MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, January 28, 2009, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor Baird, Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Lynn Sunderman and Tommy Taylor (Jim Partington absent). Marvin Krout, Steve Henrichsen, Mike DeKalb, Brian Will, Tom Cajka, Christy Eichorn, Brandon Garrett, Rashi Jain, 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 requested a motion approving the minutes for the regular meeting held January 14, 2008. Motion for approval made by Sunderman, seconded by Francis and carried 7-0: Carroll, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor voting 'yes'; Gaylor Baird abstained; Partington absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: January 28, 2009

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 08029, ANNEXATION NO. 08009, ANNEXATION NO. 08012, ANNEXATION NO. 08014, ANNEXATION NO. 08017, ANNEXATION NO. 08018, ANNEXATION NO. 08021, CHANGE OF ZONE NO. 08070, CHANGE OF ZONE NO. 08073, SPECIAL PERMIT NO. 08052, USE PERMIT NO. 100B, and SPECIAL PERMIT NO. 310D.**

Ex Parte Communications: None

Item No. 1.9a, Change of Zone N. 08073; Item No. 1.9b, Special Permit No. 08052; Item No. 1.9c, Use Permit No. 100B; and Item No. 1.10, Special Permit No. 310D, were removed from the Consent Agenda and scheduled for separate public hearing.

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

Note: This is final action on Comprehensive Plan Conformance No. 08029, 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.

CHANGE OF ZONE NO. 08073
FROM R-3 RESIDENTIAL DISTRICT TO O-3 OFFICE PARK DISTRICT
and
SPECIAL PERMIT NO. 08052
FOR AN EARLY CHILDHOOD CARE FACILITY
and
USE PERMIT NO. 100B
TO REVISE THE BOUNDARIES TO ADD
APPROXIMATELY 0.98 ACRES TO THE EXISTING
SOUTH RIDGE VILLAGE USE PERMIT,
ON PROPERTY GENERALLY LOCATED
AT S. 27TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 28, 2009

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

Ex Parte Communications: None.

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

Staff presentation: **Christy Eichorn of Planning staff** explained that two of the major issues are traffic and noise. Staff attempted to address the noise in the staff report. With regard to traffic, the lot in question will have access to S. 29th St. which functions as a collector street. The applicant requested waivers for reduction in setback for side and rear yard along with the requirement that a day care be located on an arterial street. She will let the applicant address those issues.

Proponents

1. Rick Krueger, manager of South Ridge LLC, the applicant, presented the proposal and submitted a revised site plan for consideration. This is for a child care center. Except for home day care, all day care facilities requires a special permit. He originally looked at doing the day care center under the existing R-3 zoning, but thought it best to extend the O-3 zoning. The elevation has been designed to look similar to the office buildings that are

there now. After the neighborhood meeting, he made changes to the parking on the site plan and the original waiver for side yard setback is no longer needed. South Ridge Village originally had a 20 foot setback abutting the existing residential. The proposed building has been designed to be at least 30 feet from the lot line. It is 40 foot in areas. The approach to the parking lot driveway is on 29th St. It is a one-way access point. He believes most traffic will come off Pine Lake Rd.

Day care, along with other uses, are called for in the Comprehensive Plan as transitional uses.

There are three things that were adjusted after the neighborhood meeting. 1) The side yard was adjusted from 5 feet to 15 feet; 2) the number of children was changed from 130 to 120; and 3) the dumpster location was moved.

Francis would like the outdoor playground area outlined. Krueger replied that buffering will be as required in the zoning code. There will be a six foot fence. The square footage of the outdoor play area is about four times what is required. He believes outdoor activity is important for kids.

Gaylor Baird inquired about the height of the proposed building. Krueger stated that the height of this building will be lower than some of the neighbors. The back side of the building is a walk-out basement. The footprint of the building will be less than the building immediately to the north.

Esseks noted there is a lot of concern about traffic on 29th St. Krueger believes that the traffic to the day care will be mostly from Pine Lake Rd. The market will be much greater than the immediate neighborhood. He thinks that people will take the most convenient route.

Esseks inquired as to how many cars can be parked in front of the building because that is always an issue at a day care center, from his experience. Krueger stated that there are two drop-off stalls and 10 diagonal stalls.

Esseks inquired if there is information to indicate how many parking stalls would be needed for 120 children. Krueger advised that the proposed design meets the State of Nebraska standards for day care.

Carroll questioned what would happen if this day care would not be successful. Krueger replied that they would most likely look for another day care provider.

Opposition

1. Jaime Frey, 7530 Brummond Drive, representing Porter Ridge Neighborhood, testified in opposition. They are concerned with the amount of traffic that this business will

generate. They are concerned that the stop light at 29th St. and Pine Lake Rd. being a slow light. The proposed waivers are an infringement of privacy to the neighbors. They feel this will reduce property values.

