**MEETING RECORD**

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| **NAME OF GROUP:** | PLANNING COMMISSION |
| **DATE, TIME AND PLACE OF MEETING:** | Wednesday, February 13, 2008, 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, Wendy Francis, Dick Esseks, Robert Moline and Tommy Taylor (Roger Larson and Lynn Sunderman absent); Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Tom Cajka, Sara Hartzell, Christy Eichorn, Brandon Garrett, Mike Brienzo, 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 January 30, 2008. Motion for approval made by Cornelius, seconded by Francis and carried 5-0: Carroll, Cornelius, Esseks, Francis and Moline voting 'yes'; Gaylor-Baird abstaining; Taylor absent at time of vote; Larson and Sunderman absent.

**CONSENT AGENDA**
**PUBLIC HEARING & ADMINISTRATIVE ACTION**
**BEFORE PLANNING COMMISSION:** February 13, 2008

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 08005, CHANGE OF ZONE NO. 08002, SPECIAL PERMIT NO. 08006, CHANGE OF ZONE NO. 08003, SPECIAL PERMIT NO. 08007, CHANGE OF ZONE NO. 08004, SPECIAL PERMIT NO. 08008, SPECIAL PERMIT NO. 08001, SPECIAL PERMIT NO. 08002, SPECIAL PERMIT NO. 08003, SPECIAL PERMIT NO. 08004, SPECIAL PERMIT NO. 08005, ANNEXATION NO. 08001, CHANGE OF ZONE NO. 08001 AND PRELIMINARY PLAT NO. 08001, NORTHBANK JUNCTION 1ST ADDITION.**

Ex Parte Communications: None

**Item No. 3a and 3b, Change of Zone No. 08003 and Special Permit No. 08007; Item No. 1.8, Special Permit No. 08004, and Item No. 1.9, Special Permit No. 08005,** were removed from the Consent Agenda and scheduled for separate public hearing.

Cornelius moved to approve the remaining Consent Agenda, seconded by Francis and carried 6-0: Gaylor-Baird, Carroll, Cornelius, Esseks, Francis and Moline voting 'yes'; Taylor abstaining; Larson and Sunderman absent.

Note: This is final action on Special Permit No. 08006, Special Permit No. 08008, Special Permit No. 08001, Special Permit No. 08002, Special Permit No. 08003, and Preliminary Plat No. 08001, Northbank Junction 1st Addition, 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.

**SPECIAL PERMIT NO. 08004**
**FOR EXTRACTION OF SOIL**
**ON PROPERTY GENERALLY LOCATED**
**AT 3601 WAVERLY ROAD**
**PUBLIC HEARING BEFORE PLANNING COMMISSION**: February 13, 2008

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda due to correspondence received in opposition.

Additional information for the record: Mike DeKalb of Planning staff submitted a letter from Lynette Nelson in opposition. She is opposed because the proposed mining operation has been operating illegally for two years. If the applicant had applied for the special permit and followed all of the requirements, she would not be objecting.

Staff presentation: **Mike DeKalb of Planning staff** presented the proposal for a soil mining permit on a 2.5 acre parcel on Waverly Road and N. 40th Street. The actual area of the soil mining permit is at the northern portion of the property. DeKalb acknowledged that the soil mining has actually been in operation for two years. The applicant had received a number of permits from the city, state and federal government, claiming he was digging a pond versus soil mining. After a number of complaints, it has been determined to be a mining operation and the applicant was required to make this application to continue operations.

Esseks inquired whether a digging a pond and soil mining are sufficiently similar for the applicant to have been confused about it. DeKalb believes they can be similar, but in this circumstance it has grown into something perhaps more than the original intent. Whether intentional or not, DeKalb believes it turned into a borrow pit.

Cornelius inquired as to the bases for the complaints. DeKalb explained that the neighbors were complaining about the operations, equipment, noise, traffic, dirt on the road, the fact that there was no special permit and no conditions being required or enforced. Based on other mining operations in this part of the county, there appears to be a higher sensitivity and awareness of the citizens.

Esseks noted that the proposed conditions of approval appear to match the conditions in at least two prior similar applications very well and he appreciates the consistency. He referred to Condition #2.1.6, where the seeding shall occur in the first growing season after extraction ceases. Esseks confirmed that the extraction is allowed for only one year under this special permit. What happens if the seeding fails? DeKalb suggested that it relates back to enforcement. If the seeding fails, he would hope that the various agencies would enforce the condition of seeding. The bond should not be released until there is evidence that the contours are matched and the topsoil put back in, including seeding.

Esseks confirmed with DeKalb that the neighbors are allowed to lodge complaints to activate enforcement.

Cornelius inquired whether the actual intent is to end up with a pond. DeKalb understands that to be the case.

Proponents

**1. Gary Varley,** 5840 N.W. Gary Street, currently project manager for **Land Construction,** 5905 West “O” Street, the applicant, stated that he understands the need for the special permit and accepts all conditions of approval set forth in the staff report.

He explained that a floodplain permit was issued on the property two years ago, and since that time, nothing has changed with respect to operations on the property. The proposed elevations have not changed. The only thing that has changed is the city’s opinion as to what permit they need to continue the operations. Land Construction entered into an agreement with the property owner two years ago to provide a pond, which they fully intend to finish. Land Construction has a contract for removal of the soil. Land Construction also has prices bid for dirt to come out of this property. It is important to be able to maintain the operations because of the contracts. The only change is the nature of the special permit to which they are bound to complete the operations.

Esseks inquired whether Land Construction has dug ponds like this in the past. Varley advised that he has only worked with the company for the last two years so he did not have

an answer; however, he indicated that Land Construction has done a lot of work of this nature for the Lower Platte South NRD and the City in doing excavation relative to waterways, etc. To his knowledge, Land Construction has not applied for this type of permit to dig a pond of this nature in recent years.

Esseks inquired how the dirt is disposed. Varley explained that in this particular case, the elevations and contours indicate that there was no fill going to be deposited on the site. When Land Construction approached the Corps of Engineers about the 404 Permit, they were not requiring one because they were not putting any fill in the floodway. They already have the NPDES permit and the DEQ permit. There was never any fill to be deposited on the site. He does not believe there was any stipulation as to how fast this dirt was going to be removed. It is on an "as needed" basis. He is hoping that within the next construction season, a lot more will be removed. He does not have enough work under contract right now to say when it will be complete.

**2. James Peterson,** the owner and resident at 3601 Waverly Road, testified in support. Two years ago, he contacted Land Construction and made a deal with them to remove dirt needed to create a pond on his property. He was told by DEQ, the NRD and the Corps of Engineers that he did not need a permit as long as he was not draining public water onto the property or building a dam. After they began digging, the City came out and informed him that he needed a permit because the northern portion of the property lies in the floodplain. That floodplain permit was obtained and approval was given. He does not understand why he now needs a special permit to continue digging. Nothing has changed. His original intentions have not changed. In the past, Land Construction has made a major effort to keep Waverly Road clear of dirt and mud by maintaining a street sweeper on the property. Over the past 30 years that he has lived at this property, he has seen garbage trucks, tractors, cars, etc., come in and out of private property on Waverly Road leaving more mud than Land Construction has ever left during this operation.

