**MEETING RECORD**

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| **NAME OF GROUP:** | PLANNING COMMISSION |
| **DATE, TIME AND PLACE OF MEETING:** | Wednesday, August 12, 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, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jim Partington, Lynn Sunderman and Tommy Taylor; Marvin Krout, Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, 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 Lynn Sunderman called the meeting to order and requested a motion approving the minutes for the regular meeting held July 29, 2009. Motion for approval made by Partington, seconded by Francis and carried 6-0: Cornelius, Esseks, Francis, Larson, Partington and Taylor voting 'yes'; Gaylor Baird and Sunderman abstained.

**CONSENT AGENDA**
**PUBLIC HEARING & ADMINISTRATIVE ACTION**
**BEFORE PLANNING COMMISSION:** August 12, 2009

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 09008, CHANGE OF ZONE NO. 09020HP and STREET AND ALLEY VACATION NO. 09005.**

Ex Parte Communications: None

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

**COMPREHENSIVE PLAN AMENDMENT NO. 09006,**
**LITTLE SALT CREEK WATERSHED MASTER PLAN;**
**COUNTY CHANGE OF ZONE NO. 09017 and**
**COUNTY MISCELLANEOUS NO. 09006,**
**TEXT AMENDMENTS TO THE COUNTY ZONING RESOLUTION**
**AND COUNTY LAND SUBDIVISION RESOLUTION.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION:** August 12, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Mike DeKalb of Planning staff** stated that the Comprehensive Plan Amendment amends three pieces of the Comprehensive Plan as well as updating the Land Use Maps. The two text amendments change the county zoning and subdivision regulations to incorporate "floodprone areas" so that the best available information can be applied in the regulations as the best available floodplain information.

Proponents

**1. Ed Kouma, Public Works & Utilities, Watershed Division,** stated that the Little Salt Creek Watershed Master Plan is the sixth in the series that have been done for the City. The purpose of the master plan is to create long term planning tools and improvement projects for water quality, flood management and stream stability to provide guidance for sustainable urban growth.

Floodplain mapping was done in the study and the floodprone areas were updated. The study shows the existing approved FEMA floodplain maps. Some of the areas, which are mostly at the extension of the tributaries, are now included as defined floodplains that were not previously defined. The items before the Planning Commission are to make the revisions to the county zoning and subdivision regulations to add provision for regulating locally adopted floodprone areas and floodways. This mirrors the regulations in the city jurisdiction.

Kouma went on to advise that the study identified problems throughout the basin. Eighteen stream stability projects were identified with recommendations as possible improvements to the basin to improve water quality and stream stability. The recommendations were for grade control at bridges and for silt-in basins. Other recommendations include stormwater BMP's and recommendations for future development which would include testing for dispersive soils. Approval of the study adopts floodprone areas as best available information.

There are other recommendations for bridges and culverts, natural resources, riparian corridor and water quality, but these were not recommended as projects.

Kouma suggested that the public process was key throughout the study. Two open houses were held, there were mailings and two committees were formed to assist the study team. The Web site has been maintained throughout the study – keyword "watershed".

Adoption of the Master Plan is recommended. The request is to add the master plan to the list of approved subarea plans and watershed studies. The proposed future land use plan updates the agricultural stream corridor and environmental resources land uses to reflect the updated floodprone area and floodway information. This is consistent with updates that have been made in other watersheds.

Kouma pointed out that the majority of the watershed has agricultural land use designation. Two areas extend slightly into the industrial/commercial areas and urban residential land uses. Those areas are still zoned for agricultural use. The commercial area near Interstate 80 was already zoned so it was not updated with these changes.

**2. Paul Zillig, Assistant Manager of the Lower Platte South NRD**, testified in support, The NRD was a partner with the City in preparing this plan. The Board met in July and approved the plan and recommends the Planning Commission approval as well.

There was no testimony in opposition.

