MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, December 19, 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, Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Robert Moline, Lynn Sunderman, and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Brandon Garrett, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order and requested a motion approving the minutes for the regular meeting held December 5, 2007. Motion for approval made by Sunderman, seconded by Moline and carried 7-0: Gaylor-Baird, Carroll, Esseks, Francis, Larson, Moline and Sunderman voting 'yes'; Cornelius abstained; Taylor absent as time of vote.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: December 19, 2007

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 07025, SPECIAL PERMIT NO. 07052, ANNEXATION NO. 07004, CHANGE OF ZONE NO. 07062 and PRELIMINARY PLAT NO. 07005, PARROTT ADDITION.**

Ex Parte Communications: None.

Item No. 1.2, Special Permit No. 07052, was removed from the Consent Agenda and scheduled for separate public hearing. **Item No. 1.3a, Annexation No. 07004; Item 1.3b, Change of Zone No. 07062; and Item No. 1.3c, Preliminary Plat No. 07005, Parrott Addition,** were removed from Consent Agenda and called under Requests for Deferral.

Sunderman moved to approve the remaining Consent Agenda (Comprehensive Plan Conformance No. 07025), seconded by Gaylor-Baird and carried 9-0: Gaylor-Baird, Carroll, Cornelius, Esseks, Francis, Larson, Moline, Sunderman and Taylor voting 'yes'.

REQUESTS FOR DEFERRAL

ANNEXATION NO. 07004,
CHANGE OF ZONE NO. 07062
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL
and
PRELIMINARY PLAT NO. 07005
PARROTT ADDITION,
ON PROPERTY GENERALLY LOCATED
AT NORTH 14TH STREET AND ALVO ROAD: December 19, 2007

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

Ex Parte Communications: None.

Staff recommendation: Approval of the annexation, subject to an Annexation Agreement; approval of the change of zone; and conditional approval of the preliminary plat.

The Clerk announced that the applicant/owner, Lincoln Public Schools, has requested a four-week deferral.

Cornelius moved to defer, with continued public hearing and action scheduled for January 16, 2008, seconded by Sunderman and carried 9-0: Larson, Moline, Francis, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll voting 'yes'.

Public Testimony

1. Peter Katt appeared on behalf of two clients, **Fowler Homes,** the developer of Charleston Heights, and **Hartland Homes,** the developer of **Hartland's Garden**. Since this involves a school site, Katt believes there is some homework to do before the Planning Commission takes action on this development. There are important issues that the Planning Commission needs to address.

First of all, Katt suggested that government projects are not held to the same standard as private sector projects. As evidenced by the staff report, Katt purported that LPS is not being held to a very high standard in coming forward for an annexation and change of zone. Katt purports that government should set the standard – not be beneath the standard.

Secondly, there is the policy question: "who pays and how much" to extend urban infrastructure to a school site well beyond the existing city limits. Katt suggested that this annexation and change of zone are premature until the City has the ability to extend and connect the water and sewer service. To date, those services need to run through his client's property directly to the south and his client has had zero discussion with the school district. The school district does not have ability to extend water and sewer to the proposed school site today.

Katt then submitted an area map showing Charleston Heights, which was recently platted by Fowler Homes, and the proposed school site. He also showed the platted portion of Hartland's Garden. The roads that the Commissioners should drive are 14th Street, taking a look at the stub not yet connected to 14th (Julesburg), which is the proposed connection point to the school road. Alvo Road stops. And, Humphrey is an important road to drive. Why does it matter? Because when the Hartland's Garden and Charleston Heights developments were brought forward, the City of Lincoln imposed a super collector standard on Humphrey and Pennsylvania because they were concerned that Alvo Road would not be available to serve the school site. The point is: if we make the commitment to expend a lot of money to build Alvo Road to connect to the school site, it will be fundamentally unfair to uphold the super collector on Humphrey. He thinks it would be preferable for Humphrey to be put in to serve the school site because it will be a lower overall cost, but that is not his decision.

Esseks confirmed with Katt that he is purporting that under the current plan, there is an alternative route to the school. Katt concurred. The proposed school site was originally to have been a middle school site, which has now moved over to Fallbrook. This site is now going to be an elementary school site (instead of the Pegram school site). It is primarily designed to serve the residential areas north of the Interstate. Look at what road really connects the two neighborhoods – it's Humphrey. Humphrey is in place and graded. It just needs to be paved. There are already agreements in place for Humphrey.

Katt also pointed out that the Comprehensive Plan shows a commercial "dot" north of the Julesburg extension, where he believes the school district will be asking for commercial zoning. Katt is hopeful to have further discussions with LPS by January 16th. LPS has not shared information with Katt as to why they decided to change the school site location (Parrott versus Pegram). Katt suggested that they are beyond the "edge of the world" by a good measure and they are asking the taxpayers to pay the cost of extending the infrastructure.

Carroll wondered about traffic going through Katt's client's property to get to the school. Katt suggested that the easiest solution would be to have the City construct Humphrey as a special assessment district and assess the cost back to the adjacent properties.