Peterson's main concern is that Land Construction may not be able to remove the necessary amount of dirt without this special permit. Therefore, he is requesting approval of the special permit so that they can finish what they started. He suggested that the project is half-way complete. He will apply for an extension if need be.

Peterson submitted letters in support from most of his neighbors up and down Waverly Road.

Francis asked Peterson whether he thought this was going to be a long drawn-out process when he hired Land Construction. Peterson stated that he had contacted several contractors about digging a pond, but the cost was prohibitive for him, so Land Construction agreed to take the dirt on an "as needed" basis, with no specific time limit – a win-win benefit for both parties.

Esseks asked Peterson to explain his objective in digging this pond. Peterson stated that he has always liked lakes and ponds. He wants the pond for his own use. He has two boats and wants to put fish in it.

Opposition

**1. Tom Keep,** 8601 Davey Road, retired professional engineer for the Natural Resources Conservation Service, testified in opposition. Much of his career has been involved in pond design. He appreciates that the staff has followed up and required this application for a soil mining permit, which has been going on for three years. Keep submitted that the floodplain excavation permit has no bearing on the need to obtain a special permit for extraction of sand, gravel and soil. Soil was and is being removed from the site and it is being sold for fill material. That is the definition of "soil mining". The floodplain permit does not replace the zoning requirements.

Keep observed that the applicant states that after soil mining, a pond will be left. The grading plan shows an excavated pond, but there is no planned overflow structure. It would have surface area of 7 acres and would be 6-12 feet deep, holding approximately 46 acre-feet, 138 million gallons of water. The applicant states there will be no effect on groundwater in the area. In this area of the county, the pond needs to have a 20:1 watershed to maintain water from surface runoff, requiring a watershed of about 140 acres to keep water in this pond. This pond has approximately 5 acres of surface runoff. There is no surface watershed for this pond. The only way it would end up holding water is if it were dug down into the groundwater table. It would require 138 million gallons of groundwater to initially fill it. The evaporation exceeds rainfall by about 16 inches in this area. Therefore, it would require 28 million gallons of groundwater per year to keep the pond full. It is Keep's professional opinion that this pond, if constructed, and if it intercepts the groundwater table, would have a definite effect on the local groundwater resources.

In addition, the house and other dwellings on this property are located within 200 feet of the excavation. There is possibility that sewage could enter the site. The excavation plans show a uniform 40' height with 4:1 slopes entering the north side of the pond. Keep believes that this is a significant hazard to people and animals. At least a berm should be planned around the pond above the water level to allow for safety.

Keep requested that the Planning Commission deny this permit. It does not seem right to reward soil miners to operate three years without a permit on this site.

Moline pointed out that the role of the Planning Commission is to determine whether the permit is in the conformance with the Comprehensive Plan. The Planning Commission is not the enforcement agency. Keep is suggesting that the reason it should be denied is because they operated illegally. Isn't that the enforcement responsibility? Keep pointed out that there are zoning regulations, yet we seem to say, "don't worry, you don't have to follow them. If you get caught, come on in and apply for a permit". All he is suggesting is

that the Planning Commission has the choice to make the decision. He disagrees that Land Construction did not recognize the need for a special permit. He does not believe they should be rewarded by approving a permit after the fact.

Keep further advised that in his experience as a professional engineer, he designed thousands of dams. It is his opinion that this is strictly a dug-out pond. He believes that this will be a dry hole. He does not see that there is much likelihood that this is a feasible pond with water. It is his professional opinion that there is not enough drainage area to fill the pond with surface runoff.

Esseks inquired whether this large hole poses any threat to the wells and homes around it. Keep believes that it will because it is in sand and it is likely to become a lower point in the aquifer. Water will drain out of the sand and lower the groundwater table in that area.

**2. Jay Krehnke,** 3949 Waverly Road, the neighbor to the east, testified in opposition. He showed photographs of the property as it exists today. It has been an eyesore for three years. He also has issues with the groundwater that has been exposed and he believes it will contaminate the groundwater. He is also concerned about the operation being conducted without a special permit.

Moline suggested that if the special permit is not issued, the eyesore will still exist.

Krehnke also pointed out that there have been large quantities of dirt placed in his driveway from this excavating operation. The groundwater that has been opened up is what his well draws from. There has been no change in the amount of water Krehnke can pump from his well as this time, but Krehnke is fearful.

Francis inquired whether water can be seen in the pit. Krehnke acknowledged that water can be seen in the pit and it has been opened up for probably five years.

**3. Karen Kurbis,** 17500 N. 84th Street, testified in opposition. She suggested that there are very few conditions set forth to monitor these sites once they do get approved. It is difficult to get any follow through from the city or county. She believes that it is the neighbors' civic duty to help monitor and obtain compliance with soil mining, so a lot of the residents in the area are continuing to monitor the different sites that affect their daily drives into the City. The school bus driver tells her it is not uncommon to find mud on the road.

Kurbis believes that the conditions need to be furthered. Condition #2.1.4 calls for operating hours to be Monday through Saturday. She pointed out that one of the permits already approved was limited to Monday through Friday. Eliminating Saturday would decrease the number of trucks by about 140. She requested that if this permit is approved, it be limited to Monday through Friday, daylight hours only.

Kurbis inquired why a cease and desist order was not issued when it was determined they were operating illegally without a special permit. At some point, there must be a consequence for operating outside the guidelines of the ordinance. Someday we have to get serious about this. We need to quit dancing around the problem and address it with perhaps a soil mining task force to look at the issues.

Kurbis believes Land Construction knew they were out of compliance. Budget concerns are always an excuse by Building & Safety relating to enforcement. Kurbis suggested that the departments "quit working harder – work smarter".

Moline asked Kurbis whether she has any suggestions about furthering the conditions of approval. Kurbis suggested that reclamation is something that is very important. It would be nice to reclaim the property sooner than nine months, and it is not clear who is going to go out and check it.

Staff questions

Cornelius referred to Analysis #9 b) and wanted to know how we know there will be no effect on the groundwater. How do the neighbors determine that and to whom do they report problems? DeKalb explained that the statement in the staff report reflects the applicant's submittal. How do we know? We don't. Staff is taking them at their word. The cuts in this area are running 7-12 feet at the north end and he's taking out a hill at the south end. We need to know the groundwater level in this area to know whether we are getting into the aquifer. We really don't know unless we have the well and water levels on this parcel and the adjoining property. Other than cutting into the hill on the south side, it is a relatively shallow cut. Enforcement will lie with the Health Department and the NRD if the permit is approved.

Cornelius inquired as to the recourse if there is exposed groundwater. DeKalb suggested that it would have to be filled back in. If it represents a health hazard to wells in the area, then it needs to be filled back in.

