MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, November 18, 2015, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Cathy Beecham, Michael Cornelius, Tracy Corr, Maja V. Harris, Chris Hove, Jeanelle Lust, Dennis Scheer, and Lynn Sunderman present; Ken Weber absent. David Cary, Steve Henrichsen, Paul Barnes, Tom Cajka, 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 Chris Hove called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Hove requested a motion approving the minutes for the regular meeting held October 28, 2015. Harris moved approval, seconded by Beecham and carried 8-0: Beecham, Cornelius, Harris, Hove, Lust, Scheer, and Sunderman, voting 'yes'; Weber absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **November 18, 2015**

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 15031, ANNEXATION NO. 15010 and related CHANGE OF ZONE NO. 15029 and SPECIAL PERMIT NO. 06014A, ANNEXATION NO. 15012 and related CHANGE OF ZONE NO. 15032, TEXT AMENDMENT NO. 15022, AND TEXT AMENDMENT NO. 15023.**

There were no ex parte communications disclosed.

Lust moved to approve the Consent Agenda, seconded by Harris and carried 7-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, and Sunderman, voting 'yes'; Scheer declared a Conflict of Interest; Weber absent. Note: This is final action on Special Permit No. 06014A, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

Hove called for Requests for Deferral.

Rorabaugh announced that the applicant for Item 4.4 on today's agenda, Special Permit No. 1762E, Vintage Heights CUP, submitted a written request for a two week deferral of Public Hearing and Action until December 2, 2015.

SPECIAL PERMIT NO. 1762E,
VINTAGE HEIGHTS CUP
ACTION BY PLANNING COMMISSION: **November 18, 2015**

Lust moved deferral, seconded by Scheer. Motion for deferral carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, and Sunderman voting 'yes'; Weber absent.

There was no public testimony on this item.

COMPREHENSIVE PLAN AMENDMENT NO. 15003
SOUTH HAYMARKET NEIGHBORHOOD PLAN
PUBLIC HEARING BEFORE PLANNING COMMISSION: **November 18, 2015**

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

Staff recommendation: Approval.

Harris disclosed that she attended an event earlier in the day and City Council member Trent Fellers inquired about today's Planning Commission agenda. He stated that he anticipated some discussion on the topic at the City Council meeting.

Staff Presentation:

Paul Barnes of the Planning Department stated this is an exciting project that staff has worked on for the past two and a half years. It began as a study area identified in the 2005 Downtown Master Plan. That plan covered a much broader area, but identified the thirty-eight blocks of the South Haymarket as an opportunity for infill redevelopment with a focus on residential development. The study area is bounded by the O Street Harris Overpass

on the north, 10th Street on the east, 4th Street and the railroad tracks on the west, and G Street on the south. The area is currently a mix of uses today and includes a substantial footprint of government properties. In 2013, staff began meeting with stakeholders for input and eventually came up with eight goals that are included in the draft plan.

Barnes said the first and primary goal is to create an urban neighborhood. The seven other goals contribute to the larger goal, including:

- using the government-occupied land efficiently;
- transitioning from heavy industrial uses to lighter industrial and office uses, which are key to urban neighborhoods;
- organizing streets, sidewalks and trails by reestablishing streets and creating safe urban blocks and routes for bikes and pedestrians;
- having adequate open space for recreational opportunities and floodplain mitigation;
- preserving historic resources to enrich the area;
- implementing appropriate design; and
- developing a parking program.

These goals represent the outcome of the substantial amount of outreach that occurred with stakeholders, businesses, property owners, and public boards and commissions. There were two public open houses with over seventy-five individuals in attendance. This project will complement other substantial projects in the greater downtown area such as West Haymarket, Historic Haymarket, P Street, and Antelope Valley. This is a big vision that is meant to serve as guidance for implementation over the next twenty years and beyond.

