ACTION BY PLANNING COMMISSION:

August 15, 2007

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

CHANGE OF ZONE NO. 07044

ACTION BY PLANNING COMMISSION:

August 15, 2007

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

PRELIMINARY PLAT NO. 07003

ACTION BY PLANNING COMMISSION:

August 15, 2007

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

**CHANGE OF ZONE NO. 07045
FROM R-3 PUD TO B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT THE NORTHWEST CORNER OF
S. 84TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION**

August 15, 2007

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

Ex Parte Communications: None.

Staff recommendation: Denial.

Staff presentation: Steve Henrichsen of Planning staff overviewed the history of the site, as well as the background on the staff recommendation of denial. Henrichsen also noted an e-mail received from one adjoining property owner who had several questions and the staff responded to those questions.

Henrichsen went on to state that the site is currently zoned R-3 PUD. 22,000 square feet of commercial has been approved on the southern end. There are single family lots to the north and to the west. All but two of those lots have residential uses or the detention pond immediately adjacent. There is an existing 83rd Street which is built today out to Wendell Way. Wendell Way does have a median opening. As approved today, the intent was that the access point would come down to the cul-de-sac and have residential lots developed around it. The access previously approved, having a right-in right-out, was based on limitations in the approved PUD that eliminated a lot of the more intensive traffic uses. A connection was maintained between the residential street that required several turns to slow and limit the amount of traffic.

Another reason for the recommendation of denial is that there are other commercial uses in the area, including 250,000 square feet for the Vintage Heights center immediately to the south with access to a median opening; immediately to the north is the Glynoaks PUD with a 258,000 square feet neighborhood center. Both Glynoaks and Vintage Heights have access to median openings.

Henrichsen also pointed out that there are many examples in the city of residential developments at the intersection of two arterial streets.

Henrichsen suggested that if the developer is not happy with the current approved PUD layout with its unique feature in terms of alley access on both the east and west side, both of those alley accesses could be removed providing a much more typical townhome development with garages in the front. Or the entire site could be developed in terms of residential uses without any further commercial uses.

Henrichsen also observed that the B-2 zoning would require median opening access and access back through Wendell Way. The staff does not believe it appropriate to bring the commercial traffic back through the neighborhood. Therefore, staff recommends denial of this change of zone request.

Proponents

1. Mike Marsh, Realty Trust Group, as the owner of the property, presented the proposal in support of the change of zone request. Marsh reminded the Commission that the B-2 zoning was approved by the City Council in 2000, and was subsequently vetoed by the then Mayor. This request goes back to what the owner had originally planned. The owner worked very hard with the City on this PUD for a couple years, but the developer has been unable to sell the townhome lots and there are too many restrictions on the commercial uses in the PUD, such as no banks. Basically, all of the restrictions on the commercial has not allowed the owner the opportunity to develop the property. The B-2 zoning is needed for flexibility of development. Marsh believes they have worked out all of the accesses as best they can. He believes it is a viable corner for B-2 zoning.

Esseks inquired as to the problems with the approved PUD design. Marsh stated that he “cannot give the townhomes away”. The idea of a live-work unit was kind of an experiment and there has been no interest. He has tried to compromise further without B-2, but it gets him to the same point. He has had other opportunities for the commercial development, but they are not allowed because of the restrictions on the commercial uses in the PUD.

Esseks stated that he would like to see a complete plan to make a decision on whether changing to B-2 would make sense. It would make it easier for the Planning Commission to judge the wisdom of the developer. Marsh suggested that the B-2 zoning will require that the site plan come back for review by the Planning Commission. Marsh believes that is the spirit of the B-2 zoning – the flexibility to develop it. Esseks believes that this is a very busy corner and there are some important public safety issues. Marsh suggested that the B-2 zoning would broaden what can be done. The specific uses will come before the Commission before it can be developed. The owner does not have a plan for the specific uses at this time. But the Commission will have an opportunity to review those uses in the future.