**COMPREHENSIVE PLAN AMENDMENT NO. 09006**
**ACTION BY PLANNING COMMISSION**: August 12, 2009

Larson moved approval, seconded by Gaylor Baird.

Sunderman commented that this is not the first watershed study the Planning Commission has been through. The issues have come forward previously and the Commission is fairly familiar with them.

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

**COUNTY CHANGE OF ZONE NO. 09017**
**ACTION BY PLANNING COMMISSION**: August 12, 2009

Francis moved approval, seconded by Cornelius and carried 8-0: Esseks, Taylor, Partington, Cornelius, Francis, Gaylor Baird, Larson and Sunderman voting 'yes'. This is a recommendation to the Lancaster County Board.

**COUNTY MISCELLANEOUS NO. 09006**
**ACTION BY PLANNING COMMISSION**: August 12, 2009

Cornelius moved approval, seconded by Francis and carried 8-0: Esseks, Taylor, Partington, Cornelius, Francis, Gaylor Baird, Larson and Sunderman voting 'yes'. This is a recommendation to the Lancaster County Board.

**ANNEXATION NO. 09003**
**and**
**CHANGE OF ZONE NO. 09011,**
**SOUTHLAKE PLANNED UNIT DEVELOPMENT,**
**ON PROPERTY GENERALLY LOCATED AT**
**SOUTH 91ST STREET AND HIGHWAY 2.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION:** August 12, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval of the annexation and conditional approval of the Planned Unit Development, as revised.

Staff presentation: **Brian Will of Planning staff** explained that this application covers 27.5 acres of land located northeast of the intersection of S. 91st Street and Highway 2, and is proposed for development of a health care facility, office space and commercial floor area. The future land use map was updated in 2003 which revised the land use designation for the area in this application and changed that designation to commercial. The proposed PUD is consistent with that designation.

There are four waivers being requested. Staff had previously agreed with three of the waivers and was recommending denial of one waiver of an additional on-premise sign. However, the staff has revised its recommendation to approve the additional sign and has revised Condition #1.1 and #1.7 as follows:

1.1 Show a pedestrian connection from the driveway at South 91st Street extending along the south lot line of Lot 1, Block 1, and/or the north lot line of Outlot A and Lot 2, Block 1, connecting to the sidewalk along South 96th Street.

1.7 Revise REQUESTED WAIVER #3 to state "MODIFICATION OF LMC CHAPTER 27.69 TO ALLOW ONE ADDITIONAL 8'-TALL, 50 SQUARE FOOT FREE-STANDING SIGN FOR LOT 1, BLOCK 1."

Gaylor Baird noted that the staff analysis indicates objection to the total number of signs and not the actual size. Why did you change your mind? Will explained that the revised staff recommendation relates to the physical character of the site. The site is fairly large and staff believes it is reasonable to want an identification sign along the arterial street. Given the amount of frontage along Andermatt Drive, it does not seem unreasonable for them to want an identification sign.

Gaylor Baird expressed concern because the sign standards were just recently revised and approved and she wondered whether there was a flaw in those standards since staff is recommending a modification in this situation. Will believes that the standards are good and reasonable, but by virtue of a planned unit development, the staff has the flexibility to look at the entire development and make accommodations, where necessary, based upon the specific character, which is being done in this case. The PUD ordinance allows modifications to the rules when necessary and appropriate on a case-by-case basis. This is one of those cases where staff has determined that it is not unreasonable. Staff suggests that the amount of frontage warrants this waiver.