David Cary, Acting Planning Director, stated he wished to enter into the public record a few updates that were made and submitted via a memo dated November 17, 2015, to the Planning Commission, which includes a letter of support from the Pedestrian Bicycle Advisory Committee. Cary noted that there are many pedestrian and bicycle aspects to this plan as part of developing the transportation network in an urban core neighborhood. In addition, it was noted that staff worked with the Public Building Commission (PBC) extensively for the past month. The minutes from two meetings were provided for informational purposes. Cary stated that there were good discussions with them and staff acknowledged their concerns, views, and their work to consolidate government activities and to be efficient with land and taxpayer dollars. Extensive changes were made before the published document was released for review. There is reference to the PBC Master Plan where there is a wealth of information available to the public. Staff also decided to use terms such as “potential reuse”, “potential long-term redevelopment” and “potential redevelopment of surface parking” in “call outs” on examples of current PBC properties. Generally speaking, that was the intent all along since this is a long-term plan. But staff felt it was important to be clearer, which was achieved with the call outs.

Cary noted one more change which incorporates language about the District Energy Corporation. There will be more specific language on their role, moving forward. That is on page 2.58. Cary wanted to make sure the changes were announced before discussion.

Beecham complimented the incorporation of the bike paths. She asked if the middle school on 8th Street was contacted to discuss the idea of 8th Street as a bicycle lane and the idea of keeping kids and bicyclists safe. She advised that they be contacted, if they have not been.

Cary clarified that 8th Street is not proposed as a formal bicycle lane; it is an on-street bike route today. 8th Street is the one street that connects completely from north to south and is therefore important for bicycles, pedestrians, and motor vehicle traffic. It is useful to go to the schools to acknowledge all forms of traffic changes as the area develops.

Beecham asked about the public buildings. By putting them in the plan, we are not recommending that they have to be sold, we are saying that down the road, if City leaders felt that it made fiscal sense, they could be included as part of the plan.

Cary said yes, that is right. The added explanatory language says exactly that. When it is financially beneficial to the public interests, then it becomes more realistic. There is current investment in public buildings and they need to fulfill their own life cycle to get back the benefit of that investment. But incorporation of government buildings in the long-term plan sets the stage for a discussion when the time comes.

Beecham wondered what would happen if they were removed from the plan. Cary said it would become an incomplete neighborhood plan. The flexibility is built into the plan, but staff wants to make sure that consideration is given to that option, when the time comes.

Harris asked for confirmation that this is a conceptual plan for the entire area that depends on potential changes in land ownership, developers willingness to move into the area, and many other factors. It can be adopted as part of the Comprehensive Plan, but that is not a guarantee that any of it will happen if the interest is not there. Cary said that is correct. We take pride in the long-term plans, but they are conceptual and serve as guides. There will be areas that redevelop sooner than others, such as along the northern end on N Street where it is already taking place. There is a more realistic feel to those areas today. In general, it is a vision that staff submits for consideration for how the area could look in the future.

John Kay, Sinclair Hille Architects, appeared at the request of the Public Building Commission. The Public Building Commission was formed in 1990. In 1991, they undertook master planning initiatives and a ten year forecasting of City and County Department growth and how to accommodate that. That led to projects such as the conversion of the former County/City Building into the Justice Center. Roughly seventy department directors

were consulted. That process was repeated in 2002. That led to such projects as the Health Department expansion at Woods Park. The process was updated in 2014 with a more narrow focus. It looked again at how to manage growth and included the use of the 605 Building. He introduced Larry Hudkins and Roma Amundson, from the County Board, and Don Killeen, Building Commission Administrator, who were also in attendance. There is general support of the plan with some limited reservations about the properties between 8th and 9th Streets. As mentioned, the investments recently made included the Crisis Center in the former Benesch Building. There is also discussion about the Trabert Hall residents relocating to the 605 Building. The investment already made in properties in this area have a slightly different planning trajectory. He thanked planning for their efforts to reach out and for the productive discussions. Public Building Commissioners appreciate the revised language.

Beecham asked if long-term plans compiled by PBC also go before City Council for approval or if they have a different process. Kay said that they do not go before Council. The presentations are made to the Public Building Commission. Two Council members are part of that commission.