Strand confirmed with Marsh that he knows who the tenants are going to be, but he does not know how the site plan will lay out and be designed. Marsh agreed.

Marsh reiterated and emphasized that in the year 2000, the B-2 zoning was approved by the City Council.

There was no testimony in opposition.

Staff response

Henrichsen advised that typically, the Commission would have seen the use permit with the change of zone. If the zoning is approved up front, it would be approved for all uses allowed in B-2. The use permit is not a point where you prohibit uses. Access is also an issue. The main reason people would be using Wendell Way is because it is where the median opening is located. Public Works only agreed to the access point on 84th Street because of the fact that it was going to be mostly a residential development in the PUD. Public Works would not have agreed to that access point if this was going to be six acres of commercial uses. In terms of the office uses, there are other cases where there has been a small amount of office development at the corner of an intersection and be quite successful. The southern 22,000 sq. ft. of this site is quite viable in terms of office use.

Chad Blahak of Public Works & Utilities gave a history on the access point on 84th Street. Public Works did reluctantly agree to the right-in right-out based on the limited uses that were approved in the PUD. In addition, the intersection at Wendell Way and 84th was also changed. It was a left-in right-out and not a full access, but due to the limited uses in the PUD, Public Works reluctantly agreed to change the plans to a full access point.

Strand inquired whether the Planning staff had recommended approval in September of 2000. Henrichsen stated that both the Planning staff and the Planning Commission had recommended denial and that the City Council approved it on a 4-3 vote. Henrichsen also pointed out that the residential lots all developed after that time, so there are now 15 adjacent residential lots being developed with the anticipation that the adjacent uses would be residential uses.

Carlson commented that because it is a PUD, "this stuff" can be moved around. Henrichsen agreed. The size of the cul-de-sac has already been reduced administratively to work out a better plan. If a townhome development wanted to have a different plan, that could be accommodated administratively.

ACTION BY PLANNING COMMISSION:

August 1, 2007

Carroll moved to deny, seconded by Sunderman.

Carroll commented that the development has gone on with the idea that this was going to be R-3 PUD. Public Works proceeded with their changes to 84th Street based partially on what this corner was going to be. This site design was approved in 2005. Carroll does not believe the economics have changed that much that this site design is not conducive to be successful. To change to B-2 and allow all of the uses creates too much traffic.

Esseks acknowledged that market conditions can change and he wants to be supportive of entrepreneurs that have to deal with those changes, but he really needs a site plan to decide whether a change of zone to B-2 is acceptable.

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

CHANGE OF ZONE NO. 07046,
TEXT AMENDMENT TO TITLE 27,
RELATING TO RESTAURANTS AND
TO ALLOW AND ESTABLISH CONDITIONS
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR CONSUMPTION ON THE PREMISES OF A
RESTAURANT.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 15, 2007

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

Ex Parte Communications: None.

Staff recommendation: Denial.

Staff presentation: **Brian Will of Planning staff** presented the proposal which accomplishes two things: 1) adds the definition of a "restaurant" to the zoning ordinance; and 2) makes the sale of alcohol in conjunction with a restaurant a conditional use.

Back in 1994, the zoning ordinance was amended to include special permits for on-sale and off-sale alcohol. Those permits were basically identical and in effect treated all uses basically the same. Those regulations remained in effect unchanged until just the last couple of years, the most recent change being to allow Planning Commission to take final action on those special permits. Additionally, the most recent change deleted the ability of the Planning Director to approve mitigation if the use were less than 100' from residential uses. Those permits have also been amended to make them a conditional use in the B-2 and B-5 zoning districts with the doorway being 100' from a residential district.