The property north of Humphrey is the Charleston Heights development of 78 acres owned by Fowler Homes. It is an approved preliminary plat. There is ability to grant access to the school site.

There was no further testimony.

These applications will have continued public hearing and action on January 16, 2008.

WAIVER NO. 07009
TO WAIVE STREET PAVING, SIDEWALKS AND STREET TREES,
ON PROPERTY GENERALLY LOCATED
AT N. 36TH STREET AND "Q" STREET: December 19, 2007

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

Ex Parte Communications: None.

Staff recommendation: Denial.

The Clerk announced that the applicant has requested this application be placed on pending until the City Council votes on paving "Q" Street with LMI funds.

Carroll suggested deferring until February 27, 2008. So moved by Sunderman, seconded by Cornelius and carried 9-0: Larson, Moline, Francis, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll voting 'yes'.

SPECIAL PERMIT NO. 07052
TO ALLOW AN EXISTING ACCESSORY BUILDING
TO BE USED AS A DWELLING FOR A
DOMESTIC EMPLOYEE, ON PROPERTY
GENERALLY LOCATED AT
S. 120TH STREET AND "O" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 19, 2007

Members present: Larson, Moline, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll (Francis declared a conflict of interest).

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda.

Staff presentation: **Mike DeKalb of Planning staff** explained that this is a special permit to use a dwelling unit for a domestic employee pursuant to §27.63.644 on a 3.25 acre portion of a 40-acre parcel. The property is also currently being final platted to split the 3.25-acre parcel off from the 40. The property is located about half-way between "O" and "A" Street on the west side of the road. There are two houses on the parcel identified in the special permit. The intent is to sell the 40-acre parcel with two houses, with the second house only to be used for a domestic employee.

Esseks noted that the Building & Safety Department has recommended denial on the grounds that it would be difficult to enforce the condition that a domestic servant live in the second house. He also noted that this area is designated for high density urban development. This appears to be an indirect way of getting the higher density early. How can we be sure this is not a ruse? DeKalb concurred that the property is designated for future urban development. These are existing houses. The provisions of the code specifically state how this can be used and it is enforced on a complaint basis, like most zoning provisions. DeKalb indicated that he understands the concerns of Building & Safety, but the application meets the provisions of the code. Esseks suggested that if the code cannot be enforced, we need to come up with a better ordinance. He assumes that this was a farm worker's home at some point in the past. Is there some presumption that this parcel will be separated out? DeKalb stated that an application for final plat has been submitted which splits off the entire 40-acre parcel. The conditions of a prior special permit required that one house be removed. The applicant wants to retain both houses for purposes of resale. Without this special permit, the final plat cannot be approved unless they remove the second house or adjust the lot lines.

Rick Peo of City Law Department discussed the issue of enforcement. There are a lot of situations where we assume that the people operate legally and lawfully, and enforcement is a complaint process. Building & Safety might feel that they are understaffed, but that does not mean it cannot be done. One possible solution would be to add a condition that the owner provide an annual certification that the occupants of the secondary home are in fact domestic employees and the status of employment in which they are engaged.

Larson clarified that it is against the code to have two separate households for two different families. DeKalb agreed – this is an exception to that rule by special permit.

Proponents

1. Marcia Kinning appeared on behalf of **ESP** and the applicant to answer any questions.

Larson inquired whether the owners intend to proceed with the platting process. Kinning explained that both applications have been submitted and are in the Planning Department at this time.

Gaylor-Baird inquired whether either of the homes are currently occupied. Kinning stated that the smaller house is currently being occupied by a person that is overseeing the land. The other house is currently vacant. The Skorohods are wanting to sell the 3-acre portion. They built their home further to the north.

There was no testimony in opposition.

Sunderman clarified that the only way they can sell the 3-acres is to destroy one of the houses, but with this application for special permit, they can keep both houses and sell both houses. DeKalb agreed. Thus, Sunderman suggested that the applicant is trying to save an asset.

ACTION BY PLANNING COMMISSION: December 19, 2007

Larson moved to approve the staff recommendation of conditional approval, seconded by Moline. Esseks suggested a friendly amendment that every year the owner of the principal residence certifies that the occupants of the second residence are domestic employees. It will be a 3-acre lot that encompasses both properties, so they will still have to meet the domestic employee condition. Larson and Moline agreed to the friendly amendment.

Motion for conditional approval, as amended, carried 8-0: Larson, Moline, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll voting 'yes'; Francis declaring a conflict of interest). This is final action, unless appealed to the City Council.

CHANGE OF ZONE NO. 07061
FROM B-1 LOCAL BUSINESS DISTRICT
TO B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT
and
PRE-EXISTING USE PERMIT NO. 07001A
ON PROPERTY GENERALLY LOCATED
AT SOUTH 70TH STREET AND VAN DORN STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 19, 2007

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

Ex Parte Communications: None.