Esseks referred to the discussion in the staff report about the driveway off of S. 91st Street, which is rather close to Hwy 2. The staff report indicates that this driveway is contrary to the city's current access management policy. Will explained that "prior approval" is the Executive Order for that public improvement for S. 91st Street. That driveway was approved by the City. Esseks observed that when we try to enforce the standard on a much larger space between a major highway and an access road onto an arterial, we get grief from some of the applicants saying we have allowed it at other places. Why did the city approve this? Dennis Bartels of Public Works & Utilities stated that the City traffic engineer and Mr. Korver negotiated this driveway probably a year or more ago. The land use was slightly different at that time with commercial on both sides. Mr. Korver convinced Public Works & Utilities that with the detention pond dividing the two areas, they could use another driveway. In agreeing to the driveway the developer agreed to construct four lanes of paving of Highway 2 to the next median at Andermatt Drive.

Francis asked Will to discuss allowing a block length in excess of 1320 feet. Will stated that this development has one larger user and there is going to be commercial and office development to the south. Given the unique character of the site, staff finds that it is reasonable to vary the standard in this case. There is also a major state highway to the south and 91st Street is an arterial street.

Proponents

**1. Danay Kalkowski** appeared on behalf of **Andermatt, LLC,** the owner of the property requesting the annexation and PUD on 27.5 acres located east of 91st Street between Andermatt Drive and Hwy 2. The infrastructure was master planned with the annexation and zoning agreement for 84th & Highway 2. This area is also shown in the Comprehensive Plan for commercial use. The B-2 PUD is a good fit for this property because they are

doing a mix of uses. Under the proposed PUD, the north half of the property is designated for a 104,000 sq. ft. health care facility, and the south half is shown for a mix of 65,000 sq. ft. of office, retail, and restaurant. There is also a rather large detention pond that will provide an amenity to all of the users.

**2. Mitch Elliott,** architect with **Vetter Health Services**, 5220 S. 118th Street, Omaha, presented the proposal for the health care facility. Vetter Health Services has been a family-owned business for 35 years, with 32 campuses in the Midwest, including the Milder Manor and Village Manor nursing facilities here in Lincoln. Vetter Health Services is committed to Lincoln and would like to expand and enhance its presence in Lincoln for long term care and retirement living.

This project is based on a project finished and opened in Omaha, being a 139 bed skilled nursing facility focusing on rehabilitation and long term care. Southlake Village will be a 120-resident/bed skilled nursing facility – 40 for short term rehabilitation; 20 for Alzheimer's and dementia care; and 60 for long term care. The 92,000 sq. ft. building is in Phase I with 130-150 full-time staff and $19.8 million in development costs. They also plan to pursue LEED certification.

The intent is to have the zoning and PUD process completed by early October, 2009, with construction completed in December 2010, opening in early February 2011. Vetter Health Services is committed to Lincoln and is looking forward to raising the bar in terms of quality care.

Partington inquired about arrangements for security for the Alzheimer's section. Elliott explained that it there will be a door locking system so that they do not inadvertently step out of the building. The facility will be very secure.

Kalkowski then stated that the applicant is in agreement with the conditions of approval, as revised today. With respect to the signage, she suggested that the new standards work great in a typical B-2 setting with 1-2 acre lots. In this case, there is an 11+ acre lot for the health care facility, 500 lineal feet of frontage on 91st and over 1,000 lineal feet of frontage on Andermatt. This would allow multiple signs in a typical B-2 setting. The waiver requested allows one additional sign.

There was no testimony in opposition.

**ANNEXATION NO. 09003**
**ACTION BY PLANNING COMMISSION**: August 12, 2009

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

**CHANGE OF ZONE NO. 09011**
**ACTION BY PLANNING COMMISSION**: August 12, 2009

Francis moved to approve the staff recommendation of conditional approval, as revised today, seconded by Taylor.

Sunderman commented that this sounds like a great project.

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

**COUNTY CHANGE OF ZONE NO. 09018**
**TEXT AMENDMENT TO THE LANCASTER COUNTY ZONING RESOLUTION RELATING TO EXPANSION OF HOME OCCUPATIONS.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION**: August 12, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval

Staff presentation: **Mike DeKalb of Planning staff** provided some history on the proposed legislation. Last summer, the County Board initiated some discussions on rural home businesses. Based on those discussions, the Planning Department, in association with other agencies and departments and members of the Planning Commission put together an analysis of what is going on locally and in other areas. The report was completed in December 2008, and that report did not support the idea of amending the code but gave a variety of options recognizing that some additional flexibility was desired.