Today's proposed change adds the definition of "restaurant" and then makes sale of alcohol a conditional use for restaurants. The sale of alcohol cannot exceed more than 50% of the gross sales, the restaurant must serve full course meals, close by midnight and outdoor dining areas must close by 11 p.m. The door must be at least 100' from any day care facility, church, state mental health institution, park or residential district. If the door is less than 100', it must face in an opposite direction from the residential use.

This proposal acknowledges that there are several zoning districts where we have commercial buildings that have been placed within 50' of the real property line and would not meet the requirements for a special permit.

Staff is recommending approval.

Proponents

1. **Mark Hunzeker** appeared on behalf of **West Gate, Inc.**, the applicant and the owner of the West Gate Shopping Center. They have a prospective tenant for one of the buildings at Capitol Beach Boulevard and West "O" Street, that being a new restaurant in the strip center that runs parallel to the north line of the shopping center which is about 30' from the residential zoning district to the north. That shopping center has previously had an off-sale liquor license and an on-sale liquor license in that building but not for some time. When Building & Safety was inquired about having this Mexican restaurant located in this center with a liquor license, the answer was that they would not qualify under the special permit provisions.

The applicant then met with the staff about whether or not it really makes sense to say to owners of buildings in older commercial areas, "We are never going to allow you to have a restaurant with a bar or any other kind of liquor establishment in those buildings." Hunzeker suggested that the possibility of a "true" restaurant makes a significant difference in the kind of tenancy you have in that neighborhood business. Staff worked with the applicant to come up with the proposed language which puts into the code a definition of "restaurant" and requires that in order to qualify under the conditional use, there must be at least 50% of the gross sales in something other than alcoholic beverages. The number of 50% came from the discussions had during the smoking ordinance to distinguish between bars and restaurants.

Hunzeker believes this is a very reasonable ordinance, particularly for a shopping center like West Gate that doesn't have any realistic opportunities to acquire additional land or modify its site plan.

Esseks agreed that it is a reasonable change. However, he wondered whether the residents adjoining have been informed about this change in the code. Hunzeker stated that the applicant has not gone to the adjoining residents of that particular center; however, he and Marvin Krout both appeared before the Mayor's Neighborhood Roundtable last week and informed them of this text change. Esseks inquired whether the Roundtable was informed that the Planning Commission might take action today. Hunzeker indicated that they were so advised at the meeting.

Opposition

1. **Tracy Corr**, 1001 S. 37th Street, appeared on behalf of **Lincoln Neighborhood Alliance**, as a member of **40th and A Neighborhood Association**, and as Chair of the **Mayor's Neighborhood Roundtable**. She requested additional time before the Planning Commission takes action on this proposal. It was less than a week ago that she and the neighborhoods found out about this. This amendment has the potential to affect a lot of the

core city neighborhoods and they are really just not yet sure how they will be affected. She is concerned about informing the neighbors to West Gate and all of the other neighborhoods.

Initially, Lincoln Neighborhood Alliance is concerned about the 50/50 split between sales of alcohol and food. They appreciate the attempt to define a restaurant, but the initial reactions by the neighborhoods show that they would favor more of a 60/40 split with no more than 40% from sales of alcohol to assure that it is in fact going to be a restaurant. They have also discussed operating hours and perhaps that would be a way to negate the difference between restaurant and a bar.

Esseks inquired how much time they would need and what process they would incur. Corr indicated that the Lincoln Neighborhood Alliance and the Neighborhood Roundtable would try to get the word out to individual associations. Some of them only meet once a month so they would need at least a one month cycle.

Strand made sure that Corr was aware that the proposed ordinance requires closing by midnight and 11:00 p.m. for outdoor dining. Corr acknowledged these operating hours.

Staff response

Cornelius asked staff whether there are any businesses operating as a restaurant at this point that would not fall under this definition. Will did not know. **Marvin Krout, Director of Planning**, suggested that the 50/50 is a common breakpoint, although 60/40 has been used in some other communities. He knew that there had been some research done and, anecdotally, he has been told that 50/50 would mean that Lazlo's would be a restaurant but Brewsky's would not. Any additional information would require digging through sales tax information that goes through the state. The City Council recently dealt with a similar question at Pioneer Woods and the applicant came in and volunteered some restriction on uses which included a restriction that defined a restaurant in the same manner referring to the state law and the 50/50 split.

