MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, June 18, 2008, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jim Partington, Lynn Sunderman and Tommy Taylor (Leirion Gaylor Baird absent); Marvin Krout, Ray Hill, Mike DeKalb, Sara Hartzell, Christy Eichorn, Brandon Garrett, Jean Preister 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 welcomed the new Commission member, Jim Partington.

Carroll then requested a motion approving the minutes for the regular meeting held June 4, 2008. Motion for approval made by Sunderman, seconded by Cornelius and carried 6-0: Carroll, Cornelius, Larson, Partington, Sunderman and Taylor voting 'yes'; Esseks and Francis abstained; Gaylor Baird absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: June 18, 2008

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 08012; SPECIAL PERMIT NO. 1748A; SPECIAL PERMIT NO. 08022; SPECIAL PERMIT NO. 08023; and SPECIAL PERMIT NO. 08024.**

Ex Parte Communications: None

Larson moved to approve the Consent Agenda, seconded by Sunderman and carried 8-0: Carroll, Cornelius, Esseks, Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Gaylor Baird absent.

Note: This is final action on Special Permit No. 1748A and Special Permit No. 08024, 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.

COMPREHENSIVE PLAN AMENDMENT NO. 08014,
TO CHANGE FROM PUBLIC & SEMI-PUBLIC AND GREEN SPACE
TO COMMERCIAL IN THE LAND USE PLAN,
and
ANNEXATION NO. 08004
and
CHANGE OF ZONE NO. 08025,
FROM AG AGRICULTURAL DISTRICT TO
H-4 GENERAL COMMERCIAL DISTRICT,
and
SPECIAL PERMIT NO. 08025
FOR PLANNED SERVICE COMMERCIAL
ON PROPERTY GENERALLY LOCATED AT THE
SOUTHEAST CORNER OF NORTH 84TH STREET AND HAVELOCK AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: June 18, 2008

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval, subject to a Memorandum of Understanding between the City and the Lancaster County Agricultural Society.

Staff presentation: **Brandon Garrett of Planning staff** submitted a correction to the staff report, adding language from the special permit report to the change of zone report regarding “Regional Issues”.

Esseks expressed concern about the part of the proposed development being in the floodplain. It appears that there will be a lot of impermeable surfaces. He wondered whether the conservation easement proposed is adequate and whether the hydrology is such that 7.8 acres are enough to achieve the new growth area standard of “no net rise”. Chad Blahak of Public Works and Utilities explained that the existing proposed conservation easement was to deal with the replacement of green space as identified in the Comprehensive Plan. The new growth area flood standards will be addressed at a future date when there is a final site plan and final grading plan provided by the applicant. He does not believe the existing conservation easement was meant to account for the flood standards.

Esseks pondered whether there is any reason to believe that the developer could not engineer a design for this property, through compensatory storage, for example, in order to achieve "no net rise". Blahak believes that will be the intent, but the applicant has not yet gone to that level of analysis.

Esseks pointed out the concern expressed by Lincoln Fire and Rescue about the lack of facilities, both fire suppression and medical, that allows timely response that the citizens expect. How far away is the closest station that can provide these services? Garrett indicated that the nearest station is #5 located at the intersection of Touzalin Avenue and Fremont Street. The approximate distance for travel by fire truck would be just over 2 miles.

Referring to the annexation, Carroll inquired whether there are any existing buildings left out of the annexation proposal. Garrett stated "no". He showed the area of annexation on the map. The applicant owns additional property beyond the existing buildings all the way to Stevens Creek, so there is still significant acreage that is not proposed to be annexed at this time, but there are no existing buildings or short term plans to build in that area. That area is also significantly in the floodplain so it is just being used for parking for now.

Proponents

1. Alan Wood, attorney for the applicant, **Lancaster County Agricultural Society,** first addressed the issue of "no net rise". The green space was originally agreed to be 1.5 times the amount coming out of the floodplain, and that was increased to two times. He referred to Analysis #6 in the staff report on the special permit, which requires that the applicant comply with the "no net rise" regulations. "We are not only providing green space but also complying with the 'no net rise' regulations."

Wood then proposed additional language for Condition #2.1.20 of the special permit as follows:

2.1.20 Revise the site plan to show a 250' north to eastbound right turn lane in N. 84th Street at Havelock Avenue, a 350' east to southbound right turn lane in Havelock Avenue, a 250' west to northbound right turn lane in Havelock Avenue, 200' right turn lanes at the proposed driveways off of Havelock Avenue, and a minimum of 250' of left turn storage for the left turn lanes for the driveways off of Havelock, or such other dimension to the satisfaction of Public Works.

