

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, September 2, 2015, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Cathy Beecham, Tracy Corr, Michael Cornelius, Maja V. Harris, Chris Hove, Jeanelle Lust, and Dennis Scheer present; (Lynn Sunderman and Ken Weber absent); David Cary, Steve Henrichsen, Brian Will, Paul Barnes, Rachel Jones, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission meeting

Chair Jeanelle Lust called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Lust requested a motion approving the minutes, as amended, for the regular meeting held August 19, 2015. Harris moved approval, seconded by Beecham and carried 7-0: Beecham, Corr, Cornelius, Harris, Hove, Lust and Scheer voting 'yes'; Sunderman and Weber absent.

Lust called for the election of Chair and Vice Chair for a two year term. Cornelius nominated Chris Hove for Chair, seconded by Beecham and carried 6-0: Beecham, Corr, Cornelius, Harris, Lust and Scheer voting 'yes'; Hove abstaining; Sunderman and Weber absent.

Hove nominated Dennis Scheer for Vice Chair, seconded by Beecham and carried 6-0: Beecham, Corr, Cornelius, Harris, Hove, and Lust voting 'yes'; Scheer abstaining; Sunderman and Weber absent.

Lust handed the meeting over to new Planning Commission Chair, Chris Hove. Hove thanked Lust for her hard work and attention while serving as Chair.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

**September 2, 2015**

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, and Scheer; Sunderman and Weber absent.

The Consent Agenda consisted of the following items: **THERE WERE NO ITEMS ON THE SEPTEMBER 2, 2015 CONSENT AGENDA.**

**REQUESTS FOR DEFERRAL**  
**BEFORE PLANNING COMMISSION:**

**September 2, 2015**

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, and Scheer; Sunderman and Weber absent.

**SPECIAL PERMIT NO. 15043**  
**COMMUNITY UNIT PLAN FOR THE ADDITION OF**  
**A 193-UNIT APARTMENT COMPLEX WITH WAIVERS**  
**ON PROPERTY GENERALLY LOCATED AT**  
**NORTH 42nd STREET AND VINE STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

**September 2, 2015**

The Clerk announced that the applicant has submitted a request for a two-week deferral.

Beecham moved to defer, with public hearing and action scheduled for September 16, 2015, seconded by Cornelius and carried 6-0: Beecham, Cornelius, Corr, Harris, Hove, Lust voting 'yes'; Scheer declared a conflict of interest; Sunderman and Weber absent.

There was no public testimony.

**CHANGE OF ZONE NO. 15024**  
**FROM R-4 RESIDENTIAL TO H-3 HIGHWAY COMMERCIAL,**  
**ON PROPERTY GENERALLY LOCATED**  
**SE OF SW 1<sup>ST</sup> STREET AND WEST L STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

**September 2, 2015**

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, and Scheer; Sunderman and Weber absent.

Staff recommendation: Approval, Subject to a Zoning Agreement.

There were no ex parte communications disclosed.

Staff Presentation: **Steve Henrichsen of Planning Staff** reviewed the boundaries of this change of zone which include Salt Creek to the west, a very active Burlington Northern railroad line to the south and southeast, and Cook Foods to the east. In this area, there is a pocket of R-4 Residential that is surrounded by I-1 zoning. This is not a typical zoning pattern, but it has historically been in place for decades. Husker Concrete is to the north. On the west side of SW 1<sup>st</sup>, there are general contractor and construction company yard uses. There is one existing house on the west side that was previously zoned R-4, and is now I-1, at the request of the property owner. On the east of SW 1<sup>st</sup> is existing I-1 zoning there are also construction uses and Schwartzkopf Park is also nearby. This request is to remove an existing storage building from the site and to rezone to Highway-Commercial.

In 1984, a special permit for the existing nonconforming storage garage was approved with the condition that there be no outdoor storage. It was used for the storage of garbage service trucks. Though the property is currently R-4, there are no residences in use. The building is accessed via a platted alley at the northern end of the property and two garage doors that face to the east. The southern end has trees and is not in use.

Immediately to the east of this area is a row of houses that are zoned R-4. SW 1<sup>st</sup> and W. L Streets are not paved but are a combination of dirt and rock. Because SW 1<sup>st</sup> can only be accessed through West J Street or L Street, much of the commercial traffic has to come down S. 1<sup>st</sup> Street and turn on to L Street to enter the area because there are only two ways in and the route to the south is often blocked by trains.

Given the character of the SW 1<sup>st</sup> Street, the Planning staff recommendation is that this area be rezoned to the requested H-3, subject to a zoning agreement which eliminates most of the more intensive uses that might have been allowed in this zoning district. It also requires an appropriate buffer to the residences to the east. Parks Department asked for an 8-foot black chainlink fence with slats to discourage climbing and because, while it will be the applicant's fence, Parks may be the ones who would have to deal with graffiti.