Will confirmed that this is a recommendation to the City Council.

Rick Peo, City Law Department, suggested that some of this concept of how to distinguish between a bar and a restaurant came up during the sidewalk café task force. The difference would be having a full service kitchen. The state law definition also talks about serving full-course meals, sit-down dinner with knife, fork, spoon, etc. No walking around eating and standing with food. He thinks there are a lot of provisions built in to make the difference.

Taylor wondered whether there is an example of a restaurant that adheres to 60/40 split. Will advised that such research has not been done. Taylor then wondered whether there is any terminology that would give us an idea of how to set a standard for 60/40 – or is it just by cash register receipts? Will agreed that it would have to be cash register receipts.

Strand noted that the Law Department has been opposed to the Planning Commission deferring an application unless the deferral is requested by the applicant. Peo agreed that to be the policy primarily on special permits, use permits, etc. However, a two-week or four-week delay on something such as a text amendment could be in the discretion of the Commission.

Will advised that the Planning Department did notify all of the neighborhood and homeowner associations which are on the Planning Department contact list.

Cornelius asked Will to describe a “conditional use”. Will stated that in any zoning district, there are three types of uses: permitted, conditional and special permitted uses. Permitted uses are uses allowed by right. Conditional uses are slightly more restrictive in that there are a set of conditions outlined that must be met. Special permitted uses are the most restrictive which require an application to the City and public hearing. This text amendment establishes that conditional use.

Response by the Applicant

Hunzeker indicated that he would like to be able to agree with a delay, but he knows that his client has entered into a lease for the premises at West Gate with a contingency on this text amendment. He filed the application in time for a hearing a few weeks ago, but he and staff agreed to defer scheduling the hearing to make sure it was drafted properly and to get it on the Mayor’s Neighborhood Roundtable agenda. It has been advertised and promoted to a broader audience. He does not know whether there is any real basis for the 60/40 or 50/50 standard other than the anecdotal evidence that was put out at the time of the smoking ordinance. Encouraging restaurants in older commercial areas is a good thing and it is very hard in this day to make money in a restaurant without being able to sell at least beer and wine with meals. The hours of operation are already restricted. He believes this has been well thought through by the staff and it is a reasonable change to make. If the Neighborhood Roundtable or any other organization wants to discuss this or propose any amendments between now and the time it appears on the City Council agenda, he is more than willing to listen. “We are not here saying this is the complete total answer to this issue, but we do think it is an issue that deserves to be modified in favor of establishing restaurants in some of these older commercial areas.”

Carlson stated that for several years he has been in favor of coming out with a restaurant definition. But he also respects that Hunzeker’s client has a timeline, yet he assumes Mr. Hunzeker explained that what his client is wanting to do is against the rules and the rules will need to be changed. Hunzeker agreed. He is here asking to change the rules.

However, Hunzeker does believe there has been notice to a broader range of individuals and it has resulted in zero commentary or contact with the Planning staff.

Cornelius moved for two-week deferral, until August 29, 2007, seconded by Esseks.

Strand stated that she was going to move to change the split to 60/40, but she will not support a delay. Notices have been sent out and the Commission has received no comment.

Carroll stated that he will not agree to a delay. It has been on the Commission's pre-agenda for a month. It has been advertised and notices have gone out. There is time before the City Council hearing.

Larson stated that he is also against the delay.

Esseks commented that he is impressed how the community relates to neighborhood associations. The community has shown great respect for them. A representative of the Neighborhood Alliance has asked us for the chance to gather her constituents and give serious consideration. This text amendment affects the whole community. He really thinks the Commission owes them a two-week delay.