2. Bruce Hahn, 7307 S. 30th St., testified in opposition. He stated five major concerns: 1) the right to enjoy his property; 2) property values; 3) increased traffic; 4) availability of other locations; and 5) management expertise. The lots that back up to the proposed development are not deep lots. At the developer's meeting, Mr. Krueger compared this project to the office buildings to the north. He does not believe they compare. He believes that homeowners wanting to use their decks will not have any privacy. There is the noise issue. He believes that homes that are near busy streets, hospitals, commercial buildings, and schools take longer to sell. Home sales decreased 12.4 percent in Lincoln in 2008. He believes there would be a stigma attached to a home that backs up to a child care facility. There is a concern for safety with increased traffic. There are many other desirable locations where this day care center could be developed. The person seeking to run this facility is currently running a child care out of her home. This will require the management of a large staff and many children. If the business fails, there will be an empty shell that affects market values. Mr. Krueger told the neighbors that there is a critical need for child care facilities, yet there are other facilities in the area that are not completely full.

3. Steve Goosic, 7301 S. 30th St., testified in opposition on his own behalf and submitted two letters in opposition from other neighbors which list concerns with traffic and infringement of property rights. Mr. Krueger talked about the existing setback from the current office buildings and that there is additional buffer created by parking spaces. Those who are directly south of the day care will have a view of a six foot fence and the roof of the day care. There will be lack of a view and lack of sunshine. They will have to deal with the effects of the operation. The buffer zone between a residential area and the office area is currently there. 120 children creates a small school in the middle of a residential area. There is a lot of traffic in front of a school. Based on the developer's proposal, he believes the layout is not suitable to handle that type of traffic pattern. There are only twelve parking stalls nearby. The others will park on the side streets. There is a tremendous amount of traffic that already goes down this street. When he purchased his property, he was assured that this property was zoned R-3.

4. Doug Deboer appeared in opposition on behalf of his father, **Clifton Deboer**. His father goes to Phoenix every winter. There is a lot of traffic on S. 29th St. He doesn't believe there is enough parking available. He believes this will affect the market value of his father's home and the view.

5. Steve Moeller, 7300 S. 30th St., testified in opposition. He has lived at his property for approximately 15 years. S. 29th St. is a very busy street. Kids get dropped off at the school. There is a potential for 140 cars in addition to what is already there. This was labeled as a collector road. Porter Ridge Rd. empties onto S. 29th St. He has two small children himself. On a cold day, cars will want to park as close to the front door of the day

care center as possible. This is going to create problems. Cars will be parked all along the road. He does not see where there is nearly enough parking for this business. There is a Starbucks at the end of the road that generates a lot of traffic by itself. He was told at the neighborhood meeting that the latest traffic study is ten years old. He would like to see a current traffic study. He and his family are opposed to this application.

Staff questions

Esseks noted that Public Works appears to have no objection. Dennis Bartels of Public Works stated that his comments are based on traffic numbers and commonly used traffic generation methods. S. 29th St. is signalized at Pine Lake Rd. The streets themselves are able to handle the traffic. He believes traffic will enter this site from Porter Ridge Rd. or S. 29th St. He could not comment on what is an acceptable level of traffic in a neighborhood but he can give data if the street widths can handle the traffic and if the required parking is being met.

Esseks questioned how many lanes are on S. 29th St. in front of this property. Bartels replied that this is a typical 39 foot wide commercial street. It is typically wide enough to park on both sides of the street and still have room for 2 cars.

Francis questioned what could be built with the existing zoning. Eichorn replied that with R-3 zoning, someone could request a special permit for a day care for 120 children as long as they met the requirements. Parking requirements are 1 stall for every 10 children and 1 stall for every employee.

Gaylor Baird questioned the parking stalls. Eichorn replied that the maximum amount of parking could be reached for this development with 130 children.

Carroll wondered what else could be built under O-3 zoning. Eichorn stated that banks are the highest traffic generator. Tailor shops and group homes could be done by right without a special permit.

Gaylor Baird inquired about the buffer to the north. Eichorn replied that most of the buildings are set back 40 feet from the lot line. With a day care facility, a six foot high fence will be required.

Esseks believes you need a lot of space in front of the building for parents to drop off their children, especially in the winter. Eichorn stated that to the best of her knowledge, the site plan was created to maximize the space and have a large play area.

Response by the Applicant

Krueger believes it is better to have a larger playground than more drive area and parking spaces. He believes this is the best use for this property. He has agreed to reduce the

number of children from 130 to 120 and has revised the site plan to have less impact. The floor area ratio is about 19 percent of the lot.

Esseks questioned the drop-off lane. He would like to see it be longer for more parents to drop off their kids. Krueger expressed willingness to take another look at that.

Larson inquired whether the south side is the only entrance to the building. Krueger replied that it is not the only exit, but day care facilities like to control the entrance.

Gaylor Baird questioned why O-3 zoning was not originally sought for this area. Krueger could not recall specifically. Porter Ridge was done first and everything else added to it.

Gaylor Baird wondered if this could be developed with homes. Krueger responded that the lot has some odd dimensions.