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

Staff presentation: **Brian Will of Planning staff** explained that this is a request to change zoning to B-2 in conjunction with an application for pre-existing use permit southwest of the intersection of S. 70th Street and Van Dorn Street. The applicant had approached staff

seeking alternatives to a dilemma. North of the existing building is a proposed outdoor temporary storage area for outdoor sales, which will eliminate required on-site parking spaces. Staff told the applicant that there are two alternatives: apply to Board of Zoning Appeals (however, it appeared that the findings that the Board of Zoning Appeals would have to make in order to grant a variance probably did not exist), or apply for B-2 zoning with a use permit.

Will noted that there were several concerns noted in the staff report which have been addressed. Public Works had concerns with adjusting the parking and the conditions it might create. Building & Safety noted that the temporary structure had to be moved further to the east to maintain the setback from 70th Street. Because this request reduces parking below the minimum number required, the staff wanted to make sure that it does not create a circumstance that causes parking problems for other neighbors in the area. To that end, one of the conditions of approval is that the City Council, upon report and recommendation of the Director of Public Works that the reduced parking creates a traffic hazard, could revoke this use permit.

Carroll pointed out that the entrance shown on the site plan off of Van Dorn does not look the same as it does on the aerial photograph. Will agreed that the site plan drawing does not include the additional area before getting to South 70th Street. Carroll believes the aerial shows the driveway considerably further west versus the site plan drawing. Carroll wondered how many parking spaces are west of the entrance. Will agreed that there appears to be a discrepancy.

Esseks inquired whether this has been done before. Will did not know if this has been done before and agreed that this condition is somewhat unique. The applicant has made the case for an adjustment and the staff does not find anything hard and fast to recommend denial. The staff is suggesting that should the situation arise, then the provision is in place to revoke the permit.

Esseks observed that it looks at though the major entrance is going to be very close to where the temporary facility will be located, creating a higher public safety risk. The Planning Commission has the duty to protect the public. Will suggested that one can still enter off Van Dorn Street and exit. The temporary facility simply eliminates a number of the parking spaces.

Proponents

1. Steve Glenn, applicant and owner of the property, explained that the reality of this application is that they are trying to sell flowers. Every grocery store and drug store in this town sells flowers. He attempted to put up a tent for 90 days to sell flowers and the zoning ordinance would not allow it due to the parking. He removed the tent and that is why he is here today. Glenn's True Value is in the convenience hardware store business. The average transaction is $15. The average customer is in the store 12 minutes. For this

whole year, they have had 70,000 customers, an average of 192 customers per day. Thus, they need 4.25 parking stalls per hour. During the busiest hours, they need 8.5 parking stalls per hour. They currently have 30 to 40 parking stalls. The flower and garden business is about 25% of their business so it is imperative that they have the ability to compete with the major box stores. This is a small business. They need the ability to compete – to sell flowers in the market place.

Glenn further stated that he has had a very positive response from the community for this store. In April, there was a very large response at the grand opening. He has since repaired the asphalt to add 10 parking stalls on the southern border. The old parking lines allowed the driveways to go north and south which caused congestion. Currently, he only allows south to northbound traffic through the property, which has improved the flow of traffic, with the majority coming in off 70th Street.

Glenn acknowledged that some of the traffic did flow onto the neighbor to the south during the grand opening; however, in the last six months, that problem has been addressed, especially with 4.25 parking spaces being used at any one time.

Larson inquired whether the building to the north is permanent. Glenn stated that it is not permanent – it is a clear tent that would only be used from March through June or July.

Cornelius inquired whether the large turnout for the grand opening was simply because this is a new store. Glenn stated that they had some real special things going on during the grand opening. He then pointed out that there are four major hardware stores within five minutes of this location. If he makes it hard to park or the customer cannot find a parking stall, then they will go to his competitor located 5 minutes away. If they can't park easily, he's going to have to deal with it or go out of business.

Cornelius ask Glenn to estimate how many parking spaces he will need while the tent is set up. Glenn believes it would be about 35. He will be required to move the tent 20 feet to the east, which will take out 4 or 5 stalls. Glenn also pointed out that 40% of the traffic comes to the store on Saturday and Sunday when the neighbor to the south is closed.

Francis inquired how the numbers were calculated. Glenn stated that the calculations were based on real numbers based on facts out of the cash register.

Gaylor-Baird noted that the staff was not able to confirm that the neighboring businesses did not have any objection. Glenn stated that he spoke with the neighbor to the south a month ago. He believes she may now have some concerns and is here today. Glenn wants to be good to his customers and wants to be a good neighbor, but he also has to run a business. He believes this is reasonable.

Moline indicated that he is struggling to understand why a 20' setback for the tent when the building itself is closer than that. Glenn stated that there is a professional building to the

west. There are trees and a little slope at the northwest corner. He also does not understand why the building can be on the lot line and the tent needs a 20' setback. There are no buildings west of the tent. Moving the tent closer to the lot line would give him more parking.

Esseks expressed concern about traffic coming in right at the entrance of the tent. Glenn believes there is probably 70' from the opening to the tent, even if they move the tent.