Cornelius agreed. There is a significant difference between professionals that deal with this on a day-to-day basis and see these notices all the time and the general recipients of the electronic notices who are dealing with a variety of other things and try to handle this in their spare time. Two weeks gives them the four weeks to react before it goes to City Council.

(The Clerk advised that the public hearing before City Council would be on September 10, 2007, due to the Labor Day Holiday.)

Carlson agreed. We need to commend the people that take their volunteer time to try to become informed in the community. Lincoln Neighborhood Alliance is asking for the time to go out and do the work to get the feedback. It is important in terms of process.

Taylor observed that this potential delay is going to prevent the business that initiated the request. But, in the broader picture, we are looking at the whole community that will be affected. So he will support the delay.

Larson thinks there is enough delay built in with the public hearing before City Council being September 10th. That should be ample time to work their arguments and present it. But, Carlson wants to hear their arguments.

Esseks believes that this body is the one that is supposed to give very careful thought to a change in the ordinance which affects the whole community. We owe it to the whole

community to get as much information as possible. This affects the neighborhood where the space between residential and commercial uses are short. He doubts that this delay will affect the health of the enterprise that Hunzeker represents.

Motion for two-week delay failed on a tie vote of 4-4: Esseks, Taylor, Cornelius and Carlson voting 'yes'; Sunderman, Larson, Carroll and Strand voting 'no'; Krieser absent.

ACTION BY PLANNING COMMISSION:

August 15, 2007

Carroll moved approval, with amendment changing the 50/50 split to 60/40, seconded by Larson.

Strand commented that this proposal adds to sustainability and viability of older neighborhoods to have their own restaurant. One of the areas that is always looking for a decent restaurant is a Capitol Beach kind of area.

Cornelius is inclined to support the motion because he thinks it is a valuable change to the text. A glance at the calendar suggests that there are four weeks from today before this comes before the City Council. That organization that wants to present testimony will have time to do that organization and make a presentation.

Carlson agreed but he will vote against the motion because he thinks it is important to the process to allow the Planning Commission to hear the comments from the neighborhoods before making a decision.

Esseks believes that this could affect all kinds of people who are not aware of what is going to happen. He does not believe this is giving them enough time to make a presentation to the Planning Commission to make a decision. There is too much at stake here. The distance between the neighbors and the restaurant is so short.

Motion for approval, as amended, carried 6-2: Sunderman, Larson, Carroll, Strand, Taylor and Cornelius voting 'yes'; Esseks and Carlson voting 'no'; Krieser absent. This is a recommendation to the City Council.

*** break ***

CHANGE OF ZONE NO. 07043,
TEXT AMENDMENT TO THE ZONING ORDINANCE
and
MISCELLANEOUS NO. 06007 AND
MISCELLANEOUS NO. 07006,
TEXT AMENDMENTS TO THE CITY DESIGN STANDARDS
RELATING TO STREET TREES, LANDSCAPING AND SCREENING.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 15, 2007

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Tom Cajka of Planning staff** presented this proposal which basically moves some provisions out of the Zoning Ordinance and places them in the Design Standards, such as the 6' landscape standard to allow adjustments without going to the Board of Zoning Appeals. The amendment to add the note to the parking matrix was inadvertently omitted when the parking matrix was recently amended.

The amendments to the Design Standards have to do with street trees and planting street trees, deleting the provisions having to do with how you plant the tree, how deep the hole, etc. This is more of a Parks issue where they have their own standards and the thought is that those standards should be able to be amended without going through a text change. It should be left to the horticulturist. There is also some language added about where a street tree is to be located.

With regard to the amendment to Section 3.5 of the Design Standards, Cajka advised that a major change to landscaping and screening requirements was done over a year ago and since then, the staff has found that some of the language needed to be clarified. These amendments are an attempt to make some of those clarifications, i.e. what needs to be included in a landscape plan, etc.