Another condition is for a 20-foot green buffer on the east and for the alley to remain for use by the residents. The applicant would have to create their own access to the west. This is to avoid a mix of commercial and residential traffic on the alley. The indoor storage use is legally allowed to use the alley now.

Planning Department received a call from Steve Larrick, South Salt Creek Community Organization, requesting this item be delayed two more weeks so that their association can have additional time to review the application and present more information to Commissioners in the future. It was asked to make his request via email so there is a written record, but as of this meeting, that was not received.

Beecham asked if there are other areas in town where highway zoning abuts residential zoning. Henrichsen said the City tries to limit residential zoning against the I-1 zone, but there are historical areas where that has taken place. There are many residential areas against highway zones. For example, much of O Street is zoned H-2 or H-3 and there is residential just south of those areas.

Beecham asked why a change of zone was pursued rather than an amendment to the existing special permit. Henrichsen indicated that the existing special permit was for particular uses. This new application requests a change in uses to outdoor storage and contractor yard. It is cleaner to do a change of zone than to amend the existing permit, but that could have been an option to consider. Beecham wondered if the change of zone opens up the property to other uses besides outdoor storage that it currently does not have under the current zoning. Henrichsen said that would be true if not for the zoning agreement. The second condition of the agreement limits the use to only outdoor storage or contractor services. Beecham asked about the process for making any change to the zoning agreement. Henrichsen said it would come back through the process, with final approval by the City Council. That is the process for changing any zoning agreement.

Lust asked for clarification about the location of the fence. Henrichsen said it is along the east and north side. At the southern end of the east side, there is an option to save existing trees to be used as the required screening. Lust asked if that area may not have a fence. Henrichsen replied that the requirement is that the entire east side have a 20-foot green space not used for storage and a 60% screen up to 10-feet high. In other words, that can be accomplished with landscaping or a fence. On the northern side, it probably needs the fence to accomplish that. Lust asked if the area to the north that borders that park requires a fence. Henrichsen said that was a specific requirement of Parks Department.

Corr asked if the fence on the northeast corner will prohibit the applicant from driving in and using it as access. Henrichsen said that is correct. There are two conditions: the screening and that they cannot take access through the alley.

Corr wondered why the park is not zoned P-Public. Henrichsen said that public areas are usually zoned P. That came into effect in 1979. The City does not necessarily have to rezone properties so some that came into existence after 1979 retained their old zoning. Corr asked if it was public zoning would make any difference with this application. Henrichsen indicated no, the screening is requested because it is a park, not because of the zoning of the property.

Corr asked if the H-3 zoning was selected because it is more restrictive and it doesn't allow heavy uses as the I-1. Henrichsen said that while the zoning agreement is getting this property down to just two uses, it was also appropriate to have H-3 adjacent to the I-1. The intent is that it can be used for some commercial uses like the surrounding area, but not heavier industrial uses so close to the houses to the east. It is a difficult area because already in existence, there are two very different uses from one block to the next.

Corr asked if the R-T zone could have worked. Henrichsen said that is mainly for office type uses and the contractor uses requested would not have been allowed.

Beecham asked Henrichsen to address the traffic and if there would be an increase. Henrichsen stated that the existing company is asking for more storage space, so from their viewpoint today, they don't anticipate adding much traffic. Staff looks at the bigger picture. When a company has more space to store equipment, there could be more potential to add employees, or the company could be sold in the future and that could change traffic. That said, having limited the uses to contractor services and storage, that is not as intensive as other uses. This is not a high visibility location where you would expect a lot of customers. The main concern is that the primary way to access this is past the houses and the park, to get to SW 1<sup>st</sup>. It is a goal of the City to get West L Street paved so there is less dust. It is also appropriate not to have alley access because sometimes the residences to the east use that alley. Beecham said that there is no plan now for access other than along S. 1<sup>st</sup> Street. Henrichsen said the access for this property is SW 1<sup>st</sup> Street and West L Street. The concrete plant to the north takes its access much farther north of their own property.

PROPONENTS:

**Derek Zimmerman of Baylor Evnen Law Firm** appeared on behalf of the applicant. He stated that the character of this area is not residential. The property is significantly within the flood plain. If one were to file for a building permit now, it would not be suitable for a residential structure. This property has been used for storage for many years. The applicant is committed to making improvements to the property that would otherwise never be made. They also agree to all of the many conditions. This is for storage which is a low impact, low traffic use. The alley serves as an additional buffer and the residences to the east have fences. The significant trees within the 20-foot green space buffer will also be preserved. The existing fence associated with the park to the north is so old there are trees growing into it. This will also be improved. The property will be regraded to flow away from the park, improving concerns about ponding in the park. These items are not requirements of the agreement but are extra steps being taken to improve the property which has not been maintained well up to this point. There will be disagreement about the traffic, but the applicant feels these are existing cars accessing the property. The plant is not expanding, just the contractor uses.