Larry Hudkins, Public Building Commission, expressed appreciation for all of the work done by the Planning Commission and thanked Planning staff for their responsiveness to concerns. The 2005 Downtown Master Plan identifies the South Haymarket area as an opportunity for high-density residential development. The plan developed by Planning staff in response identifies exciting concepts and recommendations for future growth. The concerns of the PBC do not extend beyond 8th Street. Between 8th and 9th Streets, PBC has looked to acquire the properties, not by eminent domain, but when they become available. We look at this area and how we can consolidate local government. This allows County Board to vacate the property at 2200 St. Mary's and Trabert Hall and relocate those services closer to the County Attorney's office. The South Haymarket plan identifies three governmental buildings for conversion to private use, the K Street Complex, the Benesch Building, and the old Election Commission building. All of these were components in meeting the long-range space needs of City and County government. More than $8 million has been expended and invested in these buildings. The Benesch Building will house the County Mental Health Crisis Center. The 900 Building is being used by the County's Community Corrections Program, and the K Street Complex is a state of the art records center that houses City, County and State records. Evidence and records are stored there and that is very convenient to the courts. PBC is not saying that these buildings should never be looked at, but know that they are being used wisely at this time. He suggested developing the rest of the area but retaining this specific area that has already been set aside for sixteen years.

Richard Meginnis, 2720 Katy Circle, came forward to state that he has unanswered questions regarding zoning and overlay districts. There are owners in the area that have no idea that there is a new zoning plan for the area. Some questions revolve around replacing a building in the event of a catastrophe, and if there would be a fifty percent rule

and new design standards in such a case. The idea of planning for the area is great, but taking such a big district and changing it all at once would cause problems. There are concerns about changes in property values as well.

Public Comment:

Tim Hruza, Lincoln Independent Business Association (LIBA), asked that the vote be delayed sixty days to allow for concerns to be investigated. The plan is moving too quickly, with only broad discussion occurring in the past. The plans have not been well publicized or thoroughly vetted. The full draft has been available for public review for only eleven calendar days. LIBA asks that the rights of business owners in the area be preserved. This plan sets the stage for changes in design standards and in zoning. These adjustments could tie the hands of current business owners. There should be assurances that current landowners be allowed flexibility in the application of new requirements. Additionally, LIBA has questions about the mechanisms the City might use to complete the redevelopment of a number of proposed public improvement projects in the area. No mention of specifics was made until the plan was released recently. References are made to the use of a joint public agency (JPA), as was done with the West Haymarket redevelopment area, and there are many unanswered questions such as what public body will join the City, how will funding be obtained, and whether a JPA would use eminent domain to acquire land. LIBA believes the use of a JPA could be too aggressive and could force property owners to move, whether indirectly or directly. Land where some of these ideas are proposed is privately owned and landowners may not be willing to sell in the next twenty-five years. LIBA commends the long-term concepts as they are laid out, but asks the City to remain mindful of those already in the area. He concluded by saying that he is not necessarily testifying in opposition, but asks for more time to review the plan.

Staff Questions:

Beecham asked for the process this plan will follow after Planning Commission votes. Barnes said that after this, there is a City Council briefing on December 7, 2015. It will be introduced on December 14th with Public Hearing and potential Action occurring on December 21, 2015.

Beecham asked who makes the decision to use a Joint Public Agency. Cary remarked that the comment about the JPA was a good one and there is a reason it was mentioned in the implementation section without much detail; it is because this is just an idea. The mechanism has been used, and some of the ideas put forth in this plan are similar to those in the West Haymarket, especially regarding flood storage. This plan does not say with certainty that there will be a JPA. There is an extremely large amount of discussion that would have to happen before that would even become a possibility. The idea is there so that it can be discussed in the future. On the City's side, it would be a City Council decision. Beecham reiterated that this plan is very conceptual.

Harris asked if she was understanding correctly that the job of the Planning Commission is to look at the land use. The JPA question is really out of the Planning Commission's purview. Approving this today is not equal to an endorsement of the use of a JPA, and it is included in the plan as an idea. Cary said that is correct.

Harris asked for elaboration on the questions raised about the design standards. Barnes said that it is important to note that by adopting this plan, that does not automatically make zone changes or establish new design standards. There are existing design standards in South Haymarket today. Those include the Lincoln Downtown Design Standards, the Capitol Environs Standards, and the Neighborhood Residential Design Standards. The plan suggests that as properties redevelop or as owners come forward to the City with redevelopment ideas, there be a review of the zoning at that time. This plan in no way recommends that the entire thirty-eight block area be re-zoned. This is something that will be implemented incrementally. There will be a lot of interaction with all stakeholders and make modifications. These are the concepts.

Beecham asked for a description of the process that would happen if a decision was made to implement new design standards for the area. Barnes said there is a public and planning process that would come together. Staff would reach out to stakeholders and those who would be impacted. Detailed discussions would occur to make sure that what is proposed is in the best interest of the community and all stakeholders. Those would come back before the Planning Commission and be adopted by the City Council.