The amendments to Section 7.1 add the provisions being removed from the Zoning Ordinance by Change of Zone No. 07043. It does not change the requirements, but merely moves them into the Design Standards. Language is also added to clarify how to do screening along an alley.

Esseks inquired whether there has been any type of advisory committee that has considered these issues. Cajka stated that the staff did send the proposed changes to the development community. **Lynn Johnson, Director of Parks & Recreation**, advised that there is a Community Forestry Advisory Board which provides guidance on street trees.

These amendments essentially make that process administrative, but Parks does use that advisory board in the review process. Johnson also pointed out that different street tree species are being added almost annually. There is a beetle that has devastated the ash population in other areas of the country and Johnson is hoping to address that in Nebraska by providing for a mix in the species on any given street. The staff wants to do things proactively and these amendments will allow Parks to make those changes more quickly and administratively.

There was no testimony in opposition.

CHANGE OF ZONE NO. 07043

ACTION BY PLANNING COMMISSION:

August 15, 2007

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

MISCELLANEOUS NO. 06007 AND MISCELLANEOUS NO. 07006

ACTION BY PLANNING COMMISSION:

August 15, 2007

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

WAIVER NO. 07006

**TO WAIVE SIDEWALKS ON SUNLIGHT COURT,
GENERALLY LOCATED AT
S. 56TH STREET AND ELKCREST DRIVE.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 15, 2007

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

Ex Parte Communications: None.

Staff recommendation: Denial.

Staff presentation: **Brian Will of Planning staff** showed a vicinity map of the area being discussed. The sidewalk requesting to be waived is along Sunlight Court. He pointed out the other sidewalks which currently exist in the area. When this development first came through in 1995, the sidewalks on one side of Sunlight Court and Harmony Court were waived. The sidewalk along Harmony Court has been installed. But the sidewalk along Sunlight Court has not been installed. The approved plan showed the required sidewalks to be installed on the north side of Sunlight Court and the west side of Sunlight Court. This

waiver would allow the developer not to install that sidewalk and have the money currently held by the city released back to the association.

Will indicated that staff is recommending denial because there are several references in the Comprehensive Plan about sidewalks being installed to provide safe pedestrian access. Additionally, the joint report submitted by the Planning Commission and Board of Health on health and land use also recommended to construct and maintain sidewalks in a manner consistent with community design. Sidewalks are a requirement of the subdivision ordinance and are required to be installed or sureties posted at the time of final plat. Staff is looking out for people that may live on Lots 1, 2, 3 and 4, who potentially may have mobility issues, etc. The only way to get to the sidewalk system along Dogwood Court or Harmony Court would be using the street if this sidewalk is not installed.

Will confirmed that Harmony Court is a dead-end street.

Strand agreed that sidewalks are important, but in Wilderness Ridge the sidewalks are located right next to the street. She wondered if this would be possible. Will suggested that there is 22' from the residence to the back of the sidewalk. Generally speaking, staff would suggest that you do not align a sidewalk next to the street to provide some safety buffer. But, he agreed that there are circumstances in the city where it does exist.

Esseks could think of one or two cases where these waivers have been requested and the Planning Commission has said no. Are there any cases in recent years where waivers of residential sidewalks have been approved? The staff could not recall of any along the street as opposed to in the side lot.

Sunderman suggested that this development is just kind of an odd setup. The lots to the north take their access off 56th Street, and these lots do not have access to 56th Street. It is just kind of an odd little indentation. It is more like a driveway than a street. There is a retaining wall on the north side of the drive and a retaining wall on the south side. Will agreed that it is one of those circumstances you find that is tailored to fit the circumstances that exist. However, this sidewalk would provide really good connectivity with the existing sidewalk system, including the pedestrian connection down to Edgewood.

