MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, October 10, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor-Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Lynn Sunderman and Tommy Taylor (Gene Carroll and Robert Moline absent); Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Sara Hartzell, 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

Vice-Chair Lynn Sunderman called the meeting to order and requested a motion approving the minutes for the regular meeting held September 26, 2007. Motion for approval made by Francis, seconded by Cornelius and carried 7-0: Gaylor-Baird, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor voting 'yes'; Carroll and Moline absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Gaylor-Baird, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor; Carroll and Moline absent.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 07020, CHANGE OF ZONE NO. 07050, SPECIAL PERMIT NO. 1685A, SPECIAL PERMIT NO. 07043, SPECIAL PERMIT NO. 07044, SPECIAL PERMIT NO. 07046, USE PERMIT NO. 04005A and WAIVER NO. 07007.**

Ex Parte Communications: None.

Item No. 1.3, Special Permit No. 1685A; Item No. 1.5, Special Permit No. 07044; and Item No. 1.6, Special Permit No. 07046, were removed from the Consent Agenda and scheduled for separate public hearing. **Item No. 1.7, Use Permit No. 04005A,** was removed from the Consent Agenda and called under "Requests for Deferral".

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

Note: This is final action on Waiver No. 07007, 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.

REQUESTS FOR DEFERRAL

SPECIAL PERMIT NO. 07045
FOR A WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
NEAR SOUTH 70TH STREET AND SALTILLO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman (Carroll and Moline absent).

The Clerk announced that the applicant has requested a two-week deferral.

Cornelius moved to defer for two weeks, with continued public hearing and action scheduled for October 24, 2007, seconded by Francis and carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting 'yes'; Carroll and Moline absent.

There was no public testimony.

USE PERMIT NO. 04005A,
TO REDUCE THE REAR YARD SETBACK
ON PROPERTY GENERALLY LOCATED
AT N.W. PEMBERLY LANE AND BARONS ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman (Carroll and Moline absent).

This application was removed from the Consent Agenda.

The Clerk announced that the applicant has requested a two-week deferral in order to advertise an additional waiver request.

Cornelius moved to defer for two weeks, with continued public hearing and action

scheduled for October 24, 2007, seconded by Esseks and carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting 'yes'; Carroll and Moline absent.

There was no public testimony.

SPECIAL PERMIT NO. 1685A,
TO INCREASE THE NUMBER OF CHILDREN AND STAFF
AT THE EARLY CHILDHOOD CARE FACILITY
GENERALLY LOCATED AT
SOUTH 12TH STREET AND D STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman; Carroll and Moline absent.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing.

Staff presentation: **Christy Eichorn of Planning staff** explained that this application is to expand the existing early childhood care facility from 50 to 100 children and from 6 to 11 staff. The basement of the building was previously being used as a church. The church has now vacated the basement and the child care facility wishes to use both levels. Since the original approval of the special permit, the ownerships of the parcels have changed. The north 50 feet of abutting Lot 10 is not included in this application. The applicant is showing the special permit only on his property.

Eichorn stated that staff recommends approval of the increase as long as the applicant can meet all Building & Safety and Health Department requirements.

The application requests two waivers: 1) frontage on arterial street, and 2) to provide a conversion plan. Both waivers were granted with the original special permit. A significant increase in traffic is not expected. Everett Elementary is one block to the south and this day care facility intends to serve that population. This is locating in an existing urban area and since the building has been used as both a church and a day care, a conversion plan is not needed.

There is one letter in opposition with concerns about the increase in the number of children in this area.

Proponents

1. Gus Ponstingl with REGA Engineering, appeared on behalf of the applicant, **Landborn LLC.** There has been additional parking added along the alleyway. The parking lot was reconfigured to change the entrance to the east side along 12th Street. They have increased parking stalls by 21.

2. Corey Osborn, President of Landborn, LLC and part owner of Bright Beginnings Day Care Center, advised that the ages of the children attending the day care are 6 weeks to 12 years of age. In terms of the purported congestion that this increase might cause, Osborn does not believe that to be an issue. In order to make the basement usable they intend to install a fire sprinkler system. The letter in opposition also discussed crime and prostitution in the area. "Since the day care center primarily serves the surrounding neighborhood with 90% of the children being supported by Title 20 for low income families, where in history has limiting education ever been a good idea for an area that has crime?" With the school being just one block south, there are already children all over the place. There is an overwhelming demand for child care in this area. They currently have a waiting list. The previous center was operating with 75 children. It was only just prior to closing on the purchase that Osborn found out that he would need to reduce the number to 50 or amend the special permit. This will be an expensive venture and he requested approval.