Beecham noted that there would be at least a couple of opportunities for public hearing. Barnes agreed that would be part of the process. He also noted that by working with property owners one project at a time, Planning is not in favor of creating legal non-conforming uses. If a business that exists legally today and they have they no desire to rezone, they can remain as they are.

Sunderman asked if that included situations in which a building were burned to the ground and had to rebuilt. Barnes said that if they were legally allowed in their zoning district, and not legal non-conforming today, then they can rebuild if they need to.

Hove stated that the assurance that the flexibility remains for existing property owners and businesses is that anything currently allowed there can continue for as long as the business operation chooses. Cary and Barnes both agreed.

COMPREHENSIVE PLAN AMENDMENT NO. 15003
ACTION BY PLANNING COMMISSION: **November 18, 2015**

Lust moved approval, seconded by Scheer.

Beecham thanked staff for all the work that went in to this project. This was a good public process. She said that when she thinks back just ten years ago to the West Haymarket area, she would never have dreamed that we would see what we do today. That has opened up opportunities and demand in the area in ways she would not have anticipated. A conceptual plan is important because it allows for the flexibility to respond to changes in demands for land use. It can be intimidating to hear about zoning and design standard changes, but she appreciates that this plan is very conceptual and that there is a strong public process in place for when or if changes take place. She intends to support the motion.

Harris said that if this plan becomes a reality and there is an urban village type of setting, she would love to see some type of playground. That is something that needs to be seen more in downtown Lincoln with the anticipated increase in residents. Maybe millenials with young children will choose to live downtown, or baby boomers with visiting grand children. A plaza setup for people to visit and create an urban village feeling is desirable. She also intends to support this motion. It is important to have a plan. The conceptual nature of it allows it to change as necessary, but this is a great start.

Scheer said he will support the concept and vision and thinks it is great work. There are still many details to be worked out, but you can't get to the details without a vision in place. It is the right first step.

Lust said this an item that she is enthusiastic to support. The vision and coming together over the last two and a half years is amazing. This is just a plan for what could be, and it is important.

Hove said that he will also support this. The timing is fast, but there will also be additional discussion opportunities available. He is comforted by the fact that people can continue their operations, and to live and work in the area until they decide that they no longer want to be there.

Motion for approval carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, and Sunderman voting 'yes'; Weber absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 15030
FROM R-4 RESIDENTIAL TO B-3 COMMERCIAL DISTRICT
WITH A CONDITIONAL ZONING AGREEMENT AND SITE PLAN
GENERALLY LOCATED AT 711 - 725 SOUTH STREET
PUBLIC HEARING BEFORE PLANNING COMMISSION **November 18, 2015**

Staff recommendation: Approval, Subject to a Zoning Agreement.

There were no ex parte communications disclosed.

Staff Presentation: Paul Barnes of the Planning Department came forward to present the Staff Report. This property is just under a half an acre and the owner is proposing to construct a 4,000 square foot building. They operate Dallman Drywall across the street to the north and would like to use this area for contractor services. The building would be used for storage of materials and some parking for vehicles related to that business. Along South Street, there is approximately a block and a half of R-4 zoning surrounded by I-1 and B-3 zones. These properties front to an arterial street, so there is substantial traffic.

The proposal to rezone is supported, along with the Conditional Zoning Agreement. This is an area of transition, but there still needs to be sensitivity to the residential area that remains. The zoning agreement limits uses on this property to lighter, more transitional uses so not all of the B-3 uses are allowed. The agreement also doubles the landscape requirement to 12 feet and asks for a privacy fence to create a more significant buffer. Access is off of 7th Street and off of an east/west alley which limits the impact of heavy traffic. The site plan and the conditions become part of the zoning agreement so the development would have to be in conformance with what is shown today.

Sunderman asked if the small notch in the southeast corner will be used for parking. Barnes said the notch in the building is in response to the requirement for rear yard setback, which is adjusted to the residential properties. There needs to be a 30-foot setback. As far as use, we show some landscape, but parking or other uses are not identified there. Sunderman wants to make sure there would not be large vehicles or unloading in that area. Barnes said that because of the zoning agreement, traffic moving that far east in the alleyway is limited. Sunderman asked if materials could be stored in that area. Barnes said that a certain amount of outdoor storage is generally part of the conditions that contractor services are allowed in B-3, but the zoning agreement restricts that use in this case.