The additional language leaves open the possibility of future discussions regarding a minimum of 250 feet of left lane storage for the left turn lanes for the driveway off of Havelock Avenue proceeding west and turning left into the driveways of the Event Center.

He believes that Public Works is in agreement with the additional language. If conditions change with regard to that street, this language would provide the ability to at least discuss that item in the future.

Wood also advised that the Memorandum of Understanding has not yet been finalized and is still under negotiations.

Wood went on to state that this corner commercial development has been a part of the site plan of the Lancaster County Fairgrounds and the Event Center since before the first phase was constructed in 1999-2000. It was the thought by the Ag Society Board that reserving this corner for future development would provide income to the Ag Society to support the activities of the County Fair and provide for cash flow and perhaps to develop a reserve for maintenance. The Board feels strongly that it is necessary to account for depreciation with regard to the buildings and the more they can reserve the better off they will be in the future.

Wood explained that under state statute, agricultural societies are not able to sell county fairgrounds unless the proceeds are used to acquire other county fairgrounds. This corner will not be sold. The Ag Society will develop a RFP for interested developers and request a long term lease to provide a stream of income. The Ag Society will not be involved in any way in operating this commercial venture or managing it.

Wood advised that the Traffic Study will be attached to the Memorandum of Understanding. The Traffic Study was done in 2005 and references a 6,000 seat arena. The Ag Society has no plans as this time with regard to development of an arena and has no plans to develop an arena of 6,000 seats. Wood acknowledged that there may be a need for arena space in the future, and, at this point in time, the Ag Society anticipates that could be 6,000 seats. The general future plans call for an arena of 3,500 permanent seats, which would more accurately accommodate their needs. However, at this point in time, in view of all of the circumstances surrounding the Haymarket arena and development that may occur, it is difficult for the Ag Society to agree to anything with regard to an arena. It is premature. The Ag Society is not comfortable making any binding decisions with regard to the Lancaster Event Center arena. The Ag Society is open to cooperation with other arena developments in town. It is difficult to agree to anything binding at this point. The Memorandum of Understanding has not been completed; however, there is no language therein dealing with seating, but simply a general concept of attempting to avoid duplication of facilities and competition with regard to the Downtown arena. The Event Center arena will be in the future – not now.

Wood also commented that normally, the Event Center does not host concerts. But that is not to say that concerts might occur if held in connection with another activity, e.g. the County Fair. The Ag Society does not believe there can be any steps taken to restrict the Ag Society from attracting and accommodating the events that this property was designed to accommodate.

Wood clarified that the special permit provides for 40,000 sq. ft. of retail; 6,000 to 8,000 sq. ft. in restaurant and a hotel of 75-150 rooms. The applicant does not know what kind of retail will be involved. That will be up to the developers.

Sunderman noted that the "Analysis" talks about the Ag Society having an interest in maintaining some control over the hotel's booking operations. Wood explained that that goes to football Saturdays when there might also be events going on at the Event Center for which they need rooms. This issue will be addressed in the RFP.

2. Jeremy Williams of Design Associates, referred to Condition #2.1.20 of the special permit and discussed the developer's concerns with the requested turn lanes that differ from the traffic analysis submitted with the original application.

Carroll noted that the Traffic Study was done in 2005 and he inquired as to why it was not updated with this application. Williams stated that the developer has not made any significant modifications to the trip generations since that time and there has been no change in the amount of square feet being requested, except that there would actually be a decrease in the trips considered in the 2005 study. The 2005 Traffic Study did consider the new building and accounted for all existing facilities as well as future facilities.

There was no testimony in opposition.

Cornelius inquired as to what other agencies and entities are involved in negotiating the Memorandum of Understanding. Garrett stated that the parties are the Planning Department, the Lancaster County Agricultural Society and LES.

Response by the Applicant

Wood clarified that when the 2005 Traffic Study was completed, it contemplated a 6,000 seat arena – that arena was placed on permanent hold because of the Mayor's task force study, the decision with regard to the State Fair Park, etc. The Traffic Study was developed based on the commercial corner being in existence and based on the buildout that the Event Center is currently doing. They are basically downsizing the campus, yet some of the traffic design is increasing. The applicant believed they could abide by the recommendations of the 2005 Traffic Study.