Osborn confirmed that they will be providing before- and after-school care. Once the basement is finished, the major portion will actually be for a before- and after-school program.

Gaylor-Baird commented that it is wonderful to increase capacity to keep the children away from being victims or perpetrators of crime. She inquired, however, as to the safety of the three parking spots in the alley and how they will be used. Osborn indicated that those parking stalls will be designated for staff and there will be a gate. Those parking spots would only be used by patrons if the parking lot is full. The hours of operation are 6:30 a.m. to 6:00 p.m.

Francis believes that this is a great opportunity for this neighborhood and it is something that is long overdue.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: October 10, 2007

Larson moved to approve the staff recommendation of conditional approval, seconded by Francis and carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting 'yes'; Carroll and Moline absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 07044

FOR A PARKING LOT IN A RESIDENTIAL ZONING DISTRICT ON PROPERTY LOCATED AT S. 28TH STREET AND F STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman; Carroll and Moline absent.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing.

Staff presentation: **Christy Eichorn of Planning staff** explained that First Presbyterian Church is requesting to construct a parking lot north of the existing church property, surrounded by multi-family units. The staff is recommending approval, if the applicant can meet all required setbacks of the R-7 district and all design standards.

Eichorn also pointed out that a letter was received with concerns about adding to congestion that already exists in the current alley.

As submitted, Eichorn advised that the site plan does not meet all of the design standards, i.e. the application does not meet the required front yard setback along the western part of the parking lot. Complying with the 20' setback, the applicant will lose 10 parking stalls. The applicant has expressed to the staff that they intend to request a variance from the Board of Zoning Appeals for these additional parking stalls upon approval of this special permit. The front yard setback cannot be waived by the Planning Commission or City Council. That is why the staff is recommending approval of the use as long as they can meet the current design standards, which would give them something less than 20 parking stalls as shown on the site plan.

The applicant was not present.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: October 10, 2007

Taylor moved approval of the staff recommendation of conditional approval, seconded by Larson and carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting ‘yes’; Carroll and Moline absent. This is final action, unless appealed to the City Council within 14 days.

SPECIAL PERMIT NO. 07046

FOR EXTRACTION OF SOIL,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 40TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman; Carroll and Moline absent.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda at the request of Commissioner Esseks and had separate public hearing.

Staff presentation: **Brian Will of Planning staff** explained that this is an application for special permit for soil mining operation on property bounded by S. 40th on the west and Yankee Hill Road on the north. The site is approximately 155 acres in area. The applicant is proposing to extract approximately 285,000 cubic yards of material from the site. It will be subject to the Lincoln-Lancaster County Health Department air pollution regulation standards. The applicant will also be required to get a national pollution discharge elimination permit approved by NDEQ and Lower Platte South NRD. Staff is recommending approval, subject to conditions.

Esseks explained that he removed this from the Consent Agenda because he is concerned about consistency with two recent soil mining permits recommended for approval. The Planning Commission recently approved two applications for soil mining permits with a number of conditions, one of which was:

> The operating area of excavation stripped of topsoil shall not exceed twenty (20) acres at any one time and shall not remain open for more than ten (10) months.

Esseks believes this same condition should apply to this application for consistency.

Will does not believe staff would be opposed to adding that condition. Each permit is reviewed on a case-by-case basis, and the circumstances can vary slightly, and some are more heavily scrutinized than others. Given the circumstances of this particular application, that condition was not included; however, Will agreed that the property is adjacent to some residential uses on the east, an existing church and future residential uses to the south. Therefore, the additional condition would be appropriate.

Proponents

1. Mike Rierden appeared on behalf of the applicant, and indicated that the applicant is comfortable with the additional condition. He agreed with all other conditions of approval.

2. Pam Dingman of Engineering Design Consultants advised that the church is located immediately to the south. She also pointed out that about 1/4 mile of Wilderness Hills Boulevard has already been placed there. A slight amount of this excavation site will drain to that direction, but the majority of the site will drain toward Hohensee Drive, which is approximately 1/4 mile south of the intersection South 40th and Yankee Hill Road.

Larson inquired whether the church has objected to this permit at all. Dingman stated that the applicant has coordinated with the church on the installation of Wilderness Hills Drive because it is a shared access. There is an interlocal agreement in place with the church.

There was no testimony in opposition.

Will confirmed that the Planning Department has not received any comment or questions from any of the neighbors.