In March of this year, the County Board held a meeting with towns and villages of Lancaster County to discuss the issue. The towns and villages have long wanted businesses to be directed to the towns and villages; however, the seven or eight town and village representatives who attended the meeting supported the idea of flexibility for rural home business. Yet they still strongly support the language in the current Comprehensive Plan that business continue to be directed to the villages and towns.

In June of this year, the County Board requested that the Planning Department proceed with this text amendment. This text adjusts the definition of home occupation to allow one non-family employee; adds expanded home occupation to list of special permitted uses in the AG district; adds provision to allow home occupation and lists the package of

provisions, including that the County Board reserves the right to remove, modify or add conditions as needed. Traditional home occupation is allowed in all districts.

Today, the language for home occupation does not allow employees; this text amendment would allow one employee; under the special permit, you can bump up to two employees. The existing home occupation language limits to 20% of all buildings on the premise – residence and outbuildings can be used for the home occupation. Under the special permit, 50% of all buildings can be used, 10,000 sq. ft. of the residence can be used and 15,000 sq. ft. of the outside area can be used. A 20 sq. ft. sign is allowed to be out by the street. The list of uses is expanded.

Esseks inquired whether the special permit provisions would allow the construction of a new building for this expanded business. Mike DeKalb stated that to be true. In fact, even in the existing language you can add new buildings and use it up to the existing limits. The special permit would describe those in the site plan and you could come back and amend that through the process.

Esseks confirmed that in the AG zoning, you could put in a five, six or ten thousand sq. ft. building as long as it did not exceed 20% of the pre-existing structures. DeKalb explained that under the existing language today, you could add a five, ten or fifteen thousand sq. ft. machine building to your premise and the current language would allow you to use up to 20% of the buildings on the site. Under the special permit, we have a cap on square footage of the total buildings and a cap on the percentage of the buildings within the special permit.

Esseks observed that perhaps there is more flexibility under the existing language with the addition of one employee. He thinks there would be real incentives to avoid the special permit process. DeKalb suggested that the special permit allows for a lot of additional expansion, better signage, etc. It's a better "package". As far as total impact, the existing language is not proposed to be amended very much as far as existing home occupation and will probably be the standard. The staff did suggest that under the special permit the lot size be 10 acres, and the County Board could modify that.

The largest square footage that could be used for a business would be 15,000 unless waived by County Board.

Support

**1. Mike and Judy Rosecrans** testified in support. They own 8.84 acres on Hwy 77 and Hickman Road and are interested in renting spaces for parking boats, RV's, campers, etc., because their property is right in the middle of Blue Stem, Stagecoach and different recreation areas. There is a weigh scale across from their property so there is an access into their lane that would not slow traffic down going south. If going north, there are two lanes. There are no visible neighbors. They have had no objection from any of the

neighbors. They indicated that they would be the first to ask for a special permit for the 8.84 acres as opposed to 10 acres.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION**: August 12, 2009

Partington moved to defer for further discussion until the next meeting on August 26, 2009, seconded by Esseks and carried 8-0: Esseks, Taylor, Partington, Cornelius, Francis, Gaylor Baird, Larson and Sunderman voting 'yes'.

**SPECIAL PERMIT NO. 09021,**
**TO EXPAND A NONCONFORMING USE FOR A**
**GARAGE ADDITION ON PROPERTY**
**LOCATED AT 1111 E. HILLCREST DRIVE**
**PUBLIC HEARING BEFORE PLANNING COMMISSION**: August 12, 2009

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval

Staff presentation: **Rashi Jain of Planning staff** presented the proposal to expand a nonconforming use for a garage. She also submitted an e-mail from the applicant agreeing to the conditions of approval to maintain the 30' setback.