Proponents

1. Joe Dubas, President of the Edgewood Association, testified in support. The association has discussed this and everyone believes that the sidewalk would serve no purpose. There is hardly any traffic. It is tight and it is a dead-end street. Everyone in the neighborhood is older and the sidewalk would result in more expenses for shoveling snow and the lawn care. The association is on a tight budget.

2. Rod Hornby, who developed this subdivision in 1995, testified in support. He asked the Commission to please have an open mind. He acknowledged that the developer just made

a mistake by not putting the sidewalk in. It might have been because it seemed so tight. Even if you put sidewalks in, he believes people will still walk in the street. It is not a whole city block. No one in this small community wants this sidewalk. He showed a photograph to demonstrate that the sidewalks are not needed. He requested that the Commission consider the support for this waiver by the people that live there. Ingress and egress is probably eight cars a day. It is more like a driveway. The sidewalk would require more concrete and more traffic into the circle from kids heading to the movies. The street is 21' wide. A local city street is 27' wide.

3. Byron Yurth, partner of Rod Hornby, testified in support. This is not a cost issue to the developer. When we decided to address this we went to the association to see if they really wanted the sidewalks. The association does not want more scooping of snow or additional cost on fixed incomes, and the residents decided they do not want the sidewalks. All of the residents have signed that they do not want the sidewalks installed. It will drive up the cost of association dues. There are 16 townhomes/residents on five acres. Where the houses face Sunlight Court (four units), it is a dead-end at both ends. There are landscaped walls at both ends. There is no access from Sunlight Court over to 56th Street. It is not an access street to other areas. The only people who drive on this street are the four houses located on the street. The sidewalks are not going to enhance the neighborhood. There is no direct purpose today for these sidewalks. There would be a negative impact on the green space. It functions nicely now. All four lots are 180' from lot line to lot line. The driveways are part of that 180'. The lots are 45' wide. Locating the sidewalks next to the street would be a better option if the sidewalks are required.

There was no testimony in opposition.

Staff response

Will stated that if the staff thought there were justification or hardship, they would support the waiver; however, this is pretty straight forward and the sidewalk should be installed to provide the safe pedestrian access. In regard to the rationale for supporting the waiver, Will suggested that one could probably make the same argument for most of the sidewalks in the city relative to cost of maintenance, etc. It is also a fairness issue. The other streets in this area have installed their sidewalks. One of the sidewalks was waived so the staff believes the other sidewalk should be installed.

Sunderman inquired what happens if the sidewalk is not installed. Will indicated that the City is currently holding money to install the sidewalk. That money could be used by the City to install the sidewalks.

Strand inquired whether sidewalks are required along the alleys in “new urbanism” developments. Will stated that there are sidewalks on all of the streets but not along the alleys. The alleys are typically 16-20 feet wide.

Esseks commented that there does not appear to be room for a sidewalk. Those lots are so narrow. How did we get into this kind of situation? Will suggested that with some of the latitude allowed with CUP's, the density can be increased. This plan is typical of those that are approved regularly, but it does allow for the sidewalk and an adequate front yard. The 22' dimension provides for a car to be parked in the driveway and not be parked over the sidewalk. There is room to install the sidewalk and achieve that goal. The site plan shows the 22' separation from the garage to the back of the sidewalk. That meets the city's typical requirement.

Strand thought the houses looked closer than that.

Carlson assumed that all of these issues were discussed in approving the site plan in 1995, and the compromise that was struck was this site plan. Will concurred. This site plan and the waiver to not put sidewalks on both sides of the street is what was approved.

Esseks wondered where additional cars would park that come to visit. Will advised that if the garage and driveway are full, then they would have to park in the street. Thus, Esseks believes it would be difficult to walk in the street.

Response by the Applicant

Yurth suggested that if the sidewalk is required, the parked car will not fit in the driveway and leave the sidewalk open. Esseks wondered then whether the developer followed the approved plan in developing the homes. It was clarified that the distance from the garage to the street is 22' 4".