ACTION BY PLANNING COMMISSION: October 10, 2007

Esseks moved to approve the staff recommendation of conditional approval, with amendment to add the following condition:

> The operating area of excavation stripped of topsoil shall not exceed twenty (20) acres at any one time and shall not remain open for more than ten (10) months.

seconded by Cornelius and carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting 'yes'; Carroll and Moline absent. This is final action, unless appealed to the City Council within 14 days.

COMPREHENSIVE PLAN AMENDMENT NO. 07001
ADDING THE CARDWELL BRANCH WATERSHED MASTER PLAN
TO THE LIST OF SUB-AREA PLANS
AND TO THE LIST OF WATERSHED STUDIES
IN THE COMPREHENSIVE PLAN, AND TO AMEND
THE FUTURE LAND USE MAPS TO SHOW TWO
"OPPORTUNITY AREAS" AS "GREEN SPACE" AND
"ENVIRONMENTAL RESOURCES".
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman; Carroll and Moline absent.

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Sara Hartzell of Planning staff** submitted this proposal as the first amendment to the 2030 Comprehensive Plan that was approved last November. This proposal is to add the Cardwell Branch Watershed Master Plan as a subarea plan and to modify the land use plan to show some "opportunity areas" as "green space" and "environmental resources".

The watershed master planning process in Lincoln is a strategy used for management of our watersheds, floodplains and stream corridors. The City has already approved watershed master plans for Stevens Creek, Beal Slough and Southeast Upper Salt Creek. These master plans are important to identify needs for stormwater and floodplain management prior to development; to provide a database of watershed information and a computer modeling system to be used as analysis tools; and to identify capital improvement projects needed to address flood control, water quality or stream stability issues in the watershed.

This represents the second phase of a two-phase process for Cardwell Branch, including an update of the floodplain map with floodprone areas identified and adopted as best available information. This amendment would add the master plan to the list of subarea plans on p.155 of the Comprehensive Plan; would add it to the list of watershed master plans in the Utilities section on p.81; and would amend the land use plan to show some "opportunity areas" identified in the project.

The "opportunity areas" are shown on p.ES-5 of the Executive Summary, and are believed to have some benefits for water quality, stream stability, flood control and recreation. These areas are proposed to be shown as "green space" and "environmental resources".

Esseks inquired whether the "opportunity areas" are now privately owned. Hartzell responded, " yes, for the most part." Some of the area shown as "environmental resources" is in public ownership, i.e. Department of Education. Esseks inquired whether there would be conservation easements on these areas. Hartzell advised that there is a variety of techniques being considered, i.e. conservation easements, development proposals, purchase, etc. Esseks confirmed with Hartzell that the owners will be compensated. Hartzell concurred.

Gaylor-Baird inquired whether the property owners have been contacted about these areas. Devin Biesecker of the Watershed Management Division of Public Works & Utilities stated that Watershed Management has had conversations with both landowners in the "environmental resources" area and they have no opposition. The NRD has had conversations with the property owner downstream of the Yankee Hill reservoir who also expressed interest in having his land so shown. Hartzell assured that staff would definitely work with the landowners. Biesecker added that stakeholder meetings were held where all of the property owners near each area that could be impacted were invited to attend.

2. Devin Biesecker of the Watershed Management Division of Public Works & Utilities explained that all watershed master plans that have been completed are joint efforts between the City and the Lower Platte South NRD. The purpose of the watershed master plan is to provide a sustainable growth for the City as we grow into the rural areas. In the past, the City and NRD have completed several master plans, all of which have been adopted as subarea plans in the Comprehensive Plan: Beal Slough, Southeast Upper Salt Creek, and Stevens Creek. They are nearing completion of the Dead Man's Run Watershed Master Plan and they have just begun the plan for Little Salt Creek. The overall goal for these master plans is to get one unified master plan that encompasses the entire City and its future growth areas. The public is included in this master planning process. Biesecker gave a Power Point presentation. The Cardwell Branch Watershed Master Plan was a two-phase effort, the first phase being the USGS Watershed Assessment, which has been completed. The second phase is the actual production of the watershed master plan document.

Phase 1 included the FEMA floodplain map update, which has been submitted to FEMA and is currently undergoing that review process. The floodplain map was adopted by the City in January of 2006. Any new development in Cardwell Branch would have to use the new floodplain for regulatory purposes. It is anticipated that FEMA will begin their public process in 2008.

Phase 2, the proposed Watershed Master Plan, was completed with a very extensive public involvement process. Biesecker submitted a Factsheet of the open houses, stakeholder meetings and other meetings held. The recommendation of the study include opportunity areas, two sensitive areas, and nine capital improvement projects.