Scheer said that the site plan includes a note regarding a 10-foot double landscape buffer and soundproof fence. He commented that soundproof fence is a concrete, massive structure such as seen along a highway. He wondered if the note needed to be changed. Barnes said that the note was revised to remove the word “soundproof” for that very reason. Generally a 6-foot wood privacy fence is adequate.

Corr asked for more information regarding limiting access in the north/south alley. Barnes said that it is desirable to limit use to 7th Street or the east/west alley. The alley does make a T-formation and run north/south in a small area. That is where traffic should be limited.

Corr went on to ask how the B-3 zoning was chosen for this property instead of something like R-T. She wondered if it was due to proximity to the residential area. Barnes said the B-3 with the conditional zoning agreements accommodates what the landowner has requested. R-T would not have done that. B-3 makes sense in this area. There is also B-3 on both sides of South Street. It would be likely that B-3 would continue in the future farther to the east.

Harris asked for clarification regarding the letter from the applicant which mentioned installing a fence. She wondered if the fence is optional with the additional required landscape. Barnes said the design standards are specific about the requirement for between zero and ten feet of landscape. Generally that is accommodated through a 6- foot privacy fence. In this case, the conditional zoning agreement says the 6-foot fence is not appropriate. Harris asked if that committed them to both. Barnes said both. It will be noted on the site plan that they are required to comply with, as well as in the zoning agreement.

Proponents:

Gus Ponstingl, 601 Q Street, came forward as applicant to state that this is part of a transitional zoning area on a busy street. The property to the west and south are industrial. There is a garage structure to the southeast and a residential property to the east. The property is currently two vacant lots that used to have two dilapidated residential structures that have been removed. The fencing along the east side is a newer composite material that is 98 percent soundproof, according to manufacturer specifications. It is as thin as a wooden fence and is attractive and economical. We have been working with the neighbors, and they prefer that the fence would be closer to the building. They were initially against too much landscaping. We are willing to make it as pleasant as possible. We feel we can achieve the same buffering with ten feet, so we hope to change that.

Ponstingl went on to say that they also do not want to adversely impact neighbors. Drainage options on the site are still being confirmed. There will be a minor uptake in the amount of runoff due to hard surfaces there, but currently, the site drains quickly anyway. There are two curb inlets on South Street which would almost mitigate all of the water onsite. The City is looking into that now. It looks promising. Otherwise, water will be routed into 7th Street to avoid creating any runoff to the south.

Beecham asked how close the property is to the house on the east. Ponstingl said he believed it was around ten feet from the property line. She went on to ask if they had considered placing the landscaping on the west side that faced the industrial area in the

southeast corner notch to serve as a buffer. It would be better to see the landscaping used as a buffer to the residential rather than facing the industrial. Ponstingl said there is a large garage structure that extends well beyond the residential properties in that corner.

Corr asked if the southeast square area will be paved or remain grass. Ponstingl replied that the notch is there because the building is not legally allowed there, but they have not filled in that blank yet. Since it overlaps slightly with the residential, the area will probably not be used and will be the lowest possible maintenance material possible.

Lust asked for more information about the landscaping buffer. Ponstingl said that the amount was based on City requirements. The 10-foot area is enough space to put in a lot of landscape material in addition to the fence so, to us, it seems like overkill for addressing that issue. Lust went on to say that the language notes that a fence may be used and could eliminate need a double row of landscaping. She asked if they are asking to eliminate a row. Ponstingl said they are asking for a reduction from 12 feet to 10. Scheer asked if the reduction is being requested because the applicants believe it is possible to install an adequate amount of landscape materials in the ten feet. Ponstingl said that they feel that is enough space to meet the spirit of that requirement.

Opponents:

1. Nico Shafer, 729 South Street, came forward stating he is the property owner of the adjacent property. The structure that has been referred to as a garage during the testimony is his mother-in-law's house. He said they preferred that the fence be placed closer to the applicant's new building so that it still feels like a house without a fence up against it. The alley is worn away so the right angle shown on the site plan is not so clear. It has been used as alley access and we would like it to remain. At a meeting, he said he would make a right of way in order to leave this area alley so that neighbors would not feel that they were trespassing if they drove over the corner. He is worried that he will not be able to get to his garage from that side anymore.