Strand suggested that if the sidewalk is installed next to the street, there might be an opportunity for room to walk.

ACTION BY PLANNING COMMISSION:

August 15, 2007

Taylor moved approval, seconded by Strand.

Taylor does not believe it makes sense to install the sidewalk. That street is the width of an alley. It is a dead-end. It just doesn't look practical to have the sidewalk. Maybe the developer did make a mistake, but the residents should not have to suffer because of that mistake. We have a number of signatures of people in the community who do not want the sidewalk.

Carroll believes the plat was approved with the sidewalk. He is sure the units are built appropriately and there is room for the sidewalk. We have always talked about connectivity. We do not want pedestrians in the street trying to get to Edgewood Shopping Center. He does not believe installing the sidewalks is that much of a problem to the developer. It is more beneficial to keep the people out of the streets.

Larson believes that there must have been several mistakes. He does not know how a 21' street got approved. He is also concerned because the residents are unanimously against the sidewalks, but they are not going to live there forever. Someone might move in that is disabled. He thinks the request should be denied, but allow or mandate that the sidewalks be located next to the street.

Esseks agreed with Larson.

Sunderman believes that Sunlight Court really acts as a drive. It is tight back there. The impression he got was a lot of concrete and there is not much traffic. In this instance he believes that the sidewalks would subtract more than they add.

Esseks commented that as our population gets older, mobility is really important. Grass is lovely, but mobility is more important. There is a curb. There is 4' of space where people can move back and forth if they need to without using a vehicle. You need mobility and he likes the idea of 4' of sidewalk right up against the curb in a place where the cars cannot park.

Carlson agreed with Carroll. Presumably in 1995, the Planning Commission talked this out. They reached a compromise where they allowed the waiver on one side of the street because of the narrow drive.

Motion to approve the waiver failed 3-5: Sunderman, Strand and Taylor voting 'yes'; Larson, Carroll, Esseks, Cornelius and Carlson voting 'no'; Krieser absent.

Strand moved to deny the waiver request, but to allow the sidewalks to be installed next to the street, seconded by Larson and carried 8-0: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson voting 'yes'; Krieser absent. This is a recommendation to the City Council.

(Editorial Note: This waiver request was withdrawn by the applicant prior to scheduling on the City Council agenda. The sidewalks will be installed next to the street.)

**COMPREHENSIVE PLAN CONFORMANCE NO. 07014
PROPOSED DECLARATION OF SURPLUS PROPERTY
LOCATED AT S. 70TH STREET AND A STREET.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 15, 2007

(Editorial Note: This application was withdrawn prior to this meeting)

**CHANGE OF ZONE NO 06082,
FROM AG AGRICULTURAL TO AGRICULTURAL RESIDENTIAL
and
PRELIMINARY PLAT NO. 06011,
WOODLAND VIEW 1ST ADDITION,
GENERALLY LOCATED AT
S.W. 40TH STREET AND WEST A STREET.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 15, 2007

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

Ex Parte Communications: None.

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

The Clerk announced that the applicant has submitted a request to place these applications on indefinite pending.

Marvin Krout, Director of Planning, was less concerned about not deferring to a date certain since we now have the 12-month deadline. However, there will be a readvertising fee when the applications are placed back on the agenda.

Strand moved to place on indefinite pending, seconded by Cornelius.

Esseks wondered whether "indefinite" prejudices the implementation of the 12-month rule. Krout does not believe so. It only means that the applicant will let us know when he wants to reschedule. These applications have been on deferral since before last March, when the one-year rule went into effect.

Motion to place on indefinite pending carried 8-0: Sunderman, Larson, Carroll, Strand, Esseks, Taylor, Cornelius and Carlson voting 'yes'; Krieser absent.

There was no other public testimony.

There being no further business, the meeting was adjourned at 3:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 29, 2007.

F:\FILES\PLANNING\PC\MINUTES\2007\pcm081507.wpd