Biesecker explained that "opportunity areas" are general planning locations with potential for multiple benefits creating some water quality features, use of existing natural resources

and incorporating amenities like parks and trails. The study proposes that these "opportunity areas" be designated as "green space" and "environmental resources".

"Sensitive areas" are also general planning locations, but these are areas that have natural unique characteristics. The first area is in the lower portion of the watershed, relatively close to Hwy 77 and W. Denton Road. This area was shown to have some of the best riparian habitat. Area 2 is in the upper portion of the tributary to Cardwell Branch, which is unique with steep topography. If it were to develop in the future, there would possibly be significant erosion of the tributaries due to increased stormwater runoff. The study recommends that conservation strategies be used in these areas and the use of structural best management practices.

The capital improvement projects include eight stream stability projects and one flood control project located in the Cardwell Woods development just south of W. Denton Road on S.W. 27th Street. These projects in the future are envisioned to be a coordinated effort between the City, NRD and the County.

Esseks referred to the capital improvement projects and inquired whether those projects would qualify for any federal funding. Biesecker responded that eight of the projects are stream stability projects and he does not believe there are any venues for federal funding. A flood control project is a below cost solution, so he does not believe the City would envision seeking other funding for that project.

Francis inquired when the property owners would be contacted. Biesecker referred to the factsheet which shows that several of the property owners have already been contacted. The only one they have not had direct contact with would be the "green space" west of SW 27th Street. He assured that the property owner will be contacted.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: October 10, 2007

Larson moved approval, seconded by Esseks.

Francis expressed that her only concern is if there is any property owner that might be opposed. She would want to be made aware of that.

Sunderman commented that it is a good thing to get ahead of development.

Motion for approval carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting 'yes'; Carroll and Moline absent. This is a recommendation to the City Council and the Lancaster County Board.

CHANGE OF ZONE NO. 07053

FROM O-3 OFFICE PARK TO H-4 GENERAL COMMERCIAL
and
SPECIAL PERMIT NO. 2022B
TO EXPAND THE EXISTING PINE LAKE HEIGHTS
PLANNED SERVICE COMMERCIAL,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 27TH STREET AND GRAINGER PARKWAY.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman; Carroll and Moline absent.

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone and conditional approval of the special permit amendment.

Staff presentation: **Christy Eichorn of Planning staff** presented the proposal. All of the area to the south is currently zoned H-4. The area to which the changes are being made is the area just north of Jamie Lane. The Planned Service Commercial is a special permit created to allow the flexible arrangement of lots, blocks and buildings in exchange for restricted uses and site planning. A Planned Service Commercial special permit is only allowed the uses specifically set forth in the special permit.

The applicant is requesting a modification to the sign regulations, requesting three ground signs, one on each of the public streets and one in the front yard setback and over 50 sq. ft.. The applicant has also talked about two vertical signs, to which there is no definition in the ordinance. The applicant has agreed that the wall signs in the current O-3 zoned area becoming H-4 will be restricted to that which is allowed in O-3.

Staff believes this project is in conformance with the Comprehensive Plan and provides for a significant amount of pedestrian orientation and access.

Eichorn advised that the applicant did have a neighborhood meeting on September 11th. At that meeting, the applicant agreed to put some use restrictions on this special permit, which will be submitted by the applicant.

Proponents

1. Kent Seacrest appeared on behalf of **Airpark Holdings V, LLC,** the applicant. This project started out with the client wanting to build two quality retail buildings. When it became a possibility that there could be a used car lot or pre-owned car lot to the south, the applicant pursued purchasing the property to the south because they did not want a car lot as a neighbor to their development. Seacrest submitted exhibits showing the existing

special permit and the proposed amendment. The difference is less buildings, less drive-thru's, less pm trips (93% reduction), better layout, more walkability, more pedestrian friendly, attractive siding on all four sides of the building, better connection to the neighborhood and better landscaping.

2. Dan Grasso of Sinclair-Hille, the architects, showed images of the proposed buildings on the corner of 27th & Grainger. The first goal was to break down the scale of the buildings so that they would fit in with the neighborhood. The intent is for the buildings to appear more of a collection of small buildings as opposed to one large box.

The second goal was the issue about four-sided buildings – there being no perceivable service side or back sides of the building. There will be quality architecture on all four sides of the buildings.

Other amenities are being provided toward the pedestrian friendly nature of this development to encourage outdoor seating, shade, etc. The desire is for the neighborhood to be able to use this development and its environment.