Carroll pointed out that the aerial photo shows the driveway further west than the drawing, which reduces the parking by moving the structure 20' to the east. Glenn stated that there are two parking spaces between the opening and the corner. He did not know the number of parking stalls from the entrance to the west.

Opposition

1. Jayne Snyder, 810 Lakewood Drive, owner of the property south of the proposal, testified in opposition. She has been at this location at 2845 S. 70th for 17 years, and she currently owns the building. There are two businesses in this building, Snyder Physical Therapy and Nebraska Orthotic and Prosthetic Services, both of which deal with physically disabled clients. She is in opposition to any change that would decrease the parking stalls at the hardware store. At the time when this business opened, they did have some issues. It wasn't just with the grand opening. When they build this temporary tent on the north side, they would decrease the parking spaces considerably. She has had to staff the parking lot so that her patients can come for treatment. Sometimes patients had to leave and go without their normal treatments. Many times, her handicap parking spot directly adjacent to the hardware store is filled by customers of the hardware store. The data may be correct for the entire year, but the greatest business done by this store is in March or April through the summer. In July of 2007, she had to make arrangements to protect her handicap area from encroachment by the True Value customers, truck deliveries, and employees of the hardware store. She also noted that the owner of the store occupies parking stalls with rental equipment, pallets, and items of storage.

Moline inquired whether Snyder has marked her parking as "not available for hardware customers". Snyder stated that she monitors the parking lot. The handicap stalls are marked. They do put special signs up during the times of congestion; however, her parking is not permanently marked as for her business only. The convenience store parking is a real danger to her patients.

Carroll inquired whether the Snyder property shares a driveway with the property to the north. Snyder indicated that her business shares driveways south and north. The easement is across her parking lot to go south. There is legal sharing of the easement to enter on 70th Street.

Staff questions

Esseks appreciated the staff's effort to address the issues, but it looks like a problem. Surely we can come up with some better design features. Will stated that the site is pretty tight. The 20' setback is a uniform fire code requirement. It is not an adjustment or a waiver that can be granted. It is difficult to give a hard and fast number because the parking lot could be reconfigured and restriped. He estimates that there will be 34 parking spaces. There is concern with this. If this were a stand alone site that did not share any driveways, it would be easier to look at and suggest that the parking adjustment will not affect anyone else. As of the writing of this report, the staff did not have any knowledge of any concerns or parking problems.

Esseks wondered about voting to delay to allow the opportunity to come up with some conditions that might allow Mr. Glenn to conduct his business. Will agreed that to be a good idea. Staff could attempt to discuss other alternatives for laying out the parking lot. There may be other options. If the Planning Commission did delay, staff would be more than happy to work with the applicant and explore other alternatives.

Larson wanted to know who has jurisdiction over the setback. Will reiterated that to be a fire code requirement that cannot be waived. Larson thinks that the setback is the problem. If that could be changed, it might be a solution to this problem. Will stated that in general terms, the fire code exists for the health and safety of all, and he does not know whether there is a board that exists to adjust those requirements. That could also be explored. The applicant would be prohibited from storing anything in that area. To the south of the building identified as crushed rock, there is a chain link fence and it may have been used for storage in the past, but it is not allowed. If the zoning is changed to B-2, the applicant cannot store anything within 20' of that rear property line.

Moline wondered how someone would process a complaint. Rick Peo of the City Law Department acknowledged that the complaint process is not specifically spelled out. It is not intended that any individual complaint could go to the City Council. It is really meant to be a process for the City Traffic Engineer to be monitoring whether there is a traffic hazard out there or an adverse impact on neighboring properties not having access to parking. Once the City Traffic Engineer makes that determination, then they would set it on the Council agenda for a show cause hearing and all parties would have the opportunity to come forward and the Council would make a final decision. It could be set immediately on the City Council agenda, and would be a resolution with two readings. There would be notice to the property owner and the complaining parties. This process would take a maximum of four to six weeks.

Gaylor-Baird observed that potentially there is room by removing things that are currently being stored and reducing the size of the tent, etc. Will referred to the site plan. That is what is being proposed and that is what the staff report is based upon. If there is storage proposed to be on any of the parking spaces, it is not represented on the proposed site

plan. The site plan would indicate that all of the parking spaces are open and available. The parking requirement in B-2 zoning would be 1 space per 300 sq. ft. of floor area. B-3 would allow 1 space per 600 sq. ft. of floor area. This proposal appears to fall somewhere in-between. He cannot address what the owner to the south has experienced.

Carroll wondered whether the staff could request an "as built" survey if this proposal is deferred. Will believes that if this were delayed, certainly the validity of the site plan could be addressed. He would ask the applicant to make revisions and resubmit. The intent is to bring a site plan to the Planning Commission that is accurate.

Larson wondered whether the placement of that tent could be turned that would provide more parking. Will reiterated that because the tent is temporary and free-standing, it needs to maintain the 20 ft. separation from the building and from both of the property lines. Larson observed that all of the parking both north and south of the tent will be lost. Will agreed.