Lust asked why they declined the request by the neighborhood for the 2-week deferral. Zimmerman said for two reasons. First, one 2-week delay already took place for the purpose of coming up with the seven conditions of the zoning agreement. That is a fair step by the applicant. Second, the property is under contract with deadlines to meet. Pushing it off will not be productive. A neighborhood meeting was held. Zimmerman stated he has yet to hear of anything more regarding this specific property or further conditions to add. A further delay is not justified.

Beecham asked who was invited to the neighborhood meeting. Zimmerman said the list was provided by Planning and included neighborhood representation. There was attendance at that meeting. Beecham asked for more information about the existing trees. Zimmerman clarified that the farther south you go along the east edge is where the trees are. Practically speaking, fencing will not be added where the trees are.

Corr asked what kind of modification will be made in order to access the garage from the west. Zimmerman said there is a list of priorities and the immediate concerns were how to create the buffer areas and the conditions of the zoning agreement. In the long term, the entrance will be shifted to the west but there is not a set time line for that yet. It will make it a more efficient use since it does not make sense to drive around from SW 1<sup>st</sup> Street, pull around, and access the building from the east. Corr noted the existing garage doors on the east may be lost. Zimmerman agreed that the doors will probably be moved to the west. The access is currently through the alley.

OPPONENTS:

**Teri Pope-Gonzalez, 349 S. 1<sup>st</sup> Street**, came forward to show the location of her house which is on the southeast corner of the block just north of the property in question. She stated that at the start of this business 16 years ago, she was not disabled, but since that time, she has suffered from the industrial uses in the area, ongoing stress, and environmental poisons. Commercial vehicles drive right by her home only seven feet away. In one day, she counted 87 commercial vehicles accessing surrounding properties, which are all the same company. Other neighbors also suffer stress and health problems and feel constantly harassed. She stated that City and County officials will go on doing these activities until these situations are in their backyards. The activities of the surrounding businesses are not only during business hours, but all day, every day of the year. She stated that her brother respectfully requests a 2-week delay so that he can appear with an attorney.

**Steve Larrick, 920 S. 8<sup>th</sup> Street**, came forward to state he wishes Commissioners had photos of the neighborhood before the arrival of Husker Concrete. The neighborhood has been in steady decline since their arrival and several neighbors have died of respiratory diseases. He recalled his own experience in the neighborhood and the many changes and uses that have occurred over time. There have been many issues over the years. People should be protected from industrial uses that are incompatible with residential uses. He also recommends a two week delay. There is a solid block of people living in homes. It doesn't seem appropriate to push them out.

Beecham asked Mr. Larrick if he was involved in the neighborhood meeting. He said that he was out of the country and is also battling an illness. He did not receive notification.

Corr asked if the 2-week deferral were granted, what he hoped would be accomplished in that time. Mr Larrick replied that it would be good if Ms. Pope-Gonzalez had a chance to present her case. This has been a war against the residential character part of a long term attach on the neighborhood. She has legal representation that can help her develop her testimony and collect facts and figures about what she goes through day in and day out and to speak to the concern of neighbors who are too afraid to speak.

**STAFF QUESTIONS:**

Beecham asked if the “H” zoning was being considered instead of “I” because there are more protections. She wondered if R-4 provided more protections. This body could decide that this area should stay residential, but overall, it is a good direction to make sure today’s decision does not balloon. Henrichsen indicated that the street has I-1 zoning on the east side of street and the east third of the block. Staff was trying to find something in between the industrial and residential areas that makes it clear that a contractor type of use would be allowed. H-3 is appropriate.

Beecham asked if the part that is now industrial was originally residential and had homes been purchased and removed. She stated that her concern is what is in place to prevent the same thing from happening one block over. Henrichsen said that staff must look at this particular property and building. It has been there for quite a long time and is not a recent building like some others that were added within last five to ten years in the area. Some houses that were removed were on the northern edge and were in the I-1 Zoning. The zoning has been I-1 for quite some time, so if there were houses, it was legal to remove them.

Corr asked if the area east of 2<sup>nd</sup> Street is also I-1. Henrichsen said yes, much is owned by the railroad.

Harris asked if the zoning agreement stays with the land. Henrichsen said it was written in a general sense and not for a specific company, so if they moved or sold the property, the special permit stays with the property.