Esseks does not recall encountering a case like this where they are digging deeply into the earth. He believes there are significant issues. Maybe there needs to be some type of new research on cases where we are going sufficiently into the land. Is this unusual? DeKalb suggested that the very normal circumstance is where they take the dirt off the top of a hill. This is the first time he recalls having one essentially digging a hole in the ground for a pond. He would hope, however, that the distribution of the application to other agencies for review, including the NRD, would have brought the issues forward if there were any. That is the purpose of sending the application to other agencies.

Given the deepness of the cut on the south, with a sizable incline all around this, Esseks believes that it looks as though some type of protective fencing or berm is appropriate. It seems that we should be concerned about the safety of people (and children) who may

happen on this area and live close by and want to go down to the pond. Can we attach a condition that there be a sturdy sufficiently high fence to protect people from falling in? DeKalb pointed out that the 25 acres is fenced. It would be trespass if the public came onto the property.

Francis thinks there are two issues: 1) Peterson wants a pond, and 2) Land Construction is using the excavation of his pond to their advantage with their clients. Is it fair to say that if Peterson had contracted with a contractor to build a pond in the normal course of business, having it done in 60 days, we wouldn't be here? DeKalb agreed.

Taylor inquired as to the ultimate goal of the owner - what is the ultimate size of this pond? How deep? How long is it projected to take place before it is complete? DeKalb pointed out that the requirement of the special permit is that it must be completed in one year after approval, if not sooner. The testimony indicates that based on the contours and the cuts shown, it will be 6-12 feet deep and about 7 acres in size. The special permit conditions require that the contours as shown is as big as it gets. That is the maximum. If they intend to go longer or go into additional area, they would need to file for a new special permit. There is no provision for administrative extension.

Response by the Applicant

Varley does not agree that the operation is illegal and out of compliance. Land Construction has been operating under the floodplain permit with the idea that that is what they needed. Two years ago, that is what everyone agreed was needed.

Varley advised that there is already standing water on this site above the elevation shown. They are only digging in the lower part of this ground, 12 to 15 feet deep. The deeper cuts are clear back to the south end of the pond from an elevation that sits way above the road. Everything is drawn on a 4:1 slope or flatter. The idea that someone will roll down into this lake is not feasible. It is not that steep of a grade.

As far as complaints about mud on the road, Varley suggested that there is no dirt contractor in this town that doesn't leave a little mess wherever they go. There are letters from other neighbors that are not unhappy. We try to do what we can to keep the roads clean, but we are not the only ones that track mud or dirt out onto the road. Varley assured that they will handle any complaints as quickly as they can.

With regard to Saturdays, Varley advised that sometimes they have to work on Saturday because it may have rained Monday through Thursday and they have a contract to meet and complete. They must work when they can work.

With regard to the water table, Varley pointed out that the letter from the NRD allows what is being done. The soil is sandy but when you build a pond like this you can seal the bottom of the pond to keep the water from leaving. There has been water standing there

since they have been operating. He does not believe the water table is an issue, and it may take a few years for the pond to get full.

The septic system is behind Mr. Peterson's house. He would not be dumping sewage into the pond.

Varley also pointed out that there is a need for dirt around this town to build the infrastructure inside town, and the only way to get it is to get dirt from outside of town. You have to have a dirt source. Each company has to negotiate for their rights to the dirt. Nobody wants the excavation in their back yard but we need the dirt.

Gaylor-Baird inquired whether the one year is sufficient for completion of the project. Varley did not know. There could be a couple months when they are not out there because they don't have a dirt contract. It fluctuates. It is hard to know how many contracts he will get and how much dirt he is going to need. He cannot guarantee that the project will be complete in a year. It will depend on how many jobs they get, the marketplace, etc.

Cornelius asked how the pond will be fed. Varley believes there are some springs in that area because there is water standing now. It may take a few years to fill the pond from natural runoff. He acknowledged that they can seal it like they do on many lagoons. The contours have always shown that they are outside of the floodplain or floodway area. The operations can be concentrated into that area and dig the actual pond. The plan as drawn by HWS indicates that there is relatively no effect on the 100-year floodplain elevation.

Gaylor-Baird inquired whether the applicant has any possible solutions to offer concerning the mess on the road and neighboring properties and safety concerns. Varley observed that the staff report does provide conditions relative to these issues. A signed will be erected with the permit number and contact information. Land Construction makes every attempt to hire safe drivers, and they have a very good record right now. He believes they do as good a job as anybody to clean up the mud and dirt on the road. They rented a street sweeper that has been on the dump site or the borrow site at all times. He cannot afford to send someone out with a shovel every time a truck pulls out, but they do what they can to keep it clean and safe.

Varley also pointed out that there are a lot of people in support. It is hard to keep everyone happy, but with the contact information on a sign, people can make the complaint, if necessary.

It was clarified that the there is fence around most of the property. There are trees in the front off Waverly Road. They will be required to construct a gate to keep it open and closed as needed.

The project is about 50 - 60% complete at this time. This was addressed in the letter to

Building & Safety. Varley assured that they have never expanded what was started and they have no plans to go any further; however, he may need an extension beyond one year.

**ACTION BY PLANNING COMMISSION**: February 13, 2008

Cornelius moved to approve the staff recommendation of conditional approval, with amendment limiting the hours of operation to Monday through Friday during daylight hours, seconded by Moline.

Esseks moved to amend to require that there be a sealing at the bottom of the pond to prevent seepage from the pond into the aquifer, seconded by Gaylor-Baird.

Discussion on motion to amend: Esseks noted that the applicant said that this is possible and has been done in other situations. He believes that requiring the seal is a good effort at protecting the public's welfare.

Moline stated that he is uncomfortable making this requirement because we do not know whether the seal is going to accomplish what we want. Do we know that? Esseks suggested that it appears there may be a possibility of a danger here coming from the septic system and other sources. This is an area that could attract a lot of runoff as well.

Motion to amend carried 4-3: Esseks, Taylor, Cornelius and Gaylor-Baird voting 'yes'; Francis, Moline and Carroll voting 'no'; Larson and Sunderman absent.

Discussion on the main motion, as amended:

Francis indicated that she has mixed feelings. If she were a neighbor, she would not want to see this drag on even another year or two years. But if she were putting in a pond and this were an economic way to do it, she can appreciate that method. She will be in favor of this permit.

Cornelius commented that this is an unfortunate situation in that "we're in the middle" and the Planning Commission is being asked to rule on something sort of after the fact. He would like to commend the residents of the county for coming down and sharing their concerns, in particular about the issues of enforcement. It is unfortunate that this body is not responsible for code enforcement. If the residents do have code enforcement issues with regard to how hard it is to get them enforced, he encouraged that they approach the City Council or the County Board. Those are the bodies that can make a difference in that regard.

Carroll agreed with Cornelius. Plus, he thinks it is wrong to take Saturday away, but he will

vote in favor.

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

**SPECIAL PERMIT NO. 08005**
**FOR AN EARLY CHILDHOOD CARE FACILITY**
**ON PROPERTY GENERALLY LOCATED**
**AT S. 56TH STREET AND PINE LAKE ROAD.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION**: February 13, 2008

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda at the request of Commissioner Gaylor-Baird.