Gaylor-Baird also observed that moving the tent 20 feet may result in loss of the handicap accessible parking. Will suggested that it depends on striping. Perhaps they could be moved. It appears that the building is some distance off the rear property line. To maintain that 20 ft. separation is going to remove 4-6 stalls and gets into the handicap stall.

Response by the Applicant

Glenn reiterated that "things have changed since April". 10 parking spots were not available at that time. The parking for the business to the south was not signed. It is now marked. Whether we have 37, 42 or 35 parking spaces – even if our capacity goes up 50 or 100 percent – the hardware store needs an average of 8 to 10 stalls for customers, i.e. we need 1/4 of what we have. Things have changed dramatically since the grand opening – change in the flow of traffic and ten more stalls that have become usable for parking.

Larson asked whether the applicant could provide an hour-by-hour computation to determine the peak hours of business. Glenn observed that his neighbor to the south is closed Saturday and Sunday, and those are the peak hours of the hardware store (40-50 percent higher than mid-week). He cannot afford to have parking problems.

But, Esseks advised Glenn that the Planning Commission's role is to be concerned about public safety and the neighbor to the south has expressed some real concerns that he cannot ignore. He is going to vote to defer so that hopefully something can be worked out to mutual satisfaction.

Esseks moved to defer four weeks, pending consultation by the Planning Department with Mr. Glenn and Ms. Snyder and other parties, seconded by Moline.

Moline grew up working at an Earl May store and knows how important this business can be. He wants to find a way to approve it but he has real concerns about the amount of parking. Today he would have to vote "no", so he hopes something can be worked out.

Carroll requested that the Planning Commission be provided with an accurate site plan.

Motion to defer, with continued public hearing and action on January 16, 2008, carried 9-0: Larson, Moline, Francis, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll voting 'yes'.

SPECIAL PERMIT NO. 07053
FOR A GARDEN CENTER
ON PROPERTY GENERALLY LOCATED
AT S. 110TH STREET AND SALTILLO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 19, 2007

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Mike DeKalb of Planning staff** presented the proposal for a garden center in the City's 3-mile jurisdiction, consisting of a 20+ acre parcel generally located at S. 110th Street on the north side of Saltillo Road. One of the conditions of approval requires a future subdivision to create the two parcels, cutting the farm house off from the balance of the land.

The applicant's attorney is requesting to delete Condition #2.1 to revise the plan to show buildings and parking setback 100' from lot lines. DeKalb explained that this condition is based on the language in the special permit provisions in the ordinance. This is not a waivable condition. When creating the lot, they could adjust the lot line to get the 100'. An alternative might be to move some of the farm buildings.

The applicant's attorney is also requesting an amendment to Condition #2.5, which is to "Note that required parking shall be paved". DeKalb explained that the city standards require paved parking of 6 stalls or more. The applicant is requesting to amend this condition such that:

> Required parking shall be paved when the retail and office use of the proposed improvements to be constructed shall exceed 1500 square feet in aggregate....

This would clarify that the six stalls is the trigger.

Proponents

1. Tom Huston appeared on behalf of Rick Clark, the applicant. Mr. Clark owns Lincoln Landscaping and his business has grown and he is hoping for a permanent location. This 20-acre farmstead is owned by Ron DeBoer, with an existing home where the applicant could reside and operate his business on the adjoining property. The zoning ordinance requirement of one use per parcel is what gave rise to the farmstead subdivision possibility. The subdivision application has not yet been submitted.

Huston requested that Condition #2.1 dealing with the 100' setback be deleted. He noted that the language in the ordinance refers to the setback being 100' from external lot lines. There is no definition of external lot lines. The definition of "lot" under the code focuses on a buildable parcel that does have access to a public right-of-way. The site plan shows that the parking and buildings are set back more than 100' from Saltillo Road. Granted, the applicant can gerrymander a lot line around the farmstead to comply with that 100' setback, but it seems illogical. That interpretation will require a very irregular shaped parcel.

In relation to Condition #2.5, Huston advised that there is no required parking for a garden center in the AG district. His proposed substitute language makes it more clear that if the applicant's parking demand stays below a level where six stalls are required, he does not have to have surface parking. There are several garden centers in the county that do not have surface parking.

Esseks assumes a garden center is a permissible use in AG zoning. Will your client raise the products to be sold? Huston indicated that most of his client's uses are permitted "by right" in AG. The only reason for this application is the possibility of selling retail, such as mulch, rock, screen nursery products, etc.

Moline wondered where any parking beyond five spaces would park. Huston reiterated that there is no required parking for a garden center in the AG district. He is trying to suggest that as long as the building remains a size that does not require six or more stalls, the applicant need not have a surface parking lot.

Esseks wondered if the same is true if it is a retail facility and not just an office building. Huston advised that there would be very little retail area within the building itself. In fact, the retail will be on the exterior of the building. There is no floor area dedicated to retail sales.

Huston also suggested that one of the attractions of this property is to use the existing buildings. It seems silly to gerrymander the lots as long as they maintain the 100' setback from Saltillo.