Lust asked that since this is in the floodplain, if they were to tear down the garage, if they could not get a permit to build a house. Henrichsen said that with the R-4 zoning, a home could be allowed but the builder would have to meet floodplain regulations, so you may have to lift the house several feet off the ground, even with flood insurance.

**Chris Schroeder of the Health Department** came forward to answer questions. Beecham asked him to address health concerns and asked if the Health Department does air and soil quality tests in this area. Schroeder said relative to Husker Concrete, they are inspected yearly. The Health Department has investigated dozens of dust and noise complaints and did not identify any violations at the time of investigations. Beecham asked him to describe how and when testing was done. Schroeder indicated that the yearly inspection looks at

the functioning of plant's ability to capture dust emissions. They also look at visible effusions of dust across the property. Beecham asked if a plant like this has different standards than other properties or residences. Schroeder said no, the health standard is the same for everyone.

APPLICANT REBUTTAL:

Zimmerman returned to the podium and stated that the Health Dept does not oppose this application and Planning recommends approval, so that shows the stance of the City with respect to the proposed use. This change of zone comes with many conditions. The property is significantly in the floodplain and has not been residential for decades. The surrounding area has been commercial for decades. This is not a new development. The property must be used and R-4 zoning is not an appropriate zone. If houses were built there, it would have the reverse effect of eliminating the transitions between the industrial and residential areas. There should not be a delay. There were several neighborhood representatives at the neighborhood meeting and letters were sent out to everyone in the required neighborhoods. Ms. Pope-Gonzalez attended the meeting and had an opportunity to speak. Another two weeks will not add any benefit to what has already been done. This application is ready to move forward.

Beecham asked for confirmation that neighborhood representation was at the neighborhood meeting. Zimmerman said that Ms. Pope Gonzalez and a few other neighbors were present.

Corr asked for clarification about the seven conditions mentioned. The staff report appears to only show five. Zimmerman stated that there are subset conditions within Item "C".

**ACTION BY PLANNING COMMISSION:**

September 2, 2015

Harris moved approval, seconded by Corr.

Cornelius said this proposed area is a neighborhood struggling as a residential zone in a sea of industrial zoning that has developed over a long period of time. Nothing this body does today can change that but this proposed change does make a change to how this specific property is used. There are improvements in the screening and access so the residences are more protected. Today's action is a recommendation that moves on to City Council so neighbors should organize and speak to City Council. He stated he will support the agreement due to the benefits derived from the Zoning Agreement.

Corr agreed that a 2-week deferral will not result in compromise or she would support that. There are four weeks between this meeting and City Council, who are the final decision-making body. That is ample time for the neighborhood to get their ducks in a row and figure

details out. She stated that she feels for this neighborhood because of its use has changed and been chipped away at. That decision was made long ago and there are benefits to this application with the screening and access.

Harris also agreed with the sentiments expressed by Cornelius and Corr. She visited the site and does not believe it is suitable for residential purposes and probably will never be. She also sympathizes with the situation. The actions of the past cannot be reversed but the Zoning Agreement improves on the situation. She also likes the installation of the 8-foot fence so near to the playground. It could prevent kids from climbing. In general, this is the best this body can do with a bad situation.

Lust stated that she also does not believe a deferral will accomplish anything. The agreement with the proposed conditions is providing an improvement to the area, especially with alley access no longer in place. She will support this application.

Beecham stated she will not support this. It is a struggle because in terms of the change to the alley traffic, it is an improvement. She also does not think a deferral is going to bring opportunity for compromise. However, she is uncomfortable with the change of zone, even with the Zoning Agreement. By setting the opinion that this should be zoned Highway, in another five years, it becomes easy for someone to ask for the conditions to be lifted one by one based on the underlying zoning.

Scheer stated he will support the motion for the reasons previously stated.

Hove stated he will as well.

Motion carried 6-1: Beecham dissenting; Sunderman and Weber absent.

**CHANGE OF ZONE NO. 15025  
FROM R-4 RESIDENTIAL TO R-5 RESIDENTIAL,  
ON PROPERTY GENERALLY LOCATED AT  
241 NORTH 44<sup>TH</sup> STREET.**

Staff recommendation: Approval

**AND**

**SPECIAL PERMIT NO. 673A  
TO REPLACE AND RELOCATE AN EXISTING RADIO BROADCAST TOWER  
ON PROPERTY GENERALLY LOCATED AT  
NORTH 45TH STREET AND VINE STREET.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

**September 2, 2015**

Staff recommendation: Conditional Approval

Rorabaugh noted that Commissioner Scheer declared a conflict of interest on **Item 4.2a, Change of Zone No. 15025 and Item 4.2b, Special Permit 673A**, and will therefore exit the chambers.