Grasso spoke to the issue of the three ground signs and two vertical signs being requested. He provided an image of the proposed vertical sign, being four-sided with vertical text, basically a cross between a pole sign and a ground sign. He also provided a definition for vertical sign:

> A four sided development sign with vertical text that does not exceed an overall height of 30'0". The sign components shall consist of:
>
> **BASE** - Sign base not to exceed 8'6" in height, and 4'0" in width.
>
> **SHAFT** - Four sided sign with vertical sign text not to exceed a total sign area of 200 sq. ft.
>
> - The height to width ratio of the shaft shall be a max. of 7:1 (height:width).
>
> - The shaft shall not exceed an overall height of 17'4" from the top of base to the bottom of capital.
>
> **CAPITAL** - Architectural feature that does not exceed 3'0" in height and 10'0" in width.

Esseks requested an explanation of the ground signs that do not meet the design standards. Eichorn explained that the applicant is showing one more sign than would be allowed, all being 100 sq. ft. (which is only allowed to be 50 sq. ft.), in the front yard. One of the signs is larger than would be allowed. Seacrest suggested that the real

consideration was the vertical signs and the nature of the development. The vertical signs are impressive enough to draw attention. Seacrest also suggested that they have located the signs closer to the street to discourage additional wall signage, but yet have the wall signs be more in scale with the characteristics of the building. The vertical signs would be maximum of 30'.

Seacrest also advised that the applicant did have a good neighborhood meeting where they invited 350 individuals with 17 in attendance. Overall, the comments were positive with some concerns about uses, landscaping, lighting, screening dumpsters, etc. The motion to amend submitted by the applicant restricts certain land uses on the O-3. The proposed amendment to Condition #3.7 is to better clarify how the buildings will generally conform to the images shown:

3.6 Add a note stating all uses are permitted on Lots 2 through 5, Block 2, as shown on the site plan (former O-3 area) per the Planned Service Commercial special permit, except car washes; drive-thru facilities; bars; retail establishments open twenty-four hours per day; automobile, motorcycle, and four-wheel truck sales; warehouses; mini-warehouses; wholesale and distribution centers; ambulance services; hospitals and clinics for animals; contractors' office and storage; service stations; food storage lockers; automobile repairs, including vehicle body repair shops; broadcast towers; indoor kennels; outdoor exercise area associated with an indoor animal hospital or indoor kennel; automobile/truck wash facility; and motels and hotels. Add a note stating all uses are permitted on Lots 1 and 6 through 8, Block 2, (north of Jamie Lane) per the Planned Service Commercial special permit except ~~drive-thrus~~ commercial storage or sale of farm implements and products used for agriculture, but not including fertilizer, or toxic or flammable agricultural chemicals, warehouses, mini-warehouses, and food storage lockers. ~~Add any additional use restrictions agreed upon between the neighborhood and the developer.~~

3.7 Add a note stating that the building and sign elevations will generally conform with the overall scale, massing, architectural style and four-side building treatment as represented on the attached elevations, unless the Planning Director agrees otherwise in writing.

3.8 The construction plans comply with the approved site plans.

Seacrest believes that the neighbors and staff appear to be in agreement with the motion to amend. The applicant also met again with the directors of the neighborhood association.

Cornelius asked for further clarification of the waiver of the unusual ground sign. Is the

idea to provide some sort of compensation for the O-3 style wall signs by providing the larger, more prominent signage away from the building? Seacrest pointed out that H-4 allows pole signs, and this neighborhood does not deserve or want that. This location has some pretty fast arterial streets, so the applicant is attempting to figure out how to not do a pole sign. No one will see the ground sign if it is brought into the development. The proposed vertical sign is a "new model for Lincoln" to provide the balance.

It was clarified that the vertical signs are internal to the development. One ground sign is on the corner of 27th & Grainger and the other two ground signs are internal. Seacrest suggested that this avoids the signage that you are used to seeing right on the street. The larger ground sign is labeled #1 on the site plan at 27th & Grainger. Normally, that is where a pole sign could be located.

Support

1. Todd Beam, 7925 S. 36th Street, current Treasurer of the Grainger O'Shea Homeowners Association, testified in support. He acknowledged that the association has had some rather significant and lengthy discussions with the representatives of this project. The applicant actually approached the association board and they have been very good about including the board in discussions. They met as a board with DaNay Kalkowski and had significant discussions about this project. The applicant has gone to some pretty significant lengths to contact the association membership and they held a neighborhood meeting. After that neighborhood meeting, the board met again with the applicant and further discussed the project. The association has looked very carefully at the sign package. Beam urged that the Planning Commission approve this project. The neighborhood believes that they have a good idea of what this developer is trying to do and Beam believes the applicant has met the neighborhood's concerns.