Krueger stated that he has been a big proponent for more access points to arterial streets. In December, 2008, parking in the front yard in R-3 zoning was eliminated. Setbacks for R-3 would make it hard to obtain required parking for the day care center.

CHANGE OF ZONE NO. 08073
ACTION BY PLANNING COMMISSION: January 28, 2009

Larson moved approval, seconded by Sunderman.

Francis believes what the applicant is trying to achieve can be done without a change of zone and by downsizing their plans. From her experience as a realtor, people do not like to live next to a child care center.

Esseks noted that the ridge line of this building is not any taller than is allowed under R-3 and he thinks the noise will be relatively reduced due to the fact that not all the children will be there at the same time. People testifying noted that they would not have built their existing homes had it been next to a day care, but this use could be a special permit under the existing R-3 zoning.

Cornelius noted that this is an increase in zoning to a more intensive use. The current neighbors have a reasonable expectation to not have a more intense zoning use behind them. They have less deep lots and already have a challenge.

Sunderman noted that he likes the office area flowing into this area. The applicant has created a larger setback.

Carroll believes the protection should be there for the residents who built their houses with R-3 zoning behind them. He is against a change of zone.

Motion for approval failed 3-5: Esseks, Larson and Sunderman voting 'yes'; Gaylor Baird, Carroll, Cornelius, Francis and Taylor voting 'no'; Partington absent.

Francis moved denial, seconded by Gaylor Baird and carried 5-3: Gaylor Baird, Carroll, Cornelius, Francis and Taylor voting 'yes'; Esseks, Larson and Sunderman voting 'no'; Partington absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 08052
ACTION BY PLANNING COMMISSION: January 28, 2009

Cornelius moved denial, seconded by Francis.

Cornelius suggested that the whole package needs to be revisited with the recommendation of denial on the change of zone.

Francis has issues with the traffic. It is too congested already. A day care would add to this.

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

USE PERMIT NO. 100B
ACTION BY PLANNING COMMISSION: January 28, 2009

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

SPECIAL PERMIT NO. 310D
FOR EXPANSION OF A HEALTH CARE FACILITY
ON PROPERTY GENERALLY LOCATED
AT NORMAL BOULEVARD AND COTNER BOULEVARD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 28, 2009

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval

Staff presentation: **Brian Will of Planning staff** stated that this is an amendment to the existing special permit to renovate the health care facility. The property is surrounded by

public zoning and B-1. There are two waivers associated with this – to adjust the building height from 35 feet to 45 feet and to adjust the side yard along the east from 35 feet to 10 feet. Staff is supportive of both of these waivers.

Proponents

1. Ann Ferguson, Executive Director of **Ambassador Health Care**, presented the proposal. The Ambassador is a 131 bed facility. They would like to build a three story facility. The whole objective is health care and moving to single rooms. They will have 141 private suites when this is done. Their existing facility is currently semi-private rooms. These would be changed to medicare suites if the existing facility is built. Their main entrance would be off Eagle Hollow Drive. She has met with the neighbors and has taken their concerns into consideration.

Larson wondered about the total capacity with this amendment. Ferguson replied it is currently 131 and would change to 141.

Opposition

1. Mary Ann Donoghue lives in Eagle Hollow, which is a community of condos for people over 50. She has been at Eagle Hollow for ten years. Parking at the Ambassador is inadequate right now. At times, parking is very limited. She has concerns with where construction trucks and workers will park during construction. She thinks getting emergency vehicles in and out of the Ambassador property could be a problem.

2. Wayne Whitmarsh lives in Unit 37, Eagle Hollow. He is concerned about the semi-trucks traveling in and out of the Ambassador. There is a storm drain that trucks have been traveling over. In the last year or so when he was president of the neighborhood association, he was successful in getting no parking on one side of the street. He believes there is room for improvement on making the site plan friendlier for truck deliveries. He is concerned that not enough has been done to address the access for large trucks and deliveries.

Taylor inquired if there is a dock for deliveries. Whitmarsh replied that there is no dock for deliveries. They are all carried in.

Response by the Applicant

Ferguson stated that she is prepared to repair the drain and replace the road in question after construction. They will pay for snow removal of Old Cotner Rd. They are in the process of working out the details. Pegler Sysco is aware of the delivery concerns. The deliveries will continue to be delivered to the front of the building.

Taylor questioned the capacity of 141 residents, noting that the staff report refers to 151. Ferguson replied that their plans are for 141 residents.

Ferguson stated that with the addition of a larger food storage area, she will have less deliveries being made.

ACTION BY PLANNING COMMISSION: January 28, 2009

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

ANNEXATION NO. 08010
TO ANNEX 448.2 ACRES, MORE OR LESS,
GENERALLY LOCATED AT
S. 70TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 28, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval

Staff presentation: **Steve Henrichsen of Planning staff** gave a brief overview of the annexations on today's agenda. The staff began studying these proposals last year. Planning Commissioners received a briefing. Neighborhood meetings were held in September, October and December of 2008. Through mailings and the Planning Department Web site, staff has tried to disseminate as much information as possible. The reasons for moving forward with these annexations are that they conform to state statutes, they are adjacent to the city limit, services can be provided, they are urban in character in that they relate to the urban area, and city streets are used to come and go.