Members present: Beecham, Cornelius, Corr, Harris, Hove, and Lust; Scheer declaring Conflict of Interests; Sunderman and Weber absent.

There were no ex parte communications disclosed.

Staff Presentation: **Paul Barnes of Planning Staff** stated the boundaries of Tanglewood Apartments and current Community Unit Plan (CUP) include the detention pond, up to the broadcast tower, and up to Vine Street. The current CUP does not include the corner property.

There is a proposal to develop the vacant land to the north, near Vine Street, with additional dwelling units. There is another area that is part of a different CUP, which could potentially have a different developer.

To change the CUP boundaries for the Tanglewood Apartments, staff looks at the density of the apartments and the amount of land that remains. Given that it is R-4 and there are approximately 480 units already built, this land area would exceed the density requirements of the zoning district. So the request to go to R-5 is essentially to meet density requirements of what is built today. The CUP that was approved was for 528 units. With R-5, the density could be increased beyond the 528, but that is not part of this request. The number that was approved previously will remain.

Corr asked for clarification that the developer still could not go beyond the 528 units previously approved, even though the zone is changing to R-5. Barnes said that is correct. They would have to amend the CUP and specifically ask for an increase in density.

Lust asked if they had already exceeded the density of the R-4. Barnes said if the boundary of the CUP were decreased without a change of zone, 480 units would exceed the R-4 density.

Corr clarified that a piece of the land is being removed from the equation. Barnes said they used an unbuilt piece of land to calculate the original density. By decreasing the land area, it decreases the number of units allowed.

Beecham asked and they are decreasing the land area to allow for the separate CUP. Barnes said that is correct. Beecham went on to ask if there is a parking lot along the west boundary, adjacent to the cemetery. Barnes said yes, there are garages and drive aisles. The apartment and the cemetery share the western boundary. She asked if there are roads and trails connected to the cemetery. Corr stated she also thought there was a trail along 42<sup>nd</sup> Street. Barnes said there is a walkway contained within the CUP.

Henrichsen approached to clarify location of boundaries and existing buildings and features.

Beech asked if there has been any discussion of having a link between the two, since Wyuka was historically designed to be a park and is a beautiful green space. Barnes said that he is not aware of discussions of that nature.

Barnes went on to discuss the relocation of the radio broadcast tower. There is currently a 500-foot tower that impacts a much larger area than its footprint due to the guide wires and fall zone. The intent is to relocate the tower closer to the detention pond where it will be approximately 330 feet in height, less obtrusive, and have less impact to the site and surrounding areas. This was discussed by the Historic Preservation Commission who agreed that the new tower location provided separation and had minimal impact to the historic elements of the nearby cemetery.

Barnes explained the memorandum that revises the staff report to remove the requirement for surety for removal of the tower. He explained that all types of towers are lumped into the regulations for cellular towers. Those requirements are different when applied to a radio broadcast tower, which are less frequent. Due to the tower size, the long term nature of it, and the impact to otherwise developable land, staff is willing to support waiving the surety.

Lust asked how the salvage value of the tower differs from that of a cellular tower. Brian Will of Planning Staff came forward. He said that salvage value does not factor in here. This particular tower encumbers so much of this site, compared to a cell tower that can be relatively more tucked away. The likelihood of the tower remaining on the site unused is remote.

Lust asked for clarification about the “incentives” that prevent a tower from remaining abandoned on a site and how that plays into waiving the requirement for surety. Will replied that there are numerous factors that come together and one is the potential salvage value.

Will stated that cellular towers are relatively new and are treated somewhat differently from other towers. They are usually on leased property and there are many of them, so the requirement to consider ways to guarantee removal is important. Radio broadcast towers are reviewed under the same guidelines as cell towers, but not all of the same requirements are not necessarily applicable. In this case, this is a very long-term tower and the chance that it would not be salvaged is remote, so for a bond to be carried for such a long period of time does not seem like a reasonable requirement in this case.

Lust stated that the cell tower people could make the same argument. Harris asked for clarity if posting a surety for a broadcast tower is not a requirement. Will referenced Chapter 27.68 for Personal Wireless Facilities, stating that it is a requirement. He further explained that this is a special permit for a broadcast tower, which is reviewed under the same provisions, but not all aspects of it apply. There is a distinction between the towers.

Hove asked if other broadcast towers in Lincoln have a surety. Will said no. They are so rare and he is not aware of one that has been adopted since the new regulations were adopted in 2000. Harris asked if this was setting a precedent. Will said he does not believe that. Each one is reviewed case by case and stands on its own merits and has its own rationale for approval or denial. What we laid out in this case may not apply for the next one that comes before this body.