Beecham asked if he has any concerns about maintenance of the landscaping if it is closer to the houses. Shafer said there should be enough room for it to be maintained easily. Beecham asked if he was comfortable with the request by the applicant to reduce the landscape requirement to ten feet. Shafer said he would like the most that can done to separate the neighborhood. He is also curious about the southeast notch area.

Sunderman asked if he is understanding correctly that the only way to get to the garage is through the alley. Shafer said yes. He also clarified that the larger metal garage is privately owned as part of a residential property and not a business.

2. John Spencer, 2120 S. 7th Street, stated he submitted letters and has not had his concerns about the drainage in the area addressed. He also hopes the alley will be paved because gravel will not hold up.

Lust said that one condition is that the alley will be paved. Corr said it may not have been mentioned in today's testimony, but it is in the report received by Commissioners.

Staff Question:

Barnes said that it is a design standard that when there are properties of substantially different character located side-by- side, that they have a minimum of landscaping between them; generally that is 6-feet wide. In this case because it is contractor service next to single-family residential, our recommendation was to double that amount. Also, the 12- foot area provides two more feet of separation.

Beecham asked Barnes to address the mother-in-law quarters that are right up against this property and whether it is possible to have the fence closer to the new building. Barnes said that staff would support shifting the fence to the west. The intent is to soften the visual impact of the building, so if it is moved, the screening would still be there.

Lust referred to the mother-in-law quarters and asked if accessory dwelling units are allowed in R-4 zoning. Barnes said that this area of town was developed many years ago and this property has two dwelling units on one lot, which would probably not be allowed today. This was probably done under an old code. This is existing and can continue to exist but would not be allowed under new construction today.

Harris asked Barnes to address concerns about the alley access. Barnes said this was brought up at the neighborhood meeting. T-intersection alleys such as this are not a good idea. From the City's point of view, this is a change of zone request. If this were for a preliminary of final plat, we would be looking at whether right-of-way could be considered. We encourage the owners to continue working with neighbors to provide that access, but that is not a condition of approval. The City cannot require that. That alley does provide access to 8th Street farther east.

Hove asked if it would be paved. Barnes said the condition to pave the alley is based on the owner taking access off of it, as we believe there would be trucks utilizing the alley, so that would require paving.

Corr asked how far the alley would be paved. Barnes said staff would recommend that it be paved in the area they are having an impact on, so at the most, it would go to the western side of the north/south alley.

Beecham asked Barnes to address the drainage questions. Barnes mentioned that Ben Higgins of Watershed Management is on hand to answer more detailed questions. He said staff met with the owner and Mr. Spencer on site. It is his understanding that there are ways the paving can be sloped to direct runoff into the street and then into storm drains. The condition in the report states those designs must be resolved with Watershed Management before plans are approved.

Corr said it looked like the squares in the parking lot will slope down. Barnes said he was unsure. That was discussed in concept, but those details should be worked out with Watershed. Corr confirmed that those plans would have to be approved by Watershed before construction can begin. Barnes said that is correct.

Applicant Rebuttal:

Ponstingl stated that the water can be directed to the inlets to reduce runoff and will not run towards the building to the south. He does not believe it will be a big challenge.

Corr asked if the paving for the lot will be level to the alley or if there will be curbing. Ponstingl said one thing considered was to pave it up and around the corner so that if someone were driving, they could drive over it easily. Corr asked if the owner would be upset if there were no curb and neighbors drove through the area to access their own properties. Ponstingl replied that he thinks they can live with some use. The corner is not frequently used.

CHANGE OF ZONE NO. 15030
ACTION BY PLANNING COMMISSION: **November 18, 2015**

Beecham moved approval retaining the 12-foot buffer but moving the fence to the west edge, seconded by Corr.

Beecham said this is a tricky one because there is more than one residential property here. The properties will likely continue to transition over the next years, but it is important to keep buffers as that transition happens. She stated she would love to see Urban Development get involved again to keep the neighborhood strong as part of the South Street Plan.

Lust said that she will not support the amendment to the condition. It causes maintenance problems for the owner. The configuration of the fence should not be a detail that this body is concerned with. Otherwise, she supports the project.