Carroll confirmed that the additional language to Condition #2.1.20 of the special permit deals with the easternmost driveway if proceeding west on Havelock and you want to turn left or south into that driveway. Wood agreed. The staff is requesting 250' and the developer does not believe that the traffic volume would justify the need for a 250' storage lane for left hand turn at that point.

COMPREHENSIVE PLAN AMENDMENT NO. 08014
ACTION BY PLANNING COMMISSION: June 18, 2008

Larson moved approval of the staff recommendation, seconded by Francis.

Cornelius noted that one of the concerns raised in the staff report was that of the direction that we are given by the Comprehensive Plan to maintain Downtown as a focus of events and activities in Lincoln. He understands that this issue is being addressed through the Memorandum of Understanding and urged the Planning Department and other agencies involved in the drafting of that agreement to protect the interests of Lincoln as set forth in the Comprehensive Plan.

Carroll agreed with Cornelius. Since the Planning Commission does not have any authority in the Memorandum of Understanding, the Planning Commission would ask that the Comprehensive Plan be followed as much as possible; that any green space and environmental space in that area be protected; and that the community's guidelines be followed which the Planning Commission is here to uphold.

Motion for approval, subject to a Memorandum of Understanding between the City and the Lancaster County Agricultural Society, carried 8-0: Cornelius, Larson, Taylor, Sunderman, Esseks, Partington, Francis and Carroll voting 'yes'; Gaylor Baird absent. This is a recommendation to the City Council.

ANNEXATION NO. 08004
ACTION BY PLANNING COMMISSION: June 18, 2008

Taylor moved approval, subject to the Memorandum of Understanding, seconded by Francis and carried 8-0: Cornelius, Larson, Taylor, Sunderman, Esseks, Partington, Francis and Carroll voting 'yes'; Gaylor Baird absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 08025
ACTION BY PLANNING COMMISSION: June 18, 2008

Cornelius moved approval, subject to the Memorandum of Understanding, seconded by Esseks and carried 8-0: Cornelius, Larson, Taylor, Sunderman, Esseks, Partington, Francis and Carroll voting 'yes'; Gaylor Baird absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 08025
ACTION BY PLANNING COMMISSION: June 18, 2008

Taylor moved approval of staff recommendation of conditional approval, with the amendment to Condition #2.1.20 as requested by the applicant, seconded by Cornelius.

Esseks clarified that the amendment pertains to the easternmost driveway when proceeding west on Havelock and turning left/south into that driveway.

Motion for conditional approval, with one amendment, carried 8-0: Cornelius, Larson, Taylor, Sunderman, Esseks, Partington, Francis and Carroll voting 'yes'; Gaylor Baird absent. This is final action unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 08024,
FROM P PUBLIC USE DISTRICT
TO AG AGRICULTURAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT S.W. 9TH STREET AND ROKEBY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: June 18, 2008

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Mike DeKalb of Planning staff** submitted this application for change of zone from P Public Use to AG Agricultural on three acres just east of the Village of Rokeby. The Rokeby School was sold to a private individual who is converting it to a residence. P zoning is for public purposes and the change of zone is needed to use the property as a residence. The property is surrounded by AG zoning.

Carroll commented that once the zoning is changed, the existing buildings, etc., are grandfathered for Building & Safety purposes. DeKalb explained that the pre-existing illegally created lot becomes a grandfathered buildable lot. The setbacks of the existing buildings are grandfathered. The only issue would be conformance with the zoning and the regulations in conversion to residential use, such as fire access, water, plumbing, sewer, etc.

Esseks inquired whether this kind of action has been done in the past where someone has purchased a small lot and wants to zone it AG. DeKalb stated that there have been a lot of older schools surplused and sold, but they were typically zoned AG to start with. The sale and conversion of country schools to residential is typical, but this is the first of the type needing a change of zone from P zoning.

Esseks noted that one of the letters in opposition states that they would like to see this property turned into some type of public use, i.e. park. The opposition suggests that when the school was sold, there was insufficient information about the sale so that the neighbors who might have organized to purchase the property for public purposes were not informed

about the sale. Do we have any information about that issue? DeKalb indicated that he did receive a call from the Superintendent of Norris Public Schools asking what would be required to convert the property to a residential house, but that is the only information he received. Norris School was the seller and he believes they followed proper procedure. Carroll assumes there would be proper public notice for this type of sale.

The applicant was not present.