People who have contacted staff in opposition have noted the tough economic times. Henrichsen can understand. Everyone is in tough times. There are pluses and minuses for living in the city. City residents don't receive burn permits and cats and dogs must be licensed. There are a lot of pluses also, including is a very fast response time for Police and Fire.

Brian Will of Planning staff stated that this is a request for annexation initiated by the Planning Director for the area bounded by Pine Lake Rd. on the north, Yankee Hill Rd. on the south and goes from 70th St. to 84th St. The city has been growing this direction for some time now. The sewer line has been extended. Given the proximity of the utilities being available and proximity to the city limit, this area is appropriate for annexation. Staff has chosen to leave out the area to the south while the city continues to resolve some issues with the rural water district. It is the intent to bring that area forward for annexation in the future.

Esseks would like the Fire Chief to address response times in proximity to existing fire stations.

Deputy Fire Chief Derald Murrell stated that the closest station to this area is at 48th and Claire Avenue. The response location depends on whether it is a medical call or a full fire response. The closest ladder truck comes from Cotner Boulevard and "A" St. The second engine company comes from 84th and South St. Our average response throughout the city is about 4.6 to 5 minutes response time for most calls. It is a little longer for the outside perimeter of the city.

Esseks is concerned with response times as the city grows and the budget continues to be tight. Murrell acknowledged that as the city grows, it is a challenge to meet the response times. Additional stations are in the planning stage and until Capital Improvements funds are approved, that is where they remain.

Proponents

1. Tom Olson, 7500 Boone Trail, is for the proposal if the city has proper infrastructure. He has no fire hydrants or city water. This annexation puts the cart before the horse. The Fire Dept. does not have the capability to provide the proper response. He is retired from the Lincoln Fire Dept. He believes it would take about five fire engines to provide a relay to reach his house from the existing hydrant. Annexation before infrastructure is in place puts the residents in jeopardy. He would like to be annexed but wonders if this isn't putting the cart before the horse.

Opposition

1. Norman Hunt, 7201 Pine Lake Rd., testified in opposition. He believes that the city comes out and does nothing to take over. He has his own utilities. We are in a severe recession and this would involve expenses he does not need.

2. Peter Katt testified in opposition. He has clients in all three of the annexation areas (Annexation No. 08010, Annexation No. 08015 and Annexation No. 08016) coming up for public hearing today. He asked the Commission to remember and consider that the proposed annexation areas are very large and are vastly underdeveloped. Today there is a lot of undeveloped land in the city. There is no demand for land on the fringes today. It is not advantageous to the homeowners. He believes it would be best to defer these annexations due to current economic circumstances.

Staff questions

Esseks questioned the financial implications to property owners that are being annexed. Will replied that they are subject to tax valuations going up, but they will have the availability of city services. Some of the property owners could subdivide and sell off some

of their land once they are annexed.

Esseks noted that these properties use city roads but do not pay city wheel tax. Will responded that to be correct. There are other taxes involved with licensing vehicles that the city does not receive from people in the county. After annexation, city services will receive their share of these funds. He doesn't believe the fire response would be any worse after annexation than before. You have to be annexed to receive city utilities.

Francis wondered if someone will be forced to hook up to city water and sewer. Will replied that as long as the property has a functioning septic system that presents no threat to the public health, they can continue to use it.

Gaylor Baird noted that irregular city limits can cause confusion for emergency services and snow plows. Will stated that not to be the issue that generated this request; however, this is a good example of a jurisdictional issue. There are people across the road from each other who are in the city and the county.

Response by the Applicant

Henrichsen stated that Lincoln Fire and Rescue will still get to the scene quicker than a Rural Fire District with a tanker truck.

Gaylor Baird wondered how often annexations are pursued by the Planning Department as opposed to the property owner. Henrichsen stated that in general, it has been eight years. At the last Comprehensive Plan review, staff was encouraged to look at areas appropriate for annexation.

ACTION BY PLANNING COMMISSION: January 28, 2009

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

ANNEXATION NO. 08015
TO ANNEX 116.9 ACRES, MORE OR LESS,
GENERALLY LOCATED AT
S. FOLSOM STREET AND W. CALVERT STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 28, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval

Staff presentation: **Steve Henrichsen of Planning staff** gave a brief overview of the annexations on today's agenda. The staff began studying these proposals last year. Planning Commissioners received a briefing. Neighborhood meetings were held in September, October and December of 2008. Through mailings and the Planning Department Web site, staff has tried to disseminate as much information as possible. The reasons for moving forward with these annexations are that they conform to state statutes, they are adjacent to the city limit, services can be provided, they are urban in character in that they relate to the urban area, and city streets are used to come and go.

People who have contacted staff in opposition have noted the tough economic times. Henrichsen can understand. Everyone is in tough times. There are pluses and minuses for living in the city. City residents don't receive burn permits and cats and dogs must be licensed. There are a lot of pluses also, including is a very fast response time for Police and Fire.