The applicant was not present.

There was no testimony in opposition.

Larson asked whether the applicant agrees to move the setback to be even with the existing building. Jain stated that there is a setback of 30' and the addition they propose will be in line with the existing building.

**ACTION BY PLANNING COMMISSION**: August 12, 2009

Taylor moved to approve the staff recommendation of conditional approval, seconded by Esseks and carried 8-0: Esseks, Taylor, Partington, Cornelius, Francis, Gaylor Baird, Larson and Sunderman voting 'yes'. This is final action, unless appealed to the City Council.

**SPECIAL PERMIT NO. 09018,**
**FOR EXPANSION OF A NONSTANDARD ATTACHED GARAGE, ON PROPERTY GENERALLY LOCATED AT S. 14TH STREET AND OTOE STREET.**
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION**: August 12, 2009

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

Ex Parte Communications: None.

Staff recommendation: Conditional Approval

Staff presentation: **Christy Eichorn of Planning staff** explained that this special permit is to allow a single family residential unit to add a garage onto the southern portion of the property. Eichorn reminded the Commission that a few months ago, an ordinance was approved making the expansion of single-family and two-family dwellings conditional uses. This is one of those cases that could not meet the conditions. In order to add the attached garage to the southern portion of the property, the owner will have to encroach into the rear yard where the existing house does not encroach into the rear yard. They had a detached garage previously. The house currently sits 19' from the front property line. Generally, there is to be a 25' front yard in this zoning district. It is also going to sit about 6' from the south property line, which would be considered the rear yard in this case. There is a driveway where the garage will be constructed. The new garage will sit approximately 6' from the south property line.

Proponents

**1. Gary VerMaas** appeared on behalf of his son, who is the applicant for this special permit, to answer any questions.

There was testimony in opposition.

**ACTION BY PLANNING COMMISSION**: August 12, 2009

Larson moved to approve the staff recommendation of conditional approval, seconded by Francis and carried 8-0: Esseks, Taylor, Partington, Cornelius, Francis, Gaylor Baird, Larson and Sunderman voting 'yes'. This is final action, unless appealed to the City Council.

**COUNTY SPECIAL PERMIT NO. 09019**
**FOR SOIL EXCAVATION ON PROPERTY**
**GENERALLY LOCATED AT**
**NORTH 56TH STREET/HIGHWAY 77 AND RAYMOND ROAD.**
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION**: August 12, 2009

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

Ex Parte Communications: Esseks disclosed that he had sent a question to staff.

Staff recommendation: Conditional Approval

Staff presentation: **Mike DeKalb of Planning staff** explained that this is a request for special permit for soil mining/extraction on Hwy 77/N. 56th Street at about the half-mile line south of Raymond Road on 19.5 acres. It is an existing soil excavation site where the permit has expired. There is a common access point off Hwy 77 jointly used by the residences and the soil excavation site. The proposed plan shows the driveway coming in off the south. There is an existing lake and acreage housing. The lake on the west end acts as detention facilities. At this point in time, it is open and about half done. Operations have ceased.

The staff recommendation is conditional approval using the new standards adopted relative to soil excavation. Staff is recommending that the bond waiver not be approved because the bond insures that the operation be completed on time and as required. The new special permit language has extensive new rules. The special permit for the operation has expired and that permit had little or no conditions of review; no hours of operation or days of operation.

DeKalb acknowledged that there have been a number of representations made previously on the prior special permit. The lesson learned is that representations made by the applicant are not a condition of approval of a special permit. The new regulations are much more detailed and should correct the issues. With the new conditions of approval and the bond, this operation should get finished, cleaned up and corrected with the least impact on the neighbors.