Staff presentation: **Tom Cajka of Planning staff** presented this proposal to allow up to 20 children and 5 staff members on the largest shift at one time. It will be located inside the building at the Madonna Proactive Health and Fitness Facility. There is an existing playground that the day care will use. The applicant has an agreement with Madonna to operate this facility.

Proponents

**1. Mary Jo Cassner,** 6110 S. 46th Street, the applicant, stated that she and her husband own a business that does cognitive skills training. The purpose for this proposed facility is to provide day care and respite care for children and students with special needs. One out of 96 children are born with autism and there is a current tragedy in that there is such a little supply and great demand for special care to help these children. There will be special training for children between the ages of 2 and 5 with autism.

Madonna's vision and goal is to provide a holistic approach that nurtures the body, mind and soul of each patient. Madonna Proactive is a beautiful facility designed to be very calming and relaxing. This kids academy will fit well into this environment.

Gaylor-Baird thanked the applicant for the kind of work they do and she has no objection. The reason she wanted to speak on this item is that in the review comments there was one brief comment by the Fire Department that she wanted to highlight. The Fire Department's

biggest issue is the "lack of fire facilities in the area" to provide the type of emergency response that our citizens expect. Gaylor-Baird wanted the applicant to be aware of this concern as she sets up this facility and makes plans for emergency preparations. It is important to acknowledge this reality as the applicant moves forward with this proposal.

There was no testimony in opposition.

Esseks inquired about any plans for a new fire station in this area. Cajka did not know. The closest is at 48th and Claire, about one block or two north of Hwy 2. Brian Will of Planning staff advised that the city did have plans to purchase a lot for the purpose of locating a fire station just south of this location in Thompson Creek. He did not know, however, whether this purchase has occurred. Esseks believes the issue will come up again so it would be nice to have the information. Will pointed out that the need for a fire station is not an uncommon comment on redevelopment projects in the southeast quadrant of the city. At such time as funding is available, he believes a fire station will be provided.

**ACTION BY PLANNING COMMISSION**: February 13, 2008

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

**CHANGE OF ZONE NO. 08003**
**FROM O-2 SUBURBAN OFFICE DISTRICT**
**TO B-3 COMMERCIAL DISTRICT**
**and**
**SPECIAL PERMIT NO. 08007**
**FOR THE EXPANSION OF A NONCONFORMING USE,**
**ON PROPERTY GENERALLY LOCATED**
**AT S. 48TH STREET AND MEREDETH STREET.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION**: February 13, 2008

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

Ex Parte Communications: None.

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

These applications were removed from the Consent Agenda at the request of a member of the public.

Staff presentation: **Brian Will of Planning staff** advised that this is a request for change of zone and special permit. 48th Street is on the east and Meredeth Street is on the south. The change of zone from O-2 to B-3 is for one lot and the special permit covers the entire area, the purpose of which is to expand a nonconforming use relating to the sale of alcohol. The intent of this request is to remove the existing convenience store located on Lots 11 and 12 and build a new facility over all three lots. Staff is recommending approval.
Proponent

**1. Chris Pischel, Hutchinson Architects,** appeared on behalf of the applicant. This change of zone is key in order for this project to happen. The existing O-2 zoning does not allow for the convenience store use. The special permit is to expand a nonconforming use for the sale of alcohol. The existing store currently sells alcohol – the purpose of this proposal is to carry that use and function from the old store to the new project.

Pischel submitted that this type of renovation is something supported by the Comprehensive Plan. It would be an improvement visually to the neighborhood as well as functionally. Two of the current exits to the site will be closed and the entrance will be moved further to the west away from 48th Street. The access off 48th Street will be combined with the alley and that portion of the alley will be paved.

Pischel understands that a project such as this is going to have an impact on the neighborhood, but he suggested that it will be a positive improvement to the neighborhood and to the city to allow such a business as Kabredlo's to be allowed to put some money back into the community and improve the neighborhood by providing additional conveniences and new products for their customers at this location.

The applicant agreed with the conditions of approval set forth in the staff report. There will be additional gas pumps with increased lighting, but flush mounted lighting will be utilized to minimize light pollution. An 8' privacy fence and planted screening materials will be provided in as many locations as possible to buffer and help mitigate the impact on the neighboring community to the west.

(***Editorial Note:*** The discussions about a reduction to the setback have been eliminated as there is no setback reduction being requested on this application.)

Esseks inquired whether the applicant has had any contact with the neighboring residents. Pischel had not personally but he stated that Mike Olderbak, the owner of Kabredlo's, has been in communication with the neighborhood, informing the residents and speaking with them directly. He is unable to be here today.

**2. Kelly Tollefsen,** legal counsel for the applicant, testified in support. She submitted that this proposal is consistent with the Comprehensive Plan in that the applicant will be demolishing an older building and structuring a new building that would beautify the neighborhood. Alcohol is already sold on Lots 11 and 12, so this would not increase

alcohol sales within the area.

Tollefsen submitted that the 8' privacy fence will protect the neighbor. The alley is also required to be paved. The applicant has also done everything possible to minimize traffic. The petition on file indicates that there is overwhelming community support for this new store at this location. The additional gas pumps will require additional lighting but it will be focused more toward the gas pumps and away from the neighborhood.

Opposition

**1. Doug Krogman, Krogman Tile,** owner of the building north of the convenience store, testified in opposition. He does not believe the petition in support is valid because it contains signatures of customers of the convenience store as opposed to the surrounding neighbors and businesses. The applicant has not talked with the business owners in the area. The applicant has not personally contacted the people that will be affected the most.

Krogman uses the alley as much as everyone else and he has to have the alley access because of his business. He has asked over and over that the beer and commercial trucks not park in the alley when making deliveries to this convenience store. They do not listen and they have done this for years. He acknowledged that he also uses the alley to unload trucks but not as much. If they pave the alley, it will bring more trucks into that location causing more traffic and more congestion.

Krogman supports the idea of having a new building, but his opposition has a lot to do with the people that own the building and how they run it. He displayed photographs of some rubbish and graffiti on the back of the building that has been there for two years. How long is the new building going to last? He also showed photographs of the garbage dumpster overflowing on the north side of the building. The wind blows all the garbage down the alley.

Krogman submitted a letter from Burch & Associates also in opposition (owner of the property running adjacent along the alley between Lowell and Meredeth Streets). Harris Lawn did not know anything about this, but Krogman stated that they are also opposed. Krogman requested that this proposal be deferred to require that the applicant discuss the plans with the businesses in the area.

**2. Keith Sackschewsky,** the owner of 4716 and 4718 Meredeth, testified in opposition. His residential property abuts the proposed new building. His biggest concern is that Kabredlo's never plows their sidewalks or their lot. They don't pick up trash. The light pollution on his house is already unreal. Kabredlo's does not take care of the property they have now. He already has a problem with the noise. The back side of the building is a known location for kids to deal and do drugs. He has complained to the Police Department. Across the street on Meredeth is a home with LOMAR kids in it; there is an apartment up the street with numerous little kids; and there is a rental next to him with little kids. Sooner

or later with the cars coming up and down that street, someone is going to get run over. He has a problem at night with cars pulling into the parking lot and leaving their headlights on. He cannot even see to back out of his driveway. No one has contacted him about any of these plans. Why give them more when they don't take care of what they have?