Lust asked if since 27.68 was adopted, if this is the first broadcast tower that has been reviewed under the new regulations. Will said yes. Lust went on to say that this is the first time anyone would have even been asked to put up a surety. Will agreed, with a qualification that it applies to the large towers.

Corr asked for an example of another tower similar to this one in town. Will said there is one north of 29<sup>th</sup> and Cornhusker Highway. There are not that many of them around.

Harris wondered what the requirement for screening would have been if there was a recommendation for that. Barnes said that for smaller towers, there is screening around the base of the tower to conceal other associated equipment near the base. The scale of this tower is so much larger so that requirement was waived because screening would have minimal impact.

Corr asked for clarification on Page 16, #2 of the staff report in terms of the development being approved for 70 additional dwelling units. Barnes said 458 units are existing today and they were approved for 528, so the 70 is the difference. Corr said she was using the 688 figure, which is the maximum under the R-5 zoning.

**Tim Gergen of Clark Enersen Partners** came forward on behalf of the applicant. Gergen stated that in two weeks more details will be presented as the site plan for the CUP comes forward. The change of zone is really a mathematical equation to work through since the land area is being reduced. Without the change of zone, the development is just about at the allowed density even with the land taken out of the equation. The land owner of Tanglewood is very much in support of the proposal and enjoys great success with the existing apartments.

**Mark Hunzeker of Baylor Evnen** came forward on behalf of the tower owners. Hunzeker indicated that the tower height is being reduced by about 40% and they are moving it farther away from streets and neighbors. This tower has been on this location for almost 60 years. The original permit was approved in 1956. This is a long-term facility, and AM broadcast facilities do not have much flexibility to move around because they are susceptible to interference and signal overlap, so the locations are relatively permanent. AM broadcast signal have also not changed dramatically in terms of technology. If this ever becomes obsolete, the lease provisions take care of it. Even in the event of some unforeseen situation, the land owner will have lots of incentive to remove it. The waiver of the surety is justified.

Proponents:

**Leon Kilmer, 1531 Kingston Road and Owner of neighboring business, Paws for Fun,** came forward in support for the change of zone. There is no issue with the expansion of pet friendly apartments so nearby.

**ACTION BY PLANNING COMMISSION:**

September 2, 2015

**CHANGE OF ZONE NO. 15025**  
**FROM R-4 RESIDENTIAL TO R-5 RESIDENTIAL,**  
**ON PROPERTY GENERALLY LOCATED AT**  
**241 NORTH 44<sup>TH</sup> STREET.**

Corr moved approval, seconded by Lust.

Corr said she thinks the change of zone will have a very minimal effect considering it is bordered by the cemetery on one side and commercial on the other.

Hove agrees this is the right thing to do at this site.

Motion carried 6-0: Scheer declared a conflict of interest; Sunderman and Weber absent.

**SPECIAL PERMIT NO. 673A**  
**TO REPLACE AND RELOCATE AN EXISTING RADIO BROADCAST TOWER**  
**ON PROPERTY GENERALLY LOCATED AT**  
**NORTH 45TH STREET AND VINE STREET.**

Corr moved approval as amended by applicant, seconded by Beecham.

Harris said this is going to be an improvement over what is currently there, so she intends to support this application.

Hove agreed. The tower is being moved to a better location.

Motion carried 6-0: Scheer declared a conflict of interest; Sunderman and Weber absent.

**USE PERMIT NO. 126D**  
**TO CONVERT OFFICE SPACE TO APARTMENTS**  
**ON PROPERTY GENERALLY LOCATED AT**  
**EXECUTIVE WOODS DRIVE AND YANKEE HILL ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

**September 2, 2015**

Staff recommendation: Conditional Approval

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, and Scheer; Sunderman and Weber absent.

Commissioner Lust disclosed that she lives in this neighborhood and attended the neighborhood meeting.

Commissioner Hove disclosed that neighborhood resident George Beattie contacted him about the process and how things worked. He is in attendance today.

Staff Presentation: **Brian Will of Planning Staff** came forward to state that this Use Permit covers an area of approximately 30 acres. There is a lot that was originally identified for a possible 50,000 square foot office building. In 1999, the original Use Permit was approved for 275,000 square feet of total office space. In 2011, it was amended and the office floor area was reduced to 225,000 square feet and 126 dwelling units were allowed. The request today further reduces offices floor area to 174,000 square feet and increases the number of dwelling units to 297.

Will went on to say this item was delayed at the request of the applicant to allow time to meet with the neighbors. Some concerns were raised by neighbors. The apartments are a permitted use in this zone and the location is suitable and does not negatively impact surrounding properties. There is in excess of 450 feet between the neighbors and the proposed apartments. There are street trees along both sides of the adjacent street. There are no waivers being requested. Given those factors, staff is recommending conditional approval.