Corr said she has concerns with the small southeast area and about whether it will be green space or paved. People may park there, but then again, maybe it provides better access. It is a tough area.

Cornelius stated that he tends to agree with Lust. He supports the application but is not sure of asking for that level of detail due to maintenance. The application is problematic because of the configuration of the alley. That could be mitigated by 8th Street access and by the owner's efforts. Many of the concerns raised by neighbors were addressed in the staff report. He stated he would vote no, but would have supported a cleaner motion.

Scheer said he would support the motion as made by Beecham. The idea of moving the fence to the west, though untraditional, is better here because of the fact that the residential property can have that 12 feet as visually an extension of their own yard. The developer is still responsible for that area and that is problematic, but that more expansive feel is worth it.

Harris wondered if we did not mention the fence, could it still be put in that space by the Planning Director; does he still have that discretion. Barnes approached to say that there is some flexibility. Point 1.1.3 talks about shifting the location of the fence. The applicant is saying that they are willing to move it. Staff is saying it should be shifted for maintenance. Harris said that there is flexibility even if it is not mentioned. Sheer asked if there is an ability to have the residential owner and the builder come together to get that done. Beecham asked if she could withdraw her motion and make a motion to leave it flexible. Barnes stated he believes so and he feels that those conversations are taking place.

Beecham withdrew her initial motion, and subsequently moved approval, adding that the location of the fence be flexible and not required to be at the eastern edge of the property. Seconded by Corr.

Harris said she will support the motion.

Beecham said that she thinks this is important because putting that fence right outside of a home is invasive.

Motion for approval subject to the zoning agreement carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, and Sunderman voting 'yes'; Weber absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 15033
FROM AG TO R-3 ON PROPERTY GENERALLY LOCATED AT
SOUTH 27TH STREET AND ROKEBY ROAD

Staff recommendation: Approval.

and

SPECIAL PERMIT NO. 15069
FOR A CUP TO ALLOW FOR UP TO 37 DWELLING UNITS
GENERALLY LOCATED AT SOUTH 27TH STREET AND ROKEBY ROAD
PUBLIC HEARING BEFORE PLANNING COMMISSION **November 18, 2015**

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: **Rachel Jones of the Planning Department** came forward to state that north of this proposed CUP are several existing townhomes. To the south, there is one single-family home. The plan requests approval for up to 37 dwelling units, however, there are only 24 shown on the site plan. They are all single-family, attached units, or traditional townhomes. Access would be taken off Rokeby Road to the north and come down 26th Street in the center and it would be a public street. Sievers Lane would create east/west connectivity and would also be public. Farther east is Sievers Court, which would be a private cul-de-sac.

She went on to say there are four waivers requested as part of this application. The first is a waiver to the zoning ordinance for double frontage lots. Then there are three waivers for design standards which include waiving the requirement to provide stormwater detention, allowing for the radius of the cul-de-sac to be reduced to 30 feet and to allow rollover curbs on the private roadway.

There was a public meeting held on November 11, 2015. Based on feedback from that meeting and an email from the property owner to the south, a set of additional conditions for approval have been submitted. They primarily relate to landscaping and screening along the north and south sides. The neighbors to the north also expressed concerns about their properties facing the rear yards of the proposed townhomes across Rokeby Road. Based on that and comments from the neighbor to the south, additional landscape screening was added to both the north and the south.

There is also a condition emphasizing the fact that accessory buildings are not allowed in what would be the front yards of the new units. The area is the functional backyard to the new townhomes but is technically considered front yard along Rokeby Road.

The proposed amendments for additional conditions to Special Permit No. 15069 are as follows:

Site Specific Conditions:

2. Before a final plat is approved, the permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including **3** copies with all required revisions and documents as listed below:

2.1 Change title of site plan to "Sievers Landing C.U.P. Special Permit #15069".

2.1.2 Add a label to the site plan indicating the front yards of the lots with a front yard adjacent to Rokeby Road that states "note: The zoning ordinance does not allow any accessory buildings in the front yards of the double frontage lots adjacent to Rokeby Road and this requirement may not be amended administratively."

2.1.3 Submit a landscape plan showing planned landscape screening to be installed by the developer along the north and south sides of the Community Unit Plan.

a. Show the trees adjacent to the Rokeby Road right-of-way adjacent as per the attached exhibit.

b. Show a 6-foot high screening fence on the neighboring southern property adjacent to Lots 9 through 12, Block 2 and the South 26th Street right-of-way, and note that the screening and fence are not required if the land to the south is rezoned from AG Agricultural to another district.