Cornelius asked whether Sackschewsky has made complaints to Public Works about lack of snow removal. Sackschewsky stated that he has complained and the applicant might then shovel the sidewalk the next snow storm, but with the traffic it becomes ice by the time they do anything.

Sackschewsky has talked to all of his neighbors and there is not one in support.

Staff questions

(***Editorial Note:*** While there was discussion about reducing the setback here, Will clarified that there were three Kabredlo's applications on today's agenda. One of them did seek an adjustment to the required yard; however, this is not the one because the applicant is requesting B-3 zoning in this case. This application meets the setback for this district.)

Cornelius sought confirmed that the normal advertising procedures were followed on these applications. Will confirmed. The Planning Department notice procedures include publication, posting of a sign and written notice to all surrounding property owners within 200 feet of the boundaries of the application property.

Response by the Applicant

Tollefsen responded to the business owner who is concerned about upkeep of the current building, suggesting that it would be very easy to put a wooden fence around the garbage containers, and she suggested that it could be added as a condition of approval. (***Editorial Note***: Later on in the discussion, it was clarified that the fence around the garbage containers is already a requirement.).

With respect to the condition of the building, the piping problems and the graffiti, Tollefsen suggested that to be one of the reasons this applicant has undergone the expense to purchase the lot next door and to hire an architect to put a building up that will deal with these issues and beautify the neighborhood.

With respect to the snow removal, Tollefsen stated that she will visit with the applicant. There are ways to deal with this issue other than denying this request. She does not know that any complaints have been made to the applicant for failure to remove snow.

Tollefsen pointed out that the customers of this convenience store are also members of the local community and that is why they have signed the petition. The neighbors did receive written notice. She assured that the applicant will address any concerns with respect to

removal of snow. This is a dilapidated building and that is why this application has been brought forward.

Francis inquired whether there is an individual manager for each store. Tollefsen advised that there is not. There are several different managers throughout the city managing several different stores. Francis suggested that perhaps the manager is not aware that the snow is not being removed. Tollefsen agreed that could be possible. On average, the managers try to spend 10-15 hours per store per location per week. She again assured that they will deal with the snow issue.

Tollefsen also submitted that paving the alley is going to assist. She agreed that it does get used by residents and the businesses, but the paving will help that. If the alley is being blocked by this applicant, Tollefsen assured that they will attempt to deal with that situation as well.

Gaylor-Baird inquired about the lighting and whether they are currently using the flush mounted lighting at this location. Tollefsen indicated that they are not currently using such lighting and that it would be an improvement over the current situation. She also pointed out that the 8' opaque fence will abut the residential property so that it should not be a situation where headlights would be coming through the fence.

Will confirmed that fencing around the garbage container is already a requirement and does not require an additional condition of approval.

**CHANGE OF ZONE NO. 08003**
**ACTION BY PLANNING COMMISSION**: February 13, 2008

Taylor moved approval, seconded by Francis.

Taylor understands the neighbors' concerns and he thinks it would be good business for the applicant to take care of those issues. He is convinced that it will be helpful to have the paving and fencing in place.

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

**SPECIAL PERMIT NO. 08007**
**ACTION BY PLANNING COMMISSION**: February 13, 2008

Cornelius moved to approve the staff recommendation of conditional approval, seconded by Francis.

Cornelius pointed out that what the Commission has heard as objections, again, relate primarily to code enforcement, and he encouraged the opposition to take their complaints about snow removal to Public Works. There are other bodies that can address these enforcement problems.

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

*** break ***

**COMPREHENSIVE PLAN CONFORMANCE NO. 08001**
**SOUTH 19TH STREET REDEVELOPMENT PLAN.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION:** February 13, 2008

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

Ex Parte Communications: Francis disclosed that she had a call from one of the abutting neighbors at 1828 Garfield, with concerns about a call from the developer wanting an easement for the alley access. She referred her to the Planning Department.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Staff presentation: **Sara Hartzell of Planning staff** reminded the Commission that the blight study for this area was found to be in conformance with the Comprehensive Plan two weeks ago. This proposal is the redevelopment plan for that blighted area, consisting generally of the area from 18th to 19th Streets, Washington to Garfield Streets. Public improvements include sidewalk and storm drainage improvements, a redevelopment project at 1531 S. 19th and 1541 S. 19th (which requires a special permit which has been submitted and is scheduled for public hearing on February 27th). As with all redevelopment plans, any projects are to be reviewed by the Urban Design Committee. There are comments from the Historic Preservation planner, Ed Zimmer, regarding three properties in the area that are of interest for historic preservation, one being the former home of William H. Wilson, a state health inspector.

The staff is recommending and has made the following corrections:

1. The alley has not been vacated and is public right-of-way. This has been corrected.

2. The bullet under #2 on page 15 of the plan has been changed from "Construction of decorative lighting in public ROW" to "Construction of ornamental street lighting in public ROW".

3. The next bullet under #2 on page 15 has been changed to read: "Pave and landscape outside property line, driveways, approaches and sidewalks to meet city codes and standards."

4. The language about the historic properties has also been added on pages 9 and 10.

The only other change was to take the bus route section on page 6 and move it to the transportation section on page 8. No verbiage was changed.

Proponents

**1. Wynn Hjermstad of Urban Development** appeared to answer any questions.

Francis inquired whether the owners of the three properties identified as historical significance have been notified. Hjermstad did not know. Generally, they are identified in the redevelopment plan to provide awareness that the status of these properties are not to be jeopardized by any redevelopment. She will check with Ed Zimmer.

Carroll confirmed with Hjermstad that so far, there is just one project being brought forward.

Francis asked staff to speak to the redevelopment process and property acquisition and relocation. She learned during the briefing two weeks ago that the city is not acquiring any of the property since there is a developer wanting this redevelopment plan to use TIF money, etc. Hjermstad advised that more of that detail will come forward in the redevelopment agreement, and some of those details have not yet been determined. She concurred that this is not a city-driven project. It is a redeveloper that owns the property. It is almost entirely privately financed. However, because it will be in a redevelopment area, it will qualify to become a TIF district where the improvements will generate money to put back into the public elements of the project. The redevelopment agreement is reviewed by the City Council.

Francis asked Hjermstad to address the fact that there might be some tenants in those properties that might need relocation assistance. Hjermstad stated that is also an issue yet to be determined. The city is required to do relocation when the city owns the property and when redevelopment actually commences. That does not happen until after there is a redevelopment agreement. The city does not have the responsibility to do relocation in this situation. In theory, that burden would be put on the property owner on this particular project.