Larson noted that the problem in the past has also been lack of enforcement. He inquired whether there have been conversations to insure that there will be inspections. DeKalb acknowledged that the issue has been lack of enforcement and lack of regulations to enforce. The state and feds do have regulations in force but a poor level of manpower and commitment of resources. The new standards require a sign-off by Building & Safety before operation starts so that the conditions are met before the operation even begins. The new regulations require an annual review, so they literally have to stop and have a review. The bond gives us the leverage.

Larson also inquired whether replacement of the topsoil on the excavated area is a requirement. DeKalb stated that the new regulations require stockpiling of soil and putting the soil back on in compliance with the Farm Act. According to the NRCS office, if the applicant intends to participate in federal farm programs, they must comply with the Farm Act process. That is a requirement that acts as a performance standard. The applicant must insure that the soil preparation and the organic matter at the end of the operation produces a certain number of bushel of types of crops. It is a performance measure to qualify for the federal money.

Esseks referred to the permit approved in April of 2006 – was there anything about reseeding the land and the nature of the slopes after excavation? Did the approved plans provide for that reseeding? DeKalb stated that the approved plans in 2006 showed the phase I and phase II - the area of excavation - the two ponds and grass pasture - there were no extensive notes on the approved plan. Staff reviewed the special permit that has expired against the city standards (which are more extensive than the county) and the standard by the city at that time talked about erosion controls, topsoil kept on site and redistributed, 3:1 slope, etc. The applicant had stated he would do that but the conditions of approval did not list these requirements. The new proposed language does add all of those requirements.

Esseks sought confirmation that all of the conditions will be enforced, noting that in February, 2006, the applicant signed a similar document with many of the same conditions. He voted in favor at that time because he thought those conditions were real. In the future, we need to know what we are voting on. DeKalb stated that because the city standards were used as a checklist, the applicant showed the items and said they would comply, but that letter and conditions were not built into the conditions of approval of the special permit. It was an unbinding promise. But, that issue is not in front of the Commission today. DeKalb assured that would not happen again.

Proponents

**1. Harry Muhlbach,** the applicant, updated the Commission on what has happened since 2006. All of the regulations have been followed. The slopes are done. There are soybeans on part of the reclaimed pit. There is another part of the pit that has been planted. The County had a committee that inspected these pits and a water analysis was done. This has been a well-managed pit. The topsoil has been re-spread on the part of the pit that has been used. He is working with the County Extension office and has a son that farms. On a normal reclamation, this ground takes about seven years, but he is going to try to speed up this process.

Muhlbach further stated that he is not doing this to destroy the farm. There is a need for this soil. Northeast Lincoln has a lot of low lying areas. A lot of this dirt goes in the Waverly area. Over the years, the City of Lincoln has actually raised the floodplain

elevation in this town on homes that are now in the floodplain. There is a definite need for this dirt.

Muhlbach submitted letters in support from four neighbors. He has personally talked to the neighbors who have had concerns and he is willing to work with the neighbors to try to accommodate their concerns.

Esseks inquired whether Muhlbach has seen the letter from Thomas Keep. Muhlbach indicated that he has read the letter. His response was that the seeding has been done. There is grass growing on part of the pit. There are some sharp edges from the existing mining permit. He assumed that there would be a temporary extension to carry on this excavation. He had to hire a water specialist and it took 90 days to do the water study. If he could have gotten an extension he would have only run it another year. He lost two contracts for selling dirt because the pit was shut down and he could not get an extension and had to reapply under the new regulations.

Partington understands that this land is part of a larger farm owned by the applicant. Muhlbach confirmed that it is 80 acres. His wife has poor health and in order to pay her health expenses he has had to sell off some of the lots. Muhlbach stated that 100% of the site will be reclaimed for agricultural use, except for the slopes. He can hay the slopes. It is now 19.5 acres. It does not involve replacing terraces. It is not highly erodible anymore.