Brian Will of Planning staff stated that this is similar to the last request for annexation. In the past, the Regional Center was interested in annexation so they could receive city water. That annexation was approved in 2004, but only included the Regional Center. That annexation was subsequently followed up by neighbors who wanted to connect to the city water system. They were already connected to the city sewer which the city took over from a SID. This area is already in the Lincoln Public Schools district.

Opposition

1. Dirk Johnson, 4501 SW. 12th Street, President of the Yankee Hill Neighborhood Association, testified in opposition on behalf of the Neighborhood Association. Approximately twenty Yankee Hill neighborhood members stood in opposition. What are the benefits to joining the City of Lincoln? The Regional Center requested the water. The Yankee Hill residents have their own wells. The County maintains their roads better than the city would. The volunteer Fire Dept. does a great job. They are in the Lincoln Public Schools district. The residents in the Yankee Hill neighborhood pays those taxes already. Sidewalks, curbs, street lights, etc., are not something they have or want.

Johnson understands that the City of Lincoln is moving towards the Yankee Hill area, but he does not believe now is the time for this annexation. It is premature.

Francis inquired about the boundaries of the Yankee Hill Neighborhood Association. Johnson replied the boundaries are S. 1st St. to Coddington, Van Dorn to Old Cheney.

Gaylor Baird questioned how annexation affects the sidewalk issue. Johnson replied that sidewalks are not in the future planning for this neighborhood. Sidewalks and street lights are safety issues. Those are items that people in the city have and his neighborhood does

not. They don't feel it is fair to pay taxes for things that they don't have.

Esseks noted that road maintenance is not being paid for by the residents. Johnson's response was that they do not pay the wheel tax but they shop in Lincoln and pay the sales tax. He understands that there are perceptions that they don't pay their fair share. At the same time, if this area is annexed and the city does not provide the sidewalks or street lights, it isn't fair.

Esseks noted that this is a classic argument. Existing rural areas do not want to be annexed. They feel they have all the services they need. Will responded that these proposed annexations are based on whether the area meets the criteria in the Comprehensive Plan to be annexed.

2. Peter Katt testified in opposition. He has clients in all three of the annexation areas (Annexation No. 08010, Annexation No. 08015 and Annexation No. 08016) coming up for public hearing today. He asked the Commission to remember and consider that the proposed annexation areas are very large and are vastly underdeveloped. Today there is a lot of undeveloped land in the city. There is no demand for land on the fringes today. It is not advantageous to the homeowners. He believes it would be best to defer these annexations due to current economic circumstances.

Staff questions

Esseks questioned if owners can benefit down the road from sidewalks, etc. Bartels stated that Folsom is shown as a major street. The mechanism to get the local streets paved would be an assessment district. The street lighting is also funded by property owners.

Taylor wondered if this should be put off until another time. These are harsh economic times and some people may not see this as profitable in becoming part of the city. Henrichsen replied that this is actually an annexation that could have taken place eight years ago. He takes exception to the comment that there is no benefit to annexation by the city. There is quicker Fire Dept. response. There is already water and sewer in this area. S. Folsom is already in the city limits. The city already maintains the road.

Taylor questioned the projected cost. Henrichsen replied that the difference in property taxes will be eight to nine percent in the year 2010. Wheel tax would be about $45.00 more.

ACTION BY PLANNING COMMISSION: January 28, 2009

Francis moved approval, seconded by Taylor.

Francis stated that it is hard to maintain an island when you are surrounded by the city.

Sunderman believes that this area meets the qualifications for annexation and should be part of the city.

Carroll agreed with Sunderman.

Motion for approval carried 6-0: Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Gaylor Baird declared a conflict of interest; Larson and Partington absent. This is a recommendation to the City Council.

ANNEXATION NO. 08016
TO ANNEX 243 ACRES, MORE OR LESS,
GENERALLY LOCATED AT
NW. 48TH STREET AND INTERSTATE 80.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 28, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval

Staff presentation: **Steve Henrichsen of Planning staff** gave a brief overview of the annexations on today's agenda. The staff began studying these proposals last year. Planning Commissioners received a briefing. Neighborhood meetings were held in September, October and December of 2008. Through mailings and the Planning Department Web site, staff has tried to disseminate as much information as possible. The reasons for moving forward with these annexations are that they conform to state statutes, they are adjacent to the city limit, services can be provided, they are urban in character in that they relate to the urban area, and city streets are used to come and go.

People who have contacted staff in opposition have noted the tough economic times. Henrichsen can understand. Everyone is in tough times. There are pluses and minuses for living in the city. City residents don't receive burn permits and cats and dogs must be licensed. There are a lot of pluses also, including is a very fast response time for Police and Fire.

Tom Cajka of Planning staff stated that this area is served by sanitary sewer and water. It meets the goals of the Comprehensive Plan. Most of the land is undeveloped. Most of the land is surrounded by the city limits. The area is already in the Lincoln Public Schools District.