Esseks asked Hjermstad to explain the public elements for which the TIF money could be used. Hjermstad explained that traditionally, TIF has been used for utility relocation, sewer and water, electrical line burial or moving of electrical lines, paving alleys, remove or add curbcuts, sidewalk improvements, landscaping if in public right-of-way, etc. TIF is also now being used to compensate the developer for use restrictions to assure that the property does not become blighted again. The developer is paid funds in exchange for use restrictions on the land and increased maintenance requirements that go with the land.

Francis confirmed that this project is designed to decrease the density in this area and be owner-occupied. Hjermstad agreed that the proposed project will decrease the density somewhat and will increase home ownership.

Moline assumes that off-street parking will be available. Again, Hjermstad advised that those details will be coming forward with the special permit. The number of units has been reduced from 20 to 16. But in terms of parking, that is another process.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION**: February 13, 2008

Cornelius moved a finding of conformance with the Comprehensive Plan, with the corrections made by staff, seconded by Moline.

Cornelius believes this will be beneficial to the area and to the city.

Gaylor-Baird stated that she is excited that this plan includes a project that will increase home ownership in an area that needs it and will remove some of the less sightly buildings.

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

**COMPREHENSIVE PLAN AMENDMENT NO. 07003,**
**ANNEXATION NO. 07005**
**and**
**CHANGE OF ZONE NO. 07063,**
**I-80 WEST LINCOLN BUSINESS CENTER**
**PLANNED UNIT DEVELOPMENT,**
**ON PROPERTY GENERALLY LOCATED**
**AT N.W. 48TH STREET AND INTERSTATE 80.** February 13, 2008

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

Ex Parte Communications: Carroll disclosed that he had a number of conversations with the Director of Planning concerning these applications, strictly to the zoning and land use, and he believes that there are some changes coming forward today.

Staff recommendation: Approval of the Comprehensive Plan amendment; approval of the annexation, subject to an annexation agreement; and conditional approval of the planned unit development.

Staff presentation: **Tom Cajka of Planning staff** explained that the proposed Comprehensive Plan amendment amends the land use plan, the tier map and the transportation plan. The proposed amendments to the land use plan change the areas from Urban Residential to Commercial and redraw the district boundary areas between commercial and industrial. The proposed land use plan shows that the Urban Residential is only on the north side of Holdrege Street, with commercial coming down along N.W. 48th Street and along I-80 with the industrial back in the area to the west of the commercial. The proposal is to change Tier I, Priority B to Priority A, which talks about infrastructure being provided within six years. There is existing water within N.W. 48th Street and an existing sanitary sewer line that terminates just north of I-80.

Cajka went on to state that the Comprehensive Plan amendment would also designate this area as a highway oriented commercial center with proposed changes to the transportation plan to show N.W. 48th Street as six lanes instead of four. The six lanes would be from "O" Street to Holdrege Street.

Cajka submitted a revised site plan, changing some street access to N.W. 48th Street. The overall proposed PUD would allow 1.5 million sq. ft. of office, commercial and industrial uses; hotels and motels up to 200 rooms; and up to 448 dwelling units on approximately 233 acres. The area south of Holdrege is the industrial/commercial area, within which they are limited to 425,000 sq. ft. of commercial uses excluding office and hotel use, and of that 425,000 sq. ft., a maximum of 200,000 sq. ft. may be located within the industrial area, the purpose being to reserve it more for larger employer industrial type uses.

Another area north of Holdrege along 48th Street is shown as “residential transition” with uses similar to the R-T zoning district, limited to 60,000 sq. ft. of commercial and office use.

Cajka advised that some concerns were brought up about the industrial along Holdrege in proximity to future residential. There is a condition in the PUD that requires a 200' buffer from the south right-of-way line of Holdrege to any type of industrial use that has “RMP” by the EPA. That buffer requirement came out of a joint committee on health and land use proposing a 300' buffer. The reason it has been changed to 200' is because of the right-of-way of Holdrege being taken into account. If you include the right-of-way, the buffer is more than 300'.

The revised site plan shows changes to the two access points on N.W. 48th Street as a result of discussions with Public Works and NDOR. They would both be full access movements. The south access is within the state’s controlled access, approved by NDOR.

Another issue of concern was signs along the Interstate and N.W. 48th Street. Billboards have been prohibited within this PUD, and the pole signs are limited to 13 along N.W. 48th Street, 13 along N.W. 56th Street and 5 along I-80. This is more restrictive than allowed in the H-3 zoning district. The pole signs would also have a minimum spacing of 50'.

Esseks asked for clarification of the boundary of the TIF district. Cajka advised that the PUD up to Holdrege Street is included in the blight study. He confirmed that no residential is included in the TIF district.

Moline wondered why the signage would be restricted. Cajka stated that the staff was concerned about a strip of pole signs going up on N.W. 48th Street or I-80, especially with the interstate being an entrance into the city.

Esseks inquired as to the justification for moving property from Priority B to Priority A. Is the public benefit demonstrated, such as jobs? Since most of this will be industrial, do we have any idea of the average number of jobs per square feet? Cajka believes the applicant would better address this question.

Carroll recalled that during the Comprehensive Plan Update, one of the questions was the need for more industrial sites in terms of economic development. We are losing industrial to commercial in this project. Are we losing too much industrial for single users? Cajka suggested that there may be a little less industrial land than what is currently shown in the land use plan, but it is more just a shift of the location of industrial.

**Marvin Krout, Director of Planning,** approached the Commission and stated that the developer wanted a certain amount of flexibility in terms of where the commercial might happen, but you also need to look at the floor areas that area allowed for commercial and the remaining primary employers (industrial and office). There is not enough floor area to fill up all of the areas designated to potentially be commercial. Carroll is concerned

because during the Comprehensive Plan Update discussion, a lack of industrial sites was recognized and this is one area where we thought it would be. Losing industrial land is a question. Krout suggested that there is additional land that will be made available for industrial to the west of this site and to the east in the future. We recognize that N.W. 48th Street is the one and only interchange to I-80 from the west so it would be natural to expect to see some more lodging and travel kinds of services which are anticipated by this project. Cajka added that the proposed PUD shows approximately 82 acres for industrial use, and the developer's traffic study projects 825,000 sq. ft. of industrial use.

Moline again expressed concern about limiting the signage. He has experienced difficulty driving in industrial parks because you can't find the building because they don't put a sign on them. Does this also limit the building signs? Cajka confirmed that the only limitation is on pole signs.

Esseks noted that the staff report cautions about a lack of agreement between this developer and the owner of 24 acres at the intersection of N.W. 48th Street and I-80 on the access. There is even a recommendation that we should delay our decision because of that lack of agreement. Cajka clarified that since the staff report was written, this proposal has already been delayed twice to work on these issues. There is an existing access easement onto N.W. 48th Street. He understands that NDOR will remove that access with the interstate project. The on-ramp will be moved further north with the I-80 improvements. NDOR wanted a minimum of 1,350 feet for a break in the access. NDOR has seen the revised site plan and he believes they agree. The attorney for the property owner to the south is here today to discuss this issue.