With respect to the bond, Muhlbach stated that he has worked with bonding companies for a lot of years and has run into several situations where people have not been able to collect the money from a bonding company. A bonding company puts undue bonding on small businesses. He is not willing to bond the reclaimed ground, which is 4 acres of the 19.5. He does not want to be charged to bond ground that has already been reclaimed. He is a soil conservationist.

Support

**1. Larry Eckel** testified in support. He has a small construction company and helped the applicant draw up this application. This pit is needed. They have attempted to remove the mud brought onto the highway. Land Construction hauled the dirt out and they try to take care of things. It was one of those days when we got caught in the middle of the rain and he bladed the highway as much as he could. That happened two or three times, but they always try to get it cleaned up.

Eckel pointed out that Mr. Keep lives 2.5 miles north and 2.5 or 3 miles east. He is not even a neighbor. The immediate neighbors do not have any problem with this request. We need to work together and get the issues resolved. This request is for the second phase, yet they want us to bond all 19.5 acres. There was no bond required in 2006. He requested that the 19.5 acres be dropped down to at least 7 or 10 for bonding purposes.

Opposition

**1. Karen Kurbis,** 17500 N. 84th Street, testified in opposition. She concurred that she and Mr. Keep do not live next door, but they do encounter the problems as they travel into Lincoln. As far as the statement made that the neighbors have never addressed the mining operators, Kurbis stated that she has talked with LeGrande on several occasions. Kurbis expressed disappointment and concern that there is not a history of the past three years of soil mining in that area because there have been a lot of complaints. Neither the Planning Department nor the Building & Safety Department has taken the time to gather that data and present it to the Planning Commission. They did ask Fred Hoke to present a report, and it was mentioned to Mike DeKalb that it would be nice to have a synopsis of the issues. There is nothing in the Planning report and no report from Building & Safety. Kurbis requested the Commission to ask for the real data before making any decisions. It is the missing history that should lead to what conditions to put on the permit. Ask Building & Safety if it is true that the operations were ceased twice this spring with LeGrande and Gana when they attempted to mine after the expiration date. Ask Building & Safety about the driver safety issues and about the dust problems and dirt problems on the highway that are not controlled. NDOR does not respond. Chris Schroeder of the Health Department failed to mention anything and the neighbors have had direct contact with the Health Dept for the dust control problems. She requested that the permit be limited to one or two years, rather than three.

Kurbis strongly supports the bond. It was put in the ordinance because of the long history in Lancaster County on lack of reclamation. Safety issues are a problem. Building & Safety needs to be asked for a compilation of the problems at the site. She suggested that the Commission should consider tabling this application.

Esseks sought confirmation that Building & Safety was asked to give a report. Kurbis stated that Becky Keep, Tom Keep's wife, personally asked for a report and "he" said he would create a report. She left a message for Fred Hoke yesterday, but did not hear anything back. She also asked Mike DeKalb for some kind of synopsis. There is no enforcement today despite the ordinance that was created. Nothing happens.

Esseks asked how many complaints these neighbors have made over the last three years. Kurbis believes that it has been at least a dozen. Muhlbach promised to use the water trucks in 2006, but the only way we get water trucks out there is from the Health Department.

**2. Marlene Tracy,** 17500 N. 84th Street, who is a daily driver on Hwy 77, testified in opposition. She has called and complained. She has been calling Fred Hoke and it takes about three weeks to get a response. She has initiated phone calls every week herself to

check on the situation. She has been getting a total run around. She is not sure that Building & Safety understands their job. Fred Hoke told her he would walk over and talk to the Director of Planning and that is the last she has heard.

Tracy showed photographs of the dust blowing across the road and where the trucks scuff up the dirt that is on the road. It took multiple calls to get this issue addressed. She ended up calling the State Patrol to verify that it was a safety problem. There is a lot of traffic in this area. A big concern is the school buses. The hours of operation need to be something of discussion and not allowed to be wide open.

Tracy also suggested that there need to be signs up on each side to make people aware.