Opposition

1. Dwayne Dowd, 220 N. 89th St., Omaha, Nebraska, testified in opposition as an owner of a farm in this area. The property is bounded by farm land and has no city services nor does it need any. The property south of "O" St. is almost exclusively farm land also. This is not urban in nature. He believes annexation is premature at this time. Of the 240 acres in the annexation, he thinks that about 190 acres are currently farmed. There is no current need for city services for these properties. He currently has a greenbelt exemption. Staff has said that annexation would create about an eight percent rise in taxes. If his property is annexed, the taxes would rise tremendously because he would lose the greenbelt status.

2. Peter Katt testified in opposition. He has clients in all three of the annexation areas (Annexation No. 08010, Annexation No. 08015 and Annexation No. 08016) coming up for public hearing today. He asked the Commission to remember and consider that the proposed annexation areas are very large and are vastly underdeveloped. Today there is a lot of undeveloped land in the city. There is no demand for land on the fringes today. It is not advantageous to the homeowners. He believes it would be best to defer these annexations due to current economic circumstances.

Staff questions

Esseks sees this as a problem. Annexation of farm land can carry enormous implications. Cajka knows that the greenbelt status would be lost once inside the city limits. The policy of annexation is the same. The Comprehensive Plan shows this land in Tier One, Priority A. Sewer and water is available to serve the area and they are contiguous to the city limits. The sewer line extends north to the edge of Mr. Dowd's property. All of these areas could be served by city services.

Carroll questioned why this land to the north of the Interstate couldn't wait until the area to the north is annexed. Henrichsen stated that the land to the north will be covered by an annexation agreement in the future. At that time, this land will be almost completely surrounded. This property meets the current policies for annexation as addressed in the Comprehensive Plan. He understands that some of these properties enjoy greenbelt designation that will be lost. There were also properties in the annexations approved on today's consent agenda that will lose their greenbelt status.

ACTION BY PLANNING COMMISSION: January 28, 2009

Francis moved approval, seconded by Cornelius.

Taylor thinks it is too bad this can't be delayed for another year, but he understands the argument for annexation.

Carroll would like to see the area north of the interstate be annexed at the same time as the annexation agreement further to the north is approved; however, he does not want to split it out of this annexation proposal.

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

COUNTY CHANGE OF ZONE NO. 08071,
TEXT AMENDMENT TO THE LANCASTER COUNTY ZONING RESOLUTION
and
CITY CHANGE OF ZONE NO. 08072,
TEXT AMENDMENT TO THE ZONING ORDINANCE,
RELATING TO EXCAVATION AND STONE MILLING.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 28, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval

Staff presentation: **Mike DeKalb of Planning staff** stated that these are text amendments to modify the language relative to soil mining. There have been three contentious soil mining permits in the last year or so. Direction was received from the County Board last year. Meetings have been held with people in the soil mining business, interested citizens, and staff from City, County, State and Federal agencies. Many issues were talked about. The conditions can be adjusted by the City Council or County Board.

Cornelius stated that an extensive request to amend was received from some interested parties. DeKalb stated that the staff recommended language is on the Web site. City staff could accept those proposed amendments if the Commission wishes to do so, but DeKalb believes the staff's proposed language is clearer and appropriate as it stands.

Cornelius wondered about an excavation that leaves a hole, perhaps meant to be a pond. DeKalb stated that there are provisions in the proposal that address that issue.

Proponents

1. Phil Pfeiffer, 15400 N. 56th St., appeared to address the bond of $525.00 per acre. He thinks it is a good starting point. It would include reclamation and would help very much.

2. Tom Keep, 8601 Davey Rd., stated that he believes this is a good effort to solve some of the questions. Hopefully this will prevent these soil mining operations from being such a controversy. He strongly supports the provision for 20 acre or less phases and reclaiming each one before you move on to another.

3. Karen Kurbis, 17500 N. 84th St., commended the Planning Dept. for all the work they have done. Over the course of time, 11 of the 20 soil mining sites have been returned to agricultural use. Reclamation is very important.

Opposition

1. Greg Varley, Land Construction, Inc., testified in opposition. He appreciates the effort that has gone into this and he has participated in the discussions. The cost of doing business goes up every day. He has an issue with groundwater and monitoring sites. Any effect to the groundwater is absurd. He does not believe you knock off the top of a hill and create water problems for someone else miles down the road. If someone just wants to dig a pond, there are many hoops that you have to go through. He doesn't see that this is a Planning Commission or Building and Safety issue. He does not believe the monitoring well as a blanket condition is necessary. He thinks applications should be looked at on a case-by-case basis.

Another issue is the daylight hours. We don't want to work at night or on Sundays. Rarely do we work at night. We work when we can. Rain affects our work. Double shifts may be necessary to get caught up. He would like to see some flexibility in an unusual situation.

The twenty acre reclamation is fine with him, but why is the bond for the entire area if you are only allowed to work 20 acres at a time?