Moline agreed that the gerrymandering is not a good idea. He asked whether there is a

plan as to how the lot line would run if the requirement is deleted. Huston explained that Lot 2 is the 3.1-acre farmstead parcel, and Lot 1 will be the 20.1-acre parcel that would be the garden center. They are nice, clean rectangular shaped parcels.

Rick Peo of the City Law Department advised that his interpretation of the setback requirement is that you are required to be set back 100' from the perimeter boundaries of the special permitted use. A special permit might encompass several lots. They are trying to create two lots so they are creating the exterior lot line that they have to be set back from. There is no waiver of the 100' setback.

Peo agreed that Condition #2.5 that requests the parking to be paved could be deleted. Under the code, all parking lots of six spaces or more are required to be paved. This particular application would not qualify for a waiver of that requirement because it is not a nonprofit corporation, etc. Any parking lot created of six stalls or more has to be paved. If the plan does not show parking lots with six or more stalls, there is nothing to be paved.

Peo concurred that the code does not allow waiver of the 100' setback (Condition #2.1).

Esseks inquired whether there are any requirements in the AG district as to the extent to which this is a productive use of the land as opposed to a kind of depository for materials used in the business. Peo referred to the definition of “garden center”, which defines the type of product that they can have on site. DeKalb suggested that when it changes use is the key. It is up to Building & Safety to find out when there is a change of use. In this particular application, they are showing outdoor nursery and plant materials.

Peo has reviewed the history of the 100' setback legislation, and the same language has always been there. This has been applied to other nurseries around town. To him, it is clear that the 100' applies to the lot line of the boundaries of the special permit. If they build out fully as shown, the parking requirement would be about seven stalls. If there is the need for that many stalls, they would have to be paved.

Other testimony

1. Jim Stewart, 8909 Saltillo Road, who owns and operates a farm directly to the south of this property, testified stating that he is not in opposition; however, he pointed out that the subject property is surrounded 100% by farm ground. The farmers try their best to keep the herbicides and insecticides on their own property, but there does tend to be some drift now and then. In addition, there is going to be a certain amount of large farm equipment on Saltillo Road. He advised that he has an airstrip on his farm with a special use permit for an airfield which has been in place 15 to 20 years.

Rick Peo recited the definition of garden center:

> A building or premises used primarily for the retail sale of items useful in the culture,

display or decoration of lawns, gardens or indoor plants; including books, appliances, and tools, but not including power tools or tractors.

Response by the Applicant

Huston agreed to delete Condition #2.5 as opposed to substitute language.

He continued to suggest that Condition #2.1 be deleted. He questioned the underlying reason for interpreting the phrase requiring 100' setback from external lot lines as meaning the perimeter of the special permit premises. If it is to protect adjoining residential property from the impact of this special use, he pointed out that the applicants are going to live in the residence and the future land use map shows that the city will grow into this area and this will not be a garden center forever. He is not asking for a waiver of this requirement. He is suggesting that the interpretation utilized by the city may not be the only interpretation that exists because of the phrase "external lot lines". The applicant can and will create an irregular shaped parcel if it is required. But, Huston believes the Planning Commission has the authority to make the interpretation.

ACTION BY PLANNING COMMISSION: December 19, 2007

Sunderman moved to approve the staff recommendation of conditional approval, with amendment deleting Condition #2.5, seconded by Larson and carried 9-0: Larson, Moline, Francis, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

*** break ***

CHANGE OF ZONE NO. 07059
FROM B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT
TO O-3 OFFICE PARK DISTRICT
AND FROM O-3 OFFICE PARK DISTRICT
TO B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT
and
USE PERMIT NO. 128B
TO CHANGE OFFICE USE TO
HOTEL, RESTAURANTS AND RETAIL SHOPS,
ON PROPERTY GENERALLY LOCATED
AT THE NORTHEAST CORNER OF
84TH & HOLDREGE STREETS.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 19, 2007

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

Ex Parte Communications: The Commissioners all received a letter from Danielle Miller, 8611 Lavender Circle, in opposition.

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

Staff presentation: **Brandon Garrett of Planning staff** explained that today's action is a recommendation to the City Council. The height waiver requested was initially eligible to be final action if a change of zone to the text of the ordinance was passed by the City Council. That text amendment was passed, except the B-2 and B-5 were not included in that ordinance. Therefore, the waiver to the B-2 height from 40 to 45 feet is required and must be acted upon by the City Council.

Garrett advised that at noon today, he received a copy of a letter from Rob Otte, who is the attorney representing the neighborhood to the east. That letter was addressed to Mike Rierden, who represents the applicant. The letter states that the neighborhood and Mr. Otte would not show up in opposition today based upon finalizing a Development and Conditional Zoning Agreement before action by the City Council.