Staff questions

Esseks asked DeKalb to respond concerning a report on the complaints and what the city and county have done. We have to serve our citizens. DeKalb stated that the application was sent to Building & Safety and the response was “completed”. If the neighbors made a specific request to Building & Safety for a listing of complaints on this site, DeKalb is not aware nor has he seen anything. On occasion, there have been complaints on this and other sites, but Building & Safety would have to be asked for a log of the number of occasions.

Francis asked whether the Planning Department has ever been an enforcement body. DeKalb responded, “no”. Francis then asked how long it took to get the new regulations in place and adopted. DeKalb stated that it was at least two years. The staff met with the haulers. It was reviewed by the County Ecological Advisory Committee. The process was extensive and open with a lot of discussion. Francis then confirmed with DeKalb that the guidelines that are now the rules and regulations were designed to address the issues that we have experienced with this past permit that was approved prior to the ordinance being approved. DeKalb agreed.

Esseks then asked whether the Commission is allowed to take into account such issues as Ms. Kurbis and her colleagues have raised. DeKalb suggested that the public testimony on any special permit is information that goes into the pot and becomes part of the Commission’s consideration. He believes that the conditions on this permit address the issues raised on the past permit and the Commission also has the opportunity through this forum to recommend more conditions, if deemed necessary.

Gaylor Baird asked whether we can expect better enforcement going forward. DeKalb suggested that the opponents’ level of expectation for enforcement is probably above and beyond the ability of the agencies to fully do day-by-day. But the second part is the ability to enforce the final conclusion of the operation as shown in the plans. They have to have certain conditions in place before they even start; there is an annual review of compliance; and in the end, there is a sign-off by the engineer that says everything has been done

according to plans and the bond can be released. The new regulations provide much better tools and more checkoffs. The bond is a strong incentive to tie up loose ends. The hope is that these kinds of complaints won't be necessary in the future because of these checkpoints.

DeKalb explained that the bond amount is set in the ordinance based on the number of acres being disturbed.

Response by the Applicant

Muhlbach responded to the school bus issue, stating that he has an agreement with the Waverly School System. They are allowed to come into his driveway and get off the highway to pick up the kids and turn around in his access road. There has never been an incident.

**ACTION BY PLANNING COMMISSION**: August 12, 2009

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

Esseks would prefer to delay for two weeks to receive information from Building & Safety and Health. Everything goes into our pot for consideration as to whether to recommend a one-year versus two- or three- year. We should get more information about what's happened.

Francis commented that the Planning Commission is not a governing/enforcement body. The Planning Commission's role is to talk about the land use issue. So what has gone on in the past (although it is disturbing and the neighbors are dissatisfied), she does not believe is relevant to this special permit.

Larson agreed with Francis. He is upset about the performance issue but that is not the Planning Commission's decision.

Gaylor Baird also expressed concern because the neighbors have not had their calls returned by Building & Safety. But, she is interested in giving the soil mining standards a chance to take effect. Yet she would like to know if there is something Building & Safety can do to be more responsive to their concerns.

Cornelius agreed with Gaylor Baird. He suggested possibly a pre-meeting briefing with Health and Building & Safety with regard to their enforcement efforts. That would be a big help in moving forward with applications of this sort.

Taylor believes there is an underlying moral issues involved here. It looks like a breach of courtesy that somehow we cannot deal with. It's almost like a personal situation between

the two groups. Dust can be an issue but we're in an agricultural/rural area. There are ways to work things out to be good neighbors and it is up to them to do that.

Sunderman pointed out that there is a one-year time frame built into the special permit by virtue of the annual review.

Motion for conditional approval carried 7-1: Taylor, Partington, Cornelius, Francis, Gaylor Baird, Larson and Sunderman voting 'yes'; Esseks voting 'no'. This is a recommendation to the Lancaster County Board.

There being no further business, the meeting was adjourned at 3:01 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 26, 2009.

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