Hove asked the height limit in the O-3 zone. Will said it is 45 feet, which generally allows for a 3-story building. These apartments will be three stories, but will probably not reach that height.

PROPONENTS:

**Mike Eckert of Civil Design Group** came forward on behalf of the applicant. This item was on the Consent Agenda a few weeks ago. Planning recommended that we notify the 8 adjacent homes even though they are outside of the 200-foot notification area. We did that and many questions were raised so we held the neighborhood meeting. Eckert showed images of the site, noting existing structures, the buffer areas and existing screening. The site to the south will have an office building. With these two new apartments, this development will be mostly built out. People are often concerned about changes in traffic. Based on information from a traffic consultant, the traffic count will be reduced with conversion from office to apartments. There are many existing mature trees and the developer had transplanted over 1,000. The actual site comes down from the road approximately four feet so the building will be below the height of the road. This site is at an elevation of 1,195 feet and the structure will have a low pitch roof up to 38 feet. The houses across the way range in 1<sup>st</sup> floor elevation from 1,210 up to 1,217 feet; so, on average, that would put the 3<sup>rd</sup> floor elevation of the proposed building roughly equal to the 1<sup>st</sup> floors across the way. These apartments will have underground parking and the intended market is elderly residents and professionals who typically do not require as much parking.

Hove asked where traffic will enter the site. Eckert replied that they will have two options, Wilderness Ridge Drive and Executive Woods Drive.

Beecham asked what the exterior will look like. Eckert showed preliminary designs and said the architects continue to work on the design. There will be full brick coverage on the first floor, plank on the second, somewhat similar to what is already in the area. They have experimented with color schemes. Until the application has moved through the process, the design will not proceed too much.

Scheer asked for clarification of which elevations were shown. Eckert replied that the exterior treatment is the same on both sides.

OPPONENTS:

**George Beattie, 2009 Wilderness Ridge Drive**, stated that the distance from his backyard to the line of locust trees is approximately 300 feet, so closer than what was suggested. There has been good tree growth, but many have died and there are holes in the screening. Neighbors have only looked at the front facade of the building but will face the rear and would like to see what that will look like. Mr. Beattie said he is speaking for neighbors and for the Homeowner's Association, including Chair Rennie Walt. We are concerned with the additional burden that 102 apartment units will have on traffic. Currently, the traffic is dense enough to create delays getting in and out of neighborhood. Adding additional offices and apartments will cause significant traffic congestion in various places. The addition will potentially add in excess of 200 cars. Traffic websites suggest that 120 units would add up to 750 more trips per day. There are also significant apartments being built across to the north. That will be even more traffic on Yankee Hill. We need better understanding the cumulative affect of what will happen. Yankee Hill is a 2-lane street and there is no guarantee of when it will be widened. There are also concerns about apartments in the area. Neighbors invested in permanent residences in a golf course community. We are neighborly and look out for and know one another. The introduction of more rental units will adversely affect the sense of community that is currently enjoyed. Over time, this will have adverse effects on property values. This addition will not be aesthetically pleasing. The neighbors ask for consideration of a villa model, which is less obtrusive to the neighborhood.

**John Munn, 2129 Wilderness Ridge Drive**, stated that the railroad track forms a "basketball backboard" for the neighborhood and traffic. Yankee Hill is two lanes and the circle that leads in is a single lane. There is no curb and gutter. If cars are parked on both sides, there is no access for emergency vehicles. Any ingress or egress from the buildings will impact traffic in the neighborhood. It is unlikely they will drive three blocks out of the way for the other access point. The comparison between commercial and residential traffic may not be accurate because this neighborhood is a sleepy hollow with very little traffic. There should be more traffic studies for this site. Mr. Eckert was asked where the traffic numbers came from because that is still a grey area for neighbors.

Beecham asked questions of Public Works staff. **Robert Simmering of Public Works** came forward. She asked him to address the traffic issues and to explain the decision making process for deciding on road expansion in relation to development. Simmering said there is a handbook called the *International Traffic Engineer's Handbook* which accumulates and combines information from all over America. The handbook is updated continually so the information is very good. Simmering confirmed that the information presented by Mr. Eckert is consistent. In general, office peak use has higher traffic than residential. Staff agrees the way Mr. Eckert compiled traffic numbers for this site is exactly how a traffic study would typically be done.

Simmering went on to say that Yankee Hill Road between 27<sup>th</sup> and 14<sup>th</sup> is carrying 8,000 cars per day. A 2-lane road is adequate for that number. 14<sup>th</sup> Street heading north carries 13,000 and it is also two lanes. The 4-lane areas of 14<sup>th</sup> carry around 22,000. One positive is that when Yankee Hill was built, all of the turn lanes were built. Those become restrictions on traffic flow. Staff is not anticipating the expansion of Yankee Hill in the near future, but this is an adequate transportation system for this kind of traffic.