Proponents

1. Mike Rierden appeared on behalf of the applicant. The request for change of zone from O-3 to B-2 is approximately 3.6 acres, the change from B-2 to O-3 is approximately 2.25 acres. The reason for the change to the O-3 is to maintain the minimum area requirement in the O-3 of 2 acres. The reason for the change to B-2 is to place a proposed extended stay hotel on the property. Today there is an approved office building of 68,000 sq. ft. on that parcel and 45' in height. The applicant wishes to change that to an extended stay hotel, but under the B-2 the height limitation is 40', so that is the reason for the request to waive the height limitation to allow 45'.

Rierden advised that the applicant met with the neighbors three times and he has spoken with legal counsel a number of times. Rierden requested that Rob Otte's letter be made a part of the record. Rierden also submitted a copy of the proposed Development and Conditional Zoning Agreement. He believes they are close to finalizing this agreement and he requested a favorable recommendation from Planning Commission to move this forward to the City Council. The applicant has committed to the neighbors that he will not schedule these applications on the City Council agenda until the agreement has been signed.

Rierden advised that the key elements of the agreements with the neighbors is that they want the change of zone tied to an extended stay hotel for a certain period of time. He also wanted the Commission to know that the conditions in the agreement are based on requests by the neighbors. This is one issue where they have not reached total agreement because of the hotel's marketing plan, but he believes they will be able come to agreement.

The agreement refers to the buffering, signing and lighting. The homeowners to the east will eventually have a 100% buffer.

2. Dave Johnson with Studio 951, 720 O Street, the architect for the project, gave a sense of flavor of the development with visuals. There will be three single story retail buildings along with the hotel. Further north in the development there is a dental office, vet clinic, Union Bank facility and another 8100 sq. ft. retail building and an office building. He displayed the architecture proposed for the development. There will be more trees than usually seen in a retail development. The fronts of the retail buildings will face the east and north. The back of the retail buildings will be mostly glass as opposed to a blank wall with service doors. There will be evergreen trees planted by the applicant in the back yards of the abutting residential properties. The applicant has also agreed to do a berm which will get the trees up higher, the trees being in the 10-12 ft. height to begin with. There is 160 feet between the end of the hotel and the back of the residences. The finished floor of the hotel can be at elevation 1272, which is down from N. 86th Street. From the grading plan, he believes that the two houses directly to the east have finished floors at about 1277.

Johnson then showed some room layouts for the suites of the proposed hotel, the smallest being 570 square feet.

3. John Klimpel, of **HMA Hotels,** testified in support. HMA Hotels will be partnering on this project on the extended stay hotel. They have done several extended stay hotels in the area, the most recent being Candlewood at 70th & Pioneer. There is a great need for this type of hotel in Lincoln.

There was no testimony in opposition.

Staff questions

Esseks stated that he personally feels comfortable supporting this proposal, provided a zoning agreement of this nature with protections for the adjacent residential properties is enacted. How do we make this possible? Garrett stated that the zoning agreement could be added as a condition of approval to the change of zone request. Esseks indicated that his vote hinges upon whether certain provisions of the zoning agreement are included. The Planning Commission would be approving something that has not been finalized. How do we deal with that? Rick Peo of City Law Department understands that the draft agreement is probably 90% accurate as to what would be finalized. He has not had a chance to evaluate the issues. Since the draft agreement has been made part of the record, the Planning Commission could indicate that any development agreement has to be substantially in compliance with the draft submitted today.

Carroll inquired about the signage. Garrett advised that the B-2 district would allow a 500 sq. ft. wall sign (or 30% of the facade) and a 100 sq. ft. ground sign per street frontage in the front yard. Out of the front yard they get 100 sq. ft. plus 50 sq. ft. ground sign per pad

within 30 feet of the building. Carroll assumed then that the ground sign would be located along Holdrege Street at that intersection and a wall sign for the hotel. Garrett concurred. The agreement provides that any signage on the east side of the building facing the building would be minimal, if any at all.

Response by the Applicant

Don Linscott, one of the developers, stated that they would only allow the ground sign along Holdrege Street, and then one sign on the west side of the building for identification. The applicant has worked very hard with the neighborhood. They have had three meetings and have agreed to many of those suggestions. Many of the provisions in the zoning agreement are those things that he has agreed to do with the neighbors from the beginning. The only difference of opinion is that the neighbors would like to make sure this is an extended stay hotel for 15 years. The applicant would prefer 10 years based on the market place. Linscott is working in a co-venture with HMA, a hotel developer out of St. Louis. 70th & Pioneers is very similar to what will be done here. A lot of these issues were dealt with at 70th & Pioneers. We do not know if this is going to be a Marriott or Spring Hill, etc. The developer is working with a national company and the 15-year requirement is difficult. All franchisers only give you a 10-year license, and then you can renew it. Rierden stated that they will work something out with the neighborhood. The timetable is the only thing they have not reached agreement upon with the neighborhood.

Marvin Krout, Director of Planning, asked the Commission to suspend their rules to allow staff to make further comments about traffic issues. Today is the first time the staff has had an opportunity to look at the draft agreement. (***Editorial Comment****:* The discussion then diverted to discussions about turn lanes and it was discovered that the reference to "84th" Street in the zoning agreement was a typographical error. The correct reference is "86th" Street.)