There was no testimony in opposition.

Eichorn clarified the sign modification. The applicant is allowed to have two ground signs of 100 sq. ft. along each of the public streets. The ground sign at 27th & Grainger sits in the front yard setback. It would normally be allowed to be 50 sq. ft., but they are requesting 100 sq. ft. The waivers are mostly related to the ground sign being in the front yard and more than 50 sq. ft., and there being one additional ground sign.

Cornelius clarified that the change of zone allows the signage that would be allowed in H-4, but the applicant has agreed to limit their signage to the O-3 requirements. Eichorn responded that the applicant has agreed to limit the wall signs along the current O-3 property – the wall signs in the new H-4 area will conform with the O-3 zoning district so that they will not be as obtrusive on the neighborhood as those allowed in H-4.

Eichorn further pointed out that these are the only signs that will be permitted unless they

submit an amendment to the sign package.

CHANGE OF ZONE NO. 07053
ACTION BY PLANNING COMMISSION: October 10, 2007

Taylor moved approval, seconded by Francis.

Esseks extended his personal congratulations to Mr. Seacrest and his colleagues in developing a project in such close and crucial consultation with the neighborhood.

Motion for approval carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting 'yes'; Carroll and Moline absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 2022B
ACTION BY PLANNING COMMISSION: October 10, 2007

Taylor moved approval of staff recommendation of conditional approval, with the amendments requested by the applicant, seconded by Francis.

Taylor believes that this will be a great project.

Sunderman stated that he is excited to see the buildings be built and how they will all fit together.

Motion for conditional approval, with amendments, carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting 'yes'; Carroll and Moline absent. This is a recommendation to the City Council.

SPECIAL PERMITS NO. 07038
FOR AUTHORITY TO SELL ALCOHOLIC BEVERAGES
FOR CONSUMPTION ON THE PREMISES
ON PROPERTY GENERALLY LOCATED
AT NORTH 59TH STREET AND ADAMS STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 10, 2007

Members present: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman; Carroll and Moline absent.

Ex Parte Communications: None.

Staff recommendation: Conditional Approval

Staff presentation: **Brian Will of Planning staff** submitted two additional letters in

opposition (there are now five letters in opposition).

Will believes that there is some confusion about special permits for the sale of alcohol. He clarified that in order to sell alcohol at a location allowed by the zoning ordinance, an individual would also need a liquor license from the State of Nebraska. During the review of the liquor license, the City Council is asked to review and make a recommendation. As a matter of process, City staff has requested that anyone who is pursuing a liquor license first go through the process of applying for a special permit. If the special permit has not been approved when the liquor license comes to the City Council, the presumption is that the City Council would recommend denial of the liquor license. The applicant needs to get the special permit approved before applying for the liquor license.

Proponent

1. Mark Hunzeker appeared on behalf of **Millie Becker,** the proposed operator and owner of this site.

2. Millie Becker gave testimony and stated that she is in the process of purchasing the building. She proposes to have a reception hall, small wedding plaza and a room where people can be married. She has made wedding cakes for 25 years. She has been at most of the reception halls in town. At the present time, you need to reserve a hall at least six months in advance. She sees a lot of people being married in the reception hall and also in the park. She wants to be able to allow the wedding ceremony and reception to take place at the same location. She lives in the neighborhood, just five blocks from this building. She intends to supervise the building very well, inside and out, especially during the reception time.

Esseks inquired how often the hall would be in use for either weddings or other social events where alcohol would be consumed. Becker only could give projected times, but she assumes Saturday nights and some Friday nights.

Cornelius inquired about the hours of operation. Becker anticipates 7:00 p.m. to 11:30 p.m., possibly midnight. She has not yet set a timeline.

Becker advised that the building is currently vacant and has been so at least one year, if not longer.

Taylor assumes that the building will only be open when it is being rented or utilized for a function. Becker advised that the reception hall will be open only during the time that it is rented for a function. The wedding plaza will be open during the day, but not after 5:00

p.m. on Saturday. There would be no walk-in traffic to the reception hall. It would be by invitation only. She is requesting on-sale liquor only, and the receptions and social functions will be by invitation only. It will not be open to the general public. The liquor cannot be carried out of the building and people that are not invited should not be there.

Francis inquired whether her staff will be taking care of the liquor. Becker indicated that she and her staff would be in charge and they will be taking the training.

Gaylor-Baird inquired about how the traffic will flow from the building to the exterior of the building and how that might impact the neighbors. Becker stated that she intends to have a lot of supervision on the inside of the building and on the outside with additional staff.