Staff questions

Esseks asked for clarification on the bond. DeKalb stated that the intent is that the bond be for only the area to be disturbed. Groundwater issues arose with the last few soil mining applications. This is staff's best attempt to address this issue. He believes that one permit allowed work on Saturdays. Daylight hours in summer time are obviously going to be longer.

Cornelius wanted it clarified that there have been applications for soil mining excavations where a well is not within 1,000 feet, so a monitoring well has not been necessary. DeKalb does not know for sure, but he agreed.

COUNTY CHANGE OF ZONE NO. 08071
ACTION BY PLANNING COMMISSION: January 28, 2009

Esseks moved approval, seconded by Taylor and carried 7-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Larson and Partington absent. This is a recommendation to the County Board.

CITY CHANGE OF ZONE NO. 08072
ACTION BY PLANNING COMMISSION: January 28, 2009

Cornelius moved approval, seconded by Francis.

Esseks thanked everyone who put time into these proposed regulations.

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

CHANGE OF ZONE NO. 08075,
FROM AG AGRICULTURAL DISTRICT
TO B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT
and
USE PERMIT NO. 08003
FOR OFFICE AND RETAIL USE,
ON PROPERTY GENERALLY LOCATED
AT N. 98TH STREET AND "O" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 28, 2009

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

Ex Parte Communications: None.

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

Staff presentation: **Brandon Garrett of Planning staff** noted that there is a lot of B-2 zoning in this area. This application will add approximately 10 acres of B-2. The applicant's proposal was for a mix of uses. Staff has proposed 250,000 sq. ft. of commercial floor area with a limitation on fast food, banks and drive-through uses. A restriction is being proposed on Lot 1, Block 1, due to its adjacency to future residential. Specific uses that would not be allowed are listed in the staff report. Due to a revised traffic study that was submitted by the applicant, the condition that Boathouse Drive be continuous to 56th St. has been removed. It can be a T intersection as shown. He has been in communication with the applicant and it appears they are in general agreement with the conditions of approval except for Condition #2.1 of the revised staff report (2.3 of original). Staff is still recommending this condition to remove the right-in, right-out driveway onto N. 98th Street.

Esseks would like Condition #2.1 clarified. Garrett stated that spacing is important. It is 100 feet from Boathouse Dr. to the centerline of "O" Street. Adding an additional right in, right out, would aggravate the situation.

Dennis Bartels of Public Works stated the developers have done a long range trip

generation report. The report addresses traffic volume on 98th St. and a lot of turn movements. Staff is projecting future traffic, but there is a desire to have flexibility in the future.

Proponents

1. Mark Palmer of **Olsson Associates** appeared on behalf of **Waterford Estates, LLC.** This application was submitted around Christmas, 2008. He has been working on a few issues with city staff. The right in, right out on 98th St. is an issue of contention. His clients have been working extensively on this project. There are numerous residential lots built. There has been some interest in the commercial portion of the development. 98th St. has been constructed to approximately ½ mile north of "O" Street. Two major intersections have been built. The NRD dam, lake and flood pool area as well as multiple channels that feed into the lake all need to be taken into consideration. The Planning Dept. has recommended more square footage be added to this use permit. There is the potential for intensive uses. If the right turn lane is gone, it impedes their development. A traffic study has been provided to the State. He thinks 600 feet is adequate. Palmer submitted proposed amendments as follows:

2.1 ~~2.3~~ ~~Revise the site plan to remove the right-in, right-out driveway onto N. 98th Street.~~

2.3 ~~2.5~~ Realign N. 97th Street (private roadway) to match the alignment proposed with N. 95th Street north of Waterford Estates Drive in the preliminary plat, and revise the legal descriptions of the change of zone and use permit based on the realignment of N. 97th Street. Depending on the alignment of the private roadway and/or future alignment of the proposed future N. 95th Street shown on the use permit, some streets may need to be renamed.

2.20 ~~2.22~~ ~~Include easement and grading plan reflecting trail platform along O Street.~~Add General Note #27 to state: If necessary, the trail shall be permitted and an easement will be granted in the front yard setback of Lots 3 and 4, Block 2, along O Street.

There was no testimony in opposition.

Staff questions

Francis believes based on the traffic study, this could turn into a six lane major street. She inquired what would prompt a traffic light. Bartels stated studies show a light at this location.

Francis asked how many business need to be up and running to generate the traffic lights. Bartels responded that this development alone will generate a need for a light. He sees

98th St. as a major arterial. It is good engineering practice to limit access points on major arterials. Public Works has historically objected to driveways on arterials. There could be 100 plus cars exiting this street in the p.m. peak hour.

Francis projected that 98th St. would mirror 84th St. for volume size and traffic. Bartels agreed. Those are the numbers that the developer's traffic study showed.

Esseks questioned if 98th St. goes through to Highway 6. Bartels replied yes. This road could be open before the East Beltway.

Garrett stated that staff is agreeable to the applicant's proposed change to Condition #2.3. Terry Genrich at Parks is also agreeable to Condition #2.20. Staff does not agree to deletion of Condition #2.1 (right-in, right-out onto N. 98th Street).