Beecham asked if formulas are adjusted for the trains and if trains even impact traffic at this site. Simmering said here was not an adjustment. The train holds back traffic breaking through to the south of this area and that is not the traffic impacting Yankee Hill or S. 14<sup>th</sup> Street.

Hove asked if these are all public roads. Simmering said that into the subdivision, they are private. The access point is public.

Scheer asked if it is safe to assume the capacity on Yankee Hill Road will remain adequate, even with the next office building and the adjacent residential development. Simmering said when this was approved, traffic levels were pushed to these levels in order to get the turn lanes in, so yes, staff assumes they will be adequate.

STAFF QUESTIONS:

Beecham asked staff to address the missing shrubbery mentioned in earlier testimony. Will said that these are private roadways so the maintenance is done by the private property owners. Street trees required with the final plat would be contractually required to be maintained. It looks like the developer went beyond what was required.

[Harris exited meeting at 3:20]

APPLICANT REBUTTAL:

Eckert returned and stated that the measurement for the distance between the site and the neighbors was measured three different ways and the distance between property lines is over 450 feet.

Hove asked for confirmation that the measurement was from the property lines. Eckert said it was from property line to property line so with the setbacks, the distance between the two will be even greater. He addressed the neighbors' concern about the facade view, explaining that the rendered image is representative of both sides of the building.

Hove asked if it is similar in look to the villas that were suggested in earlier testimony. Eckert said it will be somewhat similar in that the villas were constructed with the brick coverage on the first floor, plank on second and then the roof. In these buildings, generally the developer is doing nine foot 1<sup>st</sup> and 2<sup>nd</sup> floors, and then an 8-foot 3<sup>rd</sup> floor with vaulted ceilings.

Eckert went on to say that with regard to the traffic, it is important to understand that the traffic study done in 1999 accounted for all of the office and residential that could be done. This use permit was approved with the permitted multifamily units. With active due diligence, everyone would have been aware of the potential for multifamily units. The area is fortunate that Yankee Hill Road was one of the first roads done in the “rural ruts offset” style. The southern two lanes are built, and right of way exists for the northern two lanes. The developer will have paid \$700,000 in street impact fees. With that, Eckert asked for approval. This accomplishes the Comprehensive Plan goal of infill residential units and it is a permitted use being built by a seasoned developer whose offices will be built in this area so they will be dealing with the same issues. He thanked the neighbors for a very cordial neighborhood meeting. Their requests and concerns were taken to the developer. The goal is to stay with the 3-story units to have the diversification in the area.

**ACTION BY PLANNING COMMISSION:**

September 2, 2015

**CHANGE OF ZONE NO. 15025  
FROM R-4 RESIDENTIAL TO R-5 RESIDENTIAL,  
ON PROPERTY GENERALLY LOCATED AT  
241 NORTH 44<sup>TH</sup> STREET.**

Cornelius moved approval, seconded by Corr.

Lust said that since she lives in the neighborhood, she has interest in this development. As a measure of the Commission, she measures this application the same way she would any other. This body often approves apartment dwelling units in existing residential neighborhoods. What we look at for approval is buffering, whether it is appropriate, and traffic changes. In this case, there is buffering well beyond what is normally required. The traffic studies that Public Works relies on are saying this will generate less traffic than the offices would have. She stated she is understanding of the character of the neighborhood, she faces 27<sup>th</sup>, but there is a buffer of the golf course.

Beecham said that she finds it compelling that the increased traffic will not be routed through the neighborhood so it won't impact children on bicycles and the neighborhood as much. That holds weight. Cornelius asked if she is referring to increased traffic to what is existing, since the change in use will generate less traffic than what was originally approved. Beecham clarified that she meant increased traffic compared with what exists today.

Corr said this looks like a good plan with no waivers. She thanked the applicant for delaying to get the neighborhood meeting. She views the traffic as a “chicken and egg” situation where the people must be there first to have the roads widened, rather than building the roads before dwelling units.

Hove said that he has tremendous respect for those who testified in opposition, but he will support this application. The buffering is what it needs to be and although traffic may increase, it is away from the area.

Motion carried 6-0: Harris, Sunderman and Weber absent.

There being no further business to come before the Commission, the meeting was adjourned at 3:29 p.m.

*Note: These minutes will not be formally approved by the Planning Commission until the next regular meeting on Wednesday, September 16, 2015.*

*Note: The September 16, 2015, Planning Commission was cancelled; therefore, these minutes will not be formally approved until the September 30, 2015, Planning Commission Meeting.*