Hunzeker then gave additional testimony on behalf of the applicant. This property has been zoned commercial since 1958, and was previously used as a Hinky Dinky store. This application is simply to permit the on-sale alcoholic beverage consumption. The special permit requirements are all easily met by this application, including all of the parking and distance requirements, no drive-through or outside music source, and no access doors other than interior to the structure itself. Hunzeker also advised that the applicant is likely to request an administrative amendment to amend the interior area that will be licensed. They have decided it would be easier to police and to control the alcohol within the licensed premises if the hallway between the two reception halls and the restrooms are included within the licensed area. There is a main entrance to the building which will be exterior to the hallways that lead into the reception area, and there will be a point to place security people to check anyone leaving the building and to prevent anyone from taking alcohol outside the building.

The applicant has one issue with respect to parking. Condition #2.1.1 requires the applicant to amend the plan to bring the parking lot into compliance with the design standards. Hunzeker proposed an amendment to Condition #2.1.1 to revise the site plan to include a parking layout for "new parking stalls" that comply with the design standards. Hunzeker submitted that this building is clearly a pre-existing commercial use, with a pre-existing parking lot probably built in the early 1960's, and it does not comply with every single design standard that applies to a parking lot built today. This proposal adds about 15 parking spaces on the west side of the building. The applicant can meet the parking design standards for those stalls, but in order to bring the entire parking lot up to that design standard would not only be onerous, but it might be very difficult to meet the parking requirements because of the stalls that would be lost. Under the existing design standards, you can make significant changes to an existing parking lot without bringing the entire parking lot up to standards. Hunzeker believes it appropriate to do so only for the new parking stalls.

Hunzeker also advised that a neighborhood meeting was held last week. As a result, the applicant has been asked to consider revising the site plan in order to preserve some trees on the west side of the building. The applicant is actively considering that and has been

working to modify the parking layout to do so. The general consensus of the neighbors at this meeting was very positive. In essence, this comes down to a question of whether the party responsible for the sale of the alcoholic beverages on this site will be the person who owns the building and who has the biggest stake in keeping that license in place, or whether it will be the caterer who brings the alcoholic beverages to the site. It is not a matter of whether or not alcoholic beverages can be sold here, but a question of who will be responsible. The applicant believes that it is better to have the party who owns the building, and who will suffer the most consequence if a license is revoked by virtue of a violation, be responsible for the alcohol.

Larson noted that the reception hall will only take a portion of the interior of the building. What is in the rest of the building? Hunzeker advised that the Ms. Becker intends to have a wedding plaza, i.e. a bridal shop, a baker, tuxedo rental, florist, travel agent, possibly a hair stylist, etc.

Support

1. Gail Anderson, resident of the University Place community, testified in support. She has lived at 60th & Lexington for 47 years, and she was a frequent shopper at Hinky Dinky (a store open seven days a week with traffic there all the time). This proposal will be quite a difference from that sort of traffic. She attended the neighborhood meeting. There were a lot of people with questions and concerns, but she believes all of the concerns were answered and they felt positive when the meeting was over. Millie Becker is also a University Place resident and lives close to the site. It will be nice to have the building occupied as opposed to being vacant. She believes this is a much better answer to what possibly could have gone in this building. Most weddings are in the summertime when the high school is not in operation.

Opposition

1. Elizabeth Kittell testified in opposition on behalf of **Kathryn Barclay,** the owner of the properties directly to the west, i.e. 2921 and 2925 N. 59th Street. She is very, very opposed to this application. Kittell lives in Syracuse directly next to a VFW, which is a social hall and serves alcohol. The lights are on, with people parking in her yard. There is constant movement so that she cannot let her dog out. These folks that are living right next door will be experiencing the same thing. She has been to a lot of weddings where there is an open bar, which means more drinking, later evenings, louder evenings, more people around and out and about. There will be constant lighting up and going in the parking lot. Northeast High School is two blocks to the east. It will continue to be a problem during the fall. Weddings occur year around. It will not be just wedding receptions – there could be office holiday parties and other gatherings. She doubts that it is just a seasonal thing.

There will be people in and out constantly. Serving alcohol is a huge problem. She believes that this will impact the property values in the neighborhood. Do you want to live across the street from an operation open until midnight? Why are we attempting to put this operation smack in the middle of a residential neighborhood?

Taylor inquired whether Ms. Barclay was living there when Hinky Dinky was in business, which was open 24 hours a day. Kittell did not know when her mother purchased the properties. Taylor asked Kittell what she thought would be the difference between this operation and a Hinky Dinky. Kittell indicated that her mother liked the medical facility that was at this location. That is what she would like to see there. She would probably oppose another Hinky Dinky.