Response by the Applicant

Palmer understands that 98th St. is one mile east of 84th St. The infrastructure has been created to extend this street. There are alignments that need to be done for this street to go all the way through to Highway 6. This development will probably exacerbate the problem at 84th and "O" Street. This is all based on models. Two right-in, right-out access points to the residential development on the north end have already been approved. He believes the south end should be treated the same as the north end. For example, 40th St. and Yankee Hill by Super Target has a right-in, right-out 580 feet from the centerline. He would like to see consistency. He doesn't see this as being any different from many other locations in town.

CHANGE OF ZONE NO. 08075
ACTION BY PLANNING COMMISSION: January 28, 2009

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

USE PERMIT NO. 08003
ACTION BY PLANNING COMMISSION: January 28, 2009

Sunderman moved approval with conditions as amended by staff and requested to be amended by the applicant, seconded by Taylor.

Sunderman stated that the right-in, right-out driveway has been very selectively used by the city. He does not see a specific reason to deny it.

Gaylor Baird asked Marvin Krout to address the right-in, right-out question. Marvin Krout stated that this issue is currently being worked on by city staff. Gaylor Baird noted that this

argument comes up again and again. She hopes to have information on a policy soon.

Motion for conditional approval as revised, with amendments as requested by the applicant, carried 6-1: Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Gaylor Baird voting 'no'; Larson and Partington absent. This is final action, unless appealed to the City Council within 14 days.

SPECIAL PERMIT NO. 08034A,
AMENDMENT TO THE WHISPERING MEADOWS
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT SW. 27TH STREET AND WEST "A" STREET
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 28, 2009

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval.

Staff presentation: **Christy Eichorn of Planning staff** explained that in a previously approved development, the lot in question was left open for future development. This area is for 149 townhouse units. Each unit will be on an individual lot. Staff worked with the developer to try and reduce the number of waivers and gain some accessibility to the lots. The applicant revised the site plan. A private roadway of 27 feet wide is being proposed. Access can be achieved to almost all of these lots from two directions. That was the biggest issue.

A letter of opposition was received that had concerns about storm water runoff. This particular development isn't being treated any different from any other development in the same proximity to a wetland or oxbow.

Esseks notes that the Police Dept. still has concerns. Eichorn believes the Police Dept. is concerned with the density. Even though there is parking along the private street, some of these units will fill up the garage and the Police Dept. is concerned that there will be parking along the private alleyways.

Esseks questioned the access to the individual properties. Eichorn noted that all of the units will have addresses on the front and the back of the units. There will also be some type of signage near the commons area that will direct people to the location of individual units.

Proponents

1. Peter Katt applauded the Planning staff. This is a fairly dense project for a fringe development. Standards were discussed. There was a lot of collaboration that eliminated most of the waivers originally requested. His client is in agreement with all of the conditions recommended by staff.

Francis questioned if these are attached townhomes. Katt replied that these will be

attached with each on a single family lot.

Francis wondered where everyone is going to park if they have guests over. Katt stated that this is a mix of one-, two- and three-bedroom units. There are 581 parking stalls. Behind every unit are two stalls on the outside driveway. There are various places to park. The total is almost double the parking stalls that are required by the city.

Carroll asked if there will be an association. Katt stated that virtually every townhouse development today has an association. It is a must to address snow removal, trash removal and the maintenance of common areas.

Carroll inquired if Katt knows what the association dues will be. Katt did not know.

Francis inquired about the price range and whether it will be affordable housing. Katt believes that the developer is aiming for a single bedroom unit in the $90,000.00 - $95,000.00 range.

Cornelius asked about parking and who would run the association. Katt stated that the developer initially runs the association and as more units are sold, the association is turned over to the homeowners. He would expect that with a development of this size, it would be turned over to a professional management company and the developer would be out of the picture.

Francis would like the Fire Dept. issues addressed. Sprinklers were suggested. This is the first time she has seen concerns on a development like this from Police Dept., Fire Dept. and 911. Katt commented that a few weeks ago, an attached townhome development came before the Planning Commission in Antelope Valley and none of those concerns were raised. It is frustrating to have different standards applied. He doesn't believe that some projects should be singled out for different standards. He thinks the Fire Dept. understands that they meet the current standards.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: January 28, 2009

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

Francis is concerned with the density and the safety concerns that were raised by some city agencies.

Esseks expressed concern also. He noted that Eichorn made the point that there are two different routes for emergency vehicles to reach the development. He suggested that a development of this size will create a sizeable number of emergency calls per year.

Carroll stated that the city always needs affordable housing. Projects like this have done well in other cities. It is a tough situation as far as private sewer, water and roads. He is inclined to vote for approval.

Motion for conditional approval carried 6-1: Gaylor Baird, Carroll, Cornelius, Esseks, Sunderman and Taylor voting 'yes'; Francis voting 'no'; Larson and Partington absent. . This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 5:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 11, 2009.

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