Linscott then gave a history of the proposal. When it was originally submitted, the applicant showed two drive-through facilities, and they were told in a meeting with Public Works that they felt the two drive-through facilities would result in the development exceeding the number of trip generations. The applicant went back to the drawing board in order to stay in the same trip generation, resulting in 38,000 sq. ft. of retail and the extended stay hotel. To stay within that trip generation previously approved, the applicant agreed to do an 85 room hotel and 20,000 sq. ft. of retail (2 buildings).

Carroll then asked the applicant if he agreed with the staff's revised Condition #3.8:

> 3.8 Submit an escrow or some other method of securing the funding for the construction of the median on Holdrege Street for the N. 86th Street ~~north of Lexington Avenue~~ intersection.

Linscott stated that they had told the neighbors that they did not think they were going to have to have a left only turn from 86th & Holdrege. Linscott believes that this proposal complies with the trip generation that was previously approved. Linscott pointed out that the developer's pocket loss was tremendous in complying with the staff's recommendation to remove the two fast food locations. (In fact, he had both of them pre-sold.) But, he decided he was better off trying to work with staff in eliminating those two and complying with the 38,000 sq. ft., which is under the same trip generation currently approved with a 68,000 sq. ft. office building. Linscott would certainly like to work with the city, but he does not want to be the one between the city and the neighbors.

Garrett clarified that Condition #3.7 appears to be the condition to which Mr. Linscott is referring. That condition was in the original staff report:

> 3.7 Add General Note #45 to state "IF TRAFFIC VOLUMES AND/OR CRASH RATES INCREASE TO A LEVEL THAT WOULD WARRANT A SIGNAL, PUBLIC WORKS WOULD REQUIRE THE DEVELOPER TO CONSTRUCT A MEDIAN TO LIMIT ACCESS TO LEFT IN, RIGHT IN, AND RIGHT OUT ONLY."

The revision to Condition #3.8 made by the staff refers back to Condition #3.7. Condition #3.8 was revised only to correct a typo that he made previously. Condition #3.7 deals with how that median should be constructed and paid for. This is the same intersection (86th & Holdrege) that is referred to in the conditional zoning agreement. We're talking about the same thing.

Chad Blahak of Public Works explained that the issue with the 86th & Holdrege intersection was not that Public Works wanted to require any change or construction to that intersection at this point in time; however, the condition that was written was that it should be monitored and if crash rates and trip volumes increase to the point where a signal is warranted, that the intersection be closed to left in and right out only. When this project was originally approved, the substandard intersection spacing for full access median openings was approved, the original project being a lot less commercially intense. This project has gone through a previous change of zone to increase the traffic volume. Even though this proposal does not necessarily increase the peak hour volumes, it does increase the daily trips from 800 to 2500 daily trips. The intent of the condition was to apply some kind of financial guarantee that should the crash rates dictate a change to the intersection, there would be some escrow or financial guarantee to make those improvements in the future.

Esseks observed that this is a condition on negative evidence that may arise. It is only if it is needed.

Moline inquired whether the neighborhood's concerns would still be considered. Blahak stated that even if this application was not coming forward, Public Works would technically

still have the authority to propose changes to intersections due to safety and traffic volume. The only thing that condition was meant to do was to apply some responsibility due to the increase of traffic volumes over the history of this project. Condition #3.7 is not new today. It has been in the staff report all along.

Sunderman clarified that the staff is not asking the developer to put monies down to fund this, but merely asking for some sort of contract that they will pay for it if needed. Blahak acknowledged that the mechanism needs to be worked out – whether it is a bond or some type of agreement. Moline thinks it unfair to ask them to put up a bond if it may never happen.

Rierden suggested they could work further with staff prior to City Council.

CHANGE OF ZONE NO. 07059
ACTION BY PLANNING COMMISSION: December 19, 2007

Larson moved approval, seconded by Leirion.

Esseks moved to amend to require that the change of zone be conditioned upon the finalization of the development and conditional zoning agreement between the developer and the city that is substantially in conformance with the draft submitted to the Planning Commission on December 19, 2007, seconded by Cornelius.

Esseks believes that the agreement deals with the concerns of the residents to the east. He thinks it is an impressive agreement and suggested that the city may want to use this in the future.

Motion to amend carried 9-0: Larson, Moline, Francis, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll voting 'yes'.

Main motion, as amended, carried 9-0: Larson, Moline, Francis, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll voting 'yes'. This is a recommendation to the City Council.

USE PERMIT NO. 128B
ACTION BY PLANNING COMMISSION: December 19, 2007

Cornelius moved to approve the staff recommendation of conditional approval, including the staff amendment to Condition #3.8, seconded by Taylor and carried 9-0: Larson, Moline, Francis, Taylor, Gaylor-Baird, Esseks, Sunderman, Cornelius and Carroll voting 'yes'. This is a recommendation to the City Council.

Next regular meeting is January 16, 2008.

There being no further business, the meeting was adjourned at 3:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 16, 2008.

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