Proponents

**1. DaNay Kalkowski** appeared on behalf of the developer, **Ringneck Development,** which owns or controls 230 acres located north and west of I-80 and N.W. 48th Street. Approximately 70 acres of this property is located north of Holdrege and 160 acres on the south side of Holdrege. The property north of Holdrege is shown in the Comprehensive Plan as residential, while most on the south is shown for commercial and industrial uses. Ringneck is proposing residential and residential transition north of Holdrege, while marketing for large industrial or employment type center uses and highway commercial uses to the south. This property is attractive to some larger potential users with its location along the Interstate with good visibility and access; its large size; and its proximity to roads and other infrastructure, i.e. sewer, water lines.

Ringneck and the Chamber of Commerce have been trying to market this property to industrial type users. It is the desire of her client to go through as many steps of the governmental approval process up front to minimize the time it would take to get a building permit for a user. Consequently, the developer is asking for Planning Commission approval of annexation for the entire property, as well as the change of zone for the entire property, but the intent is to take the first phase of the annexation and zoning to the City Council for

approval and that the subsequent phases be forwarded as they find users. The purpose of getting the entire Plan approved by Planning Commission is that it locks in the development plan.

With respect to the Comprehensive Plan amendment, the developer is primarily asking for adjustments to the land use, subarea plan and to the phasing plans to take into account this proposal. The Planning Department has made additional changes in the Comprehensive Plan amendment to which the developer agrees.

In relation to the change of zone, the developer is requesting a R-3 PUD on the area north of Holdrege, and then I-3 PUD on the area to the south of Holdrege. The R-3 PUD is comprised of the residential area, the primary uses being single family and two-family dwellings. It also has a residential transition area of 13 acres along N.W. 48th Street, limited to 60,000 sq. ft. of retail uses, so that the entire area will not be able to develop with retail and office type uses, thus some additional townhomes, multi-family or single family in the R-T zone.

The area south of Holdrege is divided into two: the industrial along N.W. 56th Street and west of N.W. 48th Street, and highway commercial abutting the Interstate, N.W. 48th and a small portion of Holdrege. The highway commercial is a H-3 zone with more highway oriented higher intensity uses, i.e. hotels, larger box retailers, and the development plan provides for a wholesale or distribution type center. The base zone for the industrial area is I-3, primarily manufacturing, storage, distribution centers, office, retail. The PUD development plan does limit the total amount of retail uses in the highway commercial and the industrial, and no more than 200,000 sq. ft. of the 425,000 sq. ft. could be located within the industrial in an attempt to maintain the industrial area for larger employment center type users. Kalkowski explained that the proposal shows this much commercial because there is a huge cost to try to hold this land for an industrial user to come along.
Concerning the annexation, Kalkowski stated that the developer has been working with the city on the road, water and sewer infrastructure needed to accommodate this proposal. All of this will be incorporated into an annexation agreement that will go before the City Council.

A meeting was held with the neighbors on January 15th at the Airpark Recreation Center. The developer mailed notices to over 460 people and had a meeting of about 30 people. The primary questions were about specific users and the time frame. The neighbors are generally supportive of additional development in this area.

The developer has also met with the immediate neighbor to the south, Mr. Dowd (northwest corner of the interchange). The developer has also had conversations with neighbors on the east side of N.W. 48th Street. In general, the developer has not heard any concerns about the land use. The primary concern has been the access points on N.W. 48th Street. The neighbors did ask the applicant to defer the originally scheduled hearing to talk about the access points to N.W. 48th Street. The state does have control of access along N.W.

48th to a point about ½ mile north of the intersection. Currently, there is an unrestricted access at the joint property line between Ringneck and Mr. Dowd. However, the access break is close to the interstate and becomes problematic when the state constructs the interchange improvements. This original location of the access point was required to be removed by the city because the state indicated that they would not allow that access break to remain in the long term because of the interstate improvements. The original proposal was to show the first access point outside of the controlled access area, putting it pretty far to the north. The neighbors, primarily Mr. Dowd, felt that that access point was too far to the north and asked to see how far it could be shifted further to the south. In the last month, the developer met with Mr. Dowd, then the NDOR and the City. The NDOR took the position that the first full access point should be located 1350 feet north of where the newly constructed ramp would be located. The NDOR has subsequently met internally and has verbally verified that the 1350 feet would be an acceptable distance for the first access point. Another full access point can also be shown to the north. The site plan has been revised to show the new access points. The developer intends to move forward with the city to start the formal permitting process with the state for this access point.

Kalkowski then submitted proposed amendments to the conditions of approval:

4.2 Revise the Development Plan as follows:

4.2.1 Replace Page 4 – the PUD Site Plan – with the revised site plan attached hereto.

4.2.2 Revise Table 27.51.090(a) to add the note: "When the front yard of a 27.51.030(c)(3) use abuts Holdrege Street, the required building setback shall be 50 feet."

With that 50' plus the 100' of Holdrege Street, plus the north side of Holdrege, it should provide more protection for future residential to the north from those industrial type users on the south side of Holdrege Street.

Esseks indicated that he has suffered some grief for agreeing to blight this agricultural area, and he asked Kalkowski to summarize the benefits to the community from this project. Kalkowski pointed out that none of the area in the blight study is shown as residential. The community benefit is to attract a larger employment type user, whether it be a big office user or big industrial type user, and the benefit of having the blight and redevelopment is the ability to fund some of the improvements that will be needed in N.W. 48th Street and maybe even N.W. 56th and Holdrege Street. Esseks suggested further that the city needs to be able to provide the necessary roads for the users and the TIF will be used for the roads to attract those users.

Esseks asked for clarification about TIF being used to compensate developers for use restrictions. Kalkowski does not believe that will occur in this situation. That may be used

more in an area that already has zoning, resulting in loss of value to the owner. She does not believe that is available on this project.

Francis inquired whether the NDOR has control over the future possible widening of N.W. 48th Street. Kalkowski advised that the annexation agreement will address the phased improvements to N.W. 48th Street to accommodate development. The developer needs city as well as NDOR approval on the improvements because of the controlled access. It is primarily a matter of getting the necessary permits, and then the NDOR will need to determine whether there is any impact to the Interstate interchange.

Carroll asked Kalkowski to discuss the buffer on West Holdrege Street. Kalkowski clarified that they have the 100' separation with the Holdrege Street right-of-way and then the additional 200' for the RMP uses, thus 300' back from the start of the residential. The proposed amendment addresses a bigger use that is not a RMP. Carroll confirmed that to be more than what the Health Department is requesting.

Carroll wondered about the transportation improvements in the traffic study, which is based upon the industrial with the rest being highway/commercial. What happens if highway commercial develops when you try to reduce the industrial so that the traffic study does not follow the actual development? Kalkowski agreed that they would have to come back to the Planning Commission. If we try to expand the highway into industrial or we get additional high intensity users, then we will have to come back to address that issue.

Opposition

**1. Peter Katt** appeared on behalf of the owner of the property to the south, **Dowd Grain Company.** Mr. Dowd has been very actively involved in this process and he would have liked to have had this deferred further. The Dowd family has owned this property for 35 years; they made the investment back in 1972, and they have a lot of interest and passion about what happens. The last sentence of Analysis #14 on page 8 of the staff report is the point to be made:

> "Without a clear commitment from NDOR, or an agreement between the two abutting owners on access that meets both their needs and satisfies NDOR and Public Works, it may be prudent for the Planning Commission to delay action on the PUD."