Opposition

1. Matt Steinhausen, 400 West Rokeby Road, 1/4 mile from the school, testified in opposition. He is opposed first of all because there was no public notice of the sale of the school. He contacted Norris Schools and was told that public notice was not required in this event because they had created a lease with first right of refusal to the lessee, the applicant for this change of zone. There was also no public notice of that lease. The minutes of the School Board meeting do not include anything about lease of the school. There were five different parties in Steinhausen's neighborhood that were interested in purchasing the school and all of them submitted their displeasure to the Norris Public Schools.

Steinhausen pointed out that the Rokeby School grounds have two main buildings – two-story 2500 sq. ft. building built in 1918, which was the main school building, and about 12 years ago a modular building was constructed that is handicap accessible. This property has been used as a school for over 100 years. The main school building is located along Rokeby Road and does not meet the setbacks for AG zoning. The buildings are very close to the road and the adjoining property line. There is a basketball court, storage shed, playground, soccer field, and parking lot for 10 cars.

Steinhausen then cited the regulations of the AG zoning district:

> This district is designated for agricultural use and is intended to encourage a vigorous agricultural industry throughout the county and to preserve and protect agricultural production by limiting urban sprawl as typified by urban or acreage development.
>
> (Editorial note: This is a citation from the AG zoning district in the County Zoning Resolution. This application is in the City of Lincoln three-mile jurisdiction)

Steinhausen submitted that this zoning change does not meet the express intent of the first paragraph of the AG zoning regulations. He suggested that converting the school to a single family residence will remove the cohesive community center that was available to this agricultural community.

Steinhausen is concerned that the setbacks and existing structures might be grandfathered

by this change of zone. Based on his interpretation of grandfathering, it applies to an existing situation affected by a rule change. We have a property zoned P and we're changing it to AG to grandfather it? It was not AG zoning to begin with. The new building on the property was constructed after the AG regulations were written so Steinhausen takes the position that it cannot be grandfathered. The zoning laws are not changing in this case. The zoning is changing so we cannot grandfather it. He is in favor of grandfathering if it is used or applied to a structure slated for demolition that is no longer useful as it stands. The school is still a viable structure.

Steinhausen stated that he is speaking in opposition for himself, his family and members of the community. They have approached him with their displeasure. The neighbors are upset about the condition that the school has fallen into since the sale. Who will oversee this process? How long will it take? How will it appear during the conversion? Will the owners live there as they have the past two months? Will grass be maintained? What happens if this conversion fails? Who is accountable? Can it be converted back to a public structure?

Steinhausen does not believe a structure built in 1918 can be converted to the 2008 code requirements for a residence. He also noted that the current owners did express a desire to open a day care when they initially made the offer to Norris Schools.

Steinhausen's grandparents own the property directly across from the school. His grandmother asked him to convey to the Commission that she was devastated by the thought of losing her alma mater. His grandparents are upset because the condition of the property has fallen into overgrowth and garbage on the grounds.

Steinhausen urged that there are other options. The neighbors would prefer to maintain the P zoning. There are different entities that would be willing to approach the idea of keeping it as a community center and working to keep it as a public place. There are approximately 3,000 single family residences for sale in this area. There is a shortage of public buildings for community activities. They want to save the structure for their public use.

Steinhausen submitted that this change of zone to AG does not comply with sound zoning practices and does not meet with favor of the community.

Cornelius stated that he sympathizes with everything that has been said, but the Planning Commission cannot "unsell" the property. Steinhausen acknowledged that he had visited with the applicant, but Steinhausen had worked proactively to try to keep this situation from occurring years ago. In October when the lease took place, he notified Norris Schools of his concern and the Norris Schools believed they were within their rights. He was also opposed to the closure of this school.

Taylor wondered whether the school property could fall under the guidelines of being on

the National Registry? Steinhausen believes that it could if it is preserved as a school. But once converted into a residence, the initial purpose of the property has been lost.

Esseks suggested that the key thing is for Steinhausen and his neighbors to gain legal possession of the property through purchase. Steinhausen believes they would have to retain an attorney, which they have not done. He has given notice to the property owner and to the Norris Schools that he wants the property to remain in public use. He offered that the neighbors would be willing to purchase the property for the same price.

Steinhausen clarified that the school has been closed for the last two school years, although it was used for a lot of other activities. Before the property was sold to this applicant, the property was a pride of the community. It was maintained primarily by the community. They erected the play structure and took care of the butterfly garden. The previous owner was Norris School District, which acquired the school as a result of LB126. Norris was not interested in acquiring the school. The cost was more than what they sold it for. Norris did maintain the property for the last year. Steinhausen even helped maintain it during the Norris School ownership.