Francis asked staff to respond to the applicant's proposed amendment to the conditions of approval. Will could not respond because it really involves Building & Safety and Public Works. Rick Peo of City Law Department indicated that if the design standards are applicable to both existing or new parking, they must comply unless there is a waiver requested. There is some dispute as to whether design standards are applicable to an existing situation. Peo suggested that the Planning Commission cannot approve the proposed amendment limiting it to just the new parking stalls. It may require a separate waiver request.

Will clarified that the applicant is not arguing about the number of stalls, but is asking for an exception to the design standards which discuss the width of the stalls and the driving aisles. That waiver could be approved by the Planning Director.

Response by the Applicant

Hunzeker acknowledged that he had conversations this morning with Brian Will, and just before this meeting with Rick Peo. He understands that the Law Department might agree that the design standards do not apply to the pre-existing stalls, but Rick Peo has not had time to research it. Therefore, Hunzeker advised that he did submit a letter requesting a waiver in the event that those design standards are imposed on this application. He believes it is important for the reuse of existing commercial structures that they not have the costs imposed upon them that redesigning an entire parking lot entails just so that the building can be reused for another commercial purpose. It is an unfair burden. The main issue raised by Public Works was that under the current standards it is not permissible to have a parking stall which backs out across an entrance aisle. That was just the way parking lots were built 50 years ago. It is something that we have to recognize when reusing these buildings. Hunzeker also reiterated that the applicant will be working with staff on configuring the parking in such a way as to try to avoid some of the trees on the west side of the building.

Francis inquired as to the occupancy capacity of the social hall. Hunzeker stated that the goal was to have the larger room accommodate 300. They are requesting to show about

165-170 parking stalls. They are required to provide parking for the social hall based upon the same ratio as you would have for a restaurant or for a bar at 1/100 square feet, plus parking for the retail space at 1/300 square feet.

Francis inquired about the number of parking stalls set aside for staff. Hunzeker stated that the parking ratio standard also accounts for staff. There is some space behind the building which does not meet design standards but which is basically a driveway where staff could park, as long as it is in excess of the required parking.

Taylor inquired whether the design standards would change the width of the lines for parking. Would it reduce the number of parking spaces? Hunzeker believes that meeting all of the design standards would reduce the number of parking stalls. He believes they have enough to meet the standards, but if they start losing parking stalls, there will be problems with reconfiguring the parking to meet the design standards and save the trees on the west side.

ACTION BY PLANNING COMMISSION: October 10, 2007

Taylor moved to approve the staff recommendation of conditional approval, seconded by Larson.

Gaylor-Baird expressed concern about the use of the building, given the neighbors concerns about alcohol and the flow of traffic into the neighborhood and whether this could potentially become a bar. She made a motion to amend to limit the use of this special permit to be in conjunction with the intended use as a social hall, seconded by Esseks.

Cornelius was under the impression that the special permit did follow the intended use. Rick Peo explained that technically, the alcoholic beverages on or off the premises are separate permitted uses. When you get to a situation of a restaurant or a social hall, it becomes vague whether it is an accessory use or a separate use. Unless it is spelled out like the motion to be accessory, it would be approved as a main use. The motion to amend would make it accessory to the underlying permitted use of a social hall.

Motion to amend carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting ‘yes’; Carroll and Moline absent.

Esseks observed that the neighbors concerns are very real, but here, we are required to honor the commercial designation of this property that has been commercial for years with purchasers having the expectation of commercial use. “My hands are tied. I have to accept that this is a property for commercial uses.” He believes that the proposal being presented is an appropriate type of commercial use. The nuisances can be minimized. The best insurance for the community is to be good monitors, and if there are repeated or continued failures to prevent these nuisances, then the neighbors need to complain to the Building & Safety Department and they can shut this thing down. There is a risk to the

neighbors, but the Planning Commission cannot protect them by saying “no”, but by urging the neighbors to be vigilant. He believes that this owner will do a great job, but who knows about the next owner.

Taylor believes that the Planning Commission really has to look at the interests of the entire public. The Planning Commission is not without empathy, but we have to consider the whole public at large.

Cornelius intends to support the motion. He agreed with the comments of Esseks. It falls upon the neighbors to take some responsibility for monitoring. He is sure that it will work.

Main motion for conditional approval, as amended, carried 7-0: Cornelius, Taylor, Larson, Gaylor-Baird, Esseks, Francis and Sunderman voting ‘yes’; Carroll and Moline absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 3:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 24, 2007.

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