That is a difference of opinion that Katt's client has with the counsel for the applicant as to whether or not it is prudent to move forward. He commended the applicant because the month of deferral was very well spent, "but we're just not quite there yet" because the NDOR has not submitted any firm commitment. That is why his client believes that another two-week deferral is worthwhile because there is an internal meeting at NDOR next week. The key player in this is the NDOR. It is an access easement jointly owned and granted by the Department of Roads. The NDOR would like to close that access as a part of its

interstate highway project, but Dowd has a legal enforceable property right to have a commercial access at that location. If the NDOR moves it, they will have to pay money to close that access.

Katt suggested that it would not be so costly if the access were relocated to Vine Street as opposed to closing it. We are trying to find a solution for all parties with NDOR. Katt submitted a proposed amendment if the Planning Commission is not inclined to defer:

> 4.1.5 Add a note stating: "The location of West Vine Street as shown is conceptual only and that its location and the closure of the existing commercial access drive at the southern boundary of the project is subject to the approval of the Nebraska Department of Roads (NDOR) with the concurrence of Public Works. The total cost of obtaining approval for the West Vine Street access to NW 48th and/or the relocation of the existing commercial drive shall be paid for by the Permittee.

The cost of opening that access should clearly fall on the permittee, not the public. If the public has to acquire a new access, it will be at a significant cost. If it is a relocated access, there will not be any significant additional charge from NDOR. Who pays what to get this new access point established has both public issues and private issues, and the purpose of this amendment is to recognize that. Until the access location is resolved, a very specific Vine Street location should not be approved.

Francis noted that Mr. Katt's clients have owned this property since 1972 – what was their intent for this property, i.e. speculation? Katt suggested that when they acquired the property with the commercial access point, their plan was a long term investment. It is an interstate interchange in a major city where eventually something will develop. It was speculation in a good sense – Katt would call it an investment.

Esseks noted that the revised site plan provides for a stub coming down to the Dowd property. He inquired whether Katt's client's needs would be served if NDOR goes along with it. Katt explained that to be the point in his proposed amendment. No one can do anything until NDOR weighs in. Eventually NDOR will take his client's access. They will condemn it and they will pay for it. When they take it, and how much they pay, is up in the air. The NDOR has strongly suggested that the applicant and his client enter into a voluntary agreement to relocate the existing access to the new location. Esseks suggested that if NDOR refuses, then it becomes something that can be adjudicated in court. He does not see why the applicant should take this financial burden. Katt reiterated that NDOR has access control. They may not break that access control without obtaining fair value. The question is: who should pay for the new access point on N.W. 48th? Should the city pay for it? Or should the applicant? If the Commission thinks the city should pay, then strike the last sentence of Katt's proposed amendment. Esseks assumed that the developer would be responsible for the stub. Katt wants to make it clear that the break in access is at the cost of the permittee.

Katt also submitted that the action of the Planning Commission does not limit or destroy his client's right to access to N.W. 48th Street. NDOR has a property right which says, "you may not access our street. When you want a new access point on our road, you still need to pay to take their property right back". Katt is proposing that if NDOR has a fee to break access there, then the developer of the property getting the new access point should pay those costs. The other costs are a tremendous amount of time, energy and effort to meet with NDOR, apply for it, permitting, etc.

Moline wondered whether it is an appropriate role for the Planning Commission to be dividing up costs. Katt suggested that the issue could be deferred to the annexation agreement. There are also other places where that could happen; however, he does not believe it inappropriate to include it in this action, but he also agreed that it is not 100% necessary.

Francis inquired whether the Dowd property currently has access to pull onto N.W. 48th Street. Do they have a driveway to access the property? Katt stated "no" – they have had no need for a driveway.

**2. Matt Dowd** emphasized that his family has owned this property since 1972 with joint access to this property. This action would take that access away from the Dowd property. NDOR has not spoken with the Dowd family nor advised that the 1350 feet is the number. The Dowd family is currently negotiating with the NDOR and NDOR is scheduled to meet internally next week on this issue. Until something is set in stone, Dowd believes any Planning Commission action is premature. Dowd acknowledged receipt of the revised site plan just Monday night, and his father is out of town and could not be here today.

**Rick Peo of the City Law Department** does not believe it is appropriate for Mr. Katt's motion to be included in this proceeding. There are legitimate proceedings to resolve any damages to his client's property, or potentially to the applicant, if they don't get a break in the state's controlled access point at a reasonable cost and benefit to the properties. Those issues of compensation to the property owners need to fall back on the relationships with the NDOR and not this process. It is separate and independent. That issue could be deferred to the redevelopment agreement, if there is a need for the city to be involved at all.

**Dennis Bartels of Public Works & Utilities** was not involved in the meetings with NDOR but he called them and they are meeting as the Access Control Committee on February 19th. They have indicated that at that point in time, they will be giving us something in writing. However, the verbal direction from their engineers was that the intersection shown on the revised site plan is recommended by NDOR, and Bartels indicated that Public Works believes that to be the appropriate location as well. Based upon the traffic study, we anticipate that there will need to be dual turns on the west side of the road at the interchange ramps which will require signals. There will also be a need for signals at this intersection in question.

Moline wondered whether it would put Mr. Katt's client in a worse position if this is not delayed two weeks. Peo does not believe he is put in a worse position. These are negotiation tactics as to where you get access and who has to pay for it. The issue can be argued with NDOR regardless of what happens with this project.

Carroll confirmed with staff that the amendments proposed by the applicant are acceptable.

Response by the Applicant

Kalkowski suggested that the issue of compensation to Mr. Dowd when that access gets taken away is totally a NDOR issue. All indications are that the 1350 ft. north of the future interchange ramps is an appropriate location for the first access point and that is what is now being shown on the site plan.

**COMPREHENSIVE PLAN AMENDMENT NO. 07003**
**ACTION BY PLANNING COMMISSION**: February 13, 2008

Esseks moved approval, seconded by Cornelius.

Esseks believes that the applicant has made a good persuasive case that we should provide highway-related space for businesses in this area. They have also made good faith efforts to adjust the plan to meet the needs of the public.

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

**ANNEXATION NO. 07005**
**ACTION BY PLANNING COMMISSION**: February 13, 2008

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

**CHANGE OF ZONE NO. 07063**
**I-80 WEST LINCOLN BUSINESS CENTER PUD**
**ACTION BY PLANNING COMMISSION**: February 13, 2008

Cornelius moved to approve the staff recommendation of conditional approval, with the amendments submitted by the applicant today, seconded by Esseks.

Carroll expressed appreciation to the applicant for making the changes concerning the residential on West Holdrege. This is a growing area of the city and we need developments like this. The developer has done a good job.

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

There being no further business, the meeting was adjourned at 4:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 27, 2008.

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