Staff questions

If this change of zone is approved and the neighbors are able to purchase the property, Esseks wondered whether it would need to be rezoned back to P. DeKalb stated “no”. He also clarified that the property is located in the city’s three-mile zoning jurisdiction – not the county. The P Public Use district is intended to provide a district essentially for mapping purposes to identify real property presently owned and used by a governmental entity and put to some form of public use. It is for property owned by the government and used for a governmental use. As long as the School District owned it, that was intended. When it was sold and put into private use, either private school or private community hall or private residence, it requires a change from P Public unless it reverts to governmental ownership and governmental use. The change of zone from P is needed regardless of who owns it.

Esseks confirmed that if the neighbors were able to purchase the land, they would not have to come back for a rezoning. DeKalb stated, “probably not – it obviously depends on the use and the uses permitted”.

DeKalb further explained that if this change of zone is denied and the neighbors purchased the property for another use, they would still need a change of zone from P, unless the property is owned by the government and used for governmental purposes. And the appropriate zoning would probably be AG.

Sunderman inquired about AGR as opposed to AG since it is 3 acres. DeKalb suggested that it could be AGR but the AG matches all of the surrounding zoning and that was why AG was chosen by the applicant. The lot will be buildable as proposed in AG so there is no need for AGR.

Cornelius wondered whether there are any other zoning designations that would make any sense for this parcel. What does P zoning mean in the case where there is no governmental ownership? DeKalb suggested that in reality, it means you can't do anything. He does not believe there are any other zoning designations that would make any more sense. AGR is not needed and would create a spot zone. If the zoning is not changed, it puts Building & Safety into a difficulty situation in issuing an occupancy permit for a residence.

Cornelius wondered whether approval of this change of zone erects any barriers to the neighbors in terms of their ability to form a trust and try to buy the property and use it for public use. DeKalb's response was "absolutely not". It may actually help them somewhat because in most situations they would probably need a change from P to something else and AG permits the variety of uses they have discussed.

Esseks inquired whether the grandfathering includes setbacks. DeKalb answered in the affirmative. He gave the example of downzoning of inner city neighborhoods where the existing structures were grandfathered to fit. This is no different.

As far as the maintenance, complaints about mowing should be directed to the County Weed Inspector. Issues with interpretation of the zoning code should be directed to the Building & Safety Department for code enforcement, as well as with regard to occupancy permits or building conversion.

Taylor moved to defer for two weeks. Motion failed for lack of a second.

ACTION BY PLANNING COMMISSION: June 18, 2008

Carroll moved approval, seconded by Sunderman.

Carroll was very surprised that the transfer of ownership happened without a change of zone, but he believes the change of zone to AG is appropriate. The land around it is AG zoning. If someone else wants to purchase the property and use it for any use under the AG guidelines, they can do so. If the property is left in P zoning, it creates a legal problem even if someone else wanted to buy it. The construction and additions will be monitored by Building & Safety. The neighbors have an avenue for seeking enforcement and correction.

Cornelius commented that many of the reservations that were expressed by the neighbors had regard to the physical state of the property and increasing dilapidation. This is

overseen by governmental agencies and the weed problems are overseen by the County Weed Agency. He urged the neighbors to pursue with those agencies if they are unsuccessful with the owner. The Planning Commission cannot help with the loss of this public space at this time, although he would like to.

Esseks stated that he is sympathetic to a group of neighbors coming together and purchasing the property. He assumes the owner has intention to demolish the buildings and turn it into a 3-acre estate. Maybe this would be a good time for the neighbors to offer to purchase the property.

Francis sympathizes with the neighbors and the alumni, but the Planning Commission cannot undo the sale. The owner has the right to do what they see fit with the property, and a change of zone would have been required for any sale if not public use.

Motion for approval carried 8-0: Cornelius, Larson, Taylor, Sunderman, Esseks, Partington, Francis and Carroll voting 'yes'; Gaylor Baird absent. This is a recommendation to the City Council.

ITEMS NOT APPEARING ON THIS AGENDA: June 18, 2008

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

Matt Steinhausen, 400 W. Rokeby Road, suggested that the AG zoning description, laws and regulations should be amended if, in fact, property in AG zoning can be used for uses other than agricultural.

There being no further business, the meeting was adjourned at 2:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 2, 2008.

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