2.2 Make the following changes to the General Site Notes:

2.2.8 Add a note stating that "Note: The zoning ordinance does not allow any accessory buildings in the front yards of the double frontage lots adjacent to Rokeby Road and this requirement may not be amended administratively."

Harris asked about the comment regarding the ability of fire and rescue to respond to the location within 8 minutes for ambulance service and 4 minutes for fire rescue. She wondered if an approximate response time was available. Jones said she did not have that information. That was a comment that was submitted.

Harris asked where the closest station is. Hove said it is the station at Old Cheney and 27th. Jones agreed.

Corr wondered if the fire station relocation that has been discussed recently would decrease the response times. Jones responded that this is based on what exists now and the response time in this location would be a little bit longer than preferred.

Corr asked for clarification about the location of Wilderness Creek. Jones said it is a drainage way that runs south of the property between 150 to several hundred feet to the south. There is an associated floodplain and conservation easement but there is not floodplain on this property.

Proponents:

1. Mike Eckert, Civil Design Group, came forward on behalf of the applicant, VerMaas & Sons, LLC. This area was the home of John VerMaas, and his son, Gary, is now helping them to develop the area. This process began in 2012 and was put on hold. Discussions were reinitiated with Planning staff earlier this year. Several iterations were considered for the layout of the long, narrow piece that abuts what is a section line road and how we could best lay that out and meet the desires of the City, the neighbors, and the VerMaas family.

The VerMaas piece is roughly five acres. The Sonenberg property is directly to the south of a twin 5-acre lot. The Sievers property and railroad tracks are to the west and much of that land falls within the floodplain and has the conservation easement. As mentioned, we went through several iterations. It would have been our preference to have a twin cul-de-sac on the west side with a public street going through the middle. Planning staff emphasized a desire to create connectivity to the west with the Sievers' land because there is a swath of developable land outside of the floodplain.

We also worked with several layouts showing how the Sonenberg property could potentially develop in the exact same fashion with the 26th Street road extending and curving out to an access on South 27th Street. The neighbors to the north asked why they were not able to connect to South 27th Street so we reviewed the Access Management Policy and quarter-mile spacing.

Eckert acknowledged that it is unusual to have the lots backing to Rokeby Road but, given the nature of this property, there were not too many viable layout options. The owners were very willing to add the heavier landscape plan showing street trees and spruce trees. Neighbors preferred that option over a fence. We applaud the Planning Department for recognizing that the area along Rokeby Road is technically the front yard, allowing for the limiting of accessory buildings, which was another concern of neighbors.

To the south, there is landscape screening. It was most important to them to have a 6-foot high fence from the right-of-way to a tree-filled area to the east and that is a good arrangement. The fence will fall on their property so they have more control over it and will maintain it. The bigger

issue is the double row of trees, which the fence will go between. We appreciate their comments and concerns because this is a big change for them and they do not plan to develop any time soon. Everything appears to be satisfactory to them.

Corr asked if the existing treeline along the south will be preserved. Eckert said yes. They are on the Sonenberg property and overhang in some areas, so there may be some trimming when LES installs utilities which will be on the VerMaas side. Trees on the Sonenberg property will be retained.

Corr went on to say that she noticed a "John Court" and wondered if that had been changed. Eckert said that name was already used so everything was switched to Sievers Lane and Sievers Court.

Opponents: None present at hearing.

Staff Questions:

Corr said this will be an approval for 37 units even though only 24 are shown. She wondered if the applicants would have to come before Planning Commission again if they chose to change plans to add multifamily or another option allowed under R-3 constraints, or if it would be an Administrative Amendment. Jones said that with the note being on the site plan, they would be able to increase the number of dwelling units up to 37 administratively but that would be under the discretion of the Planning Director. If changes are significant enough, it would be determined that it should go through the Planning Commission process, including a public hearing. Often with Administrative Amendments that are more significant or could have an impact to neighbors, a notice is sent out.

Corr noticed that under the Agency Review Report it talks about the fact that lots will only be permitted to be attached, single-family units and asked if the developer wants detached units and, if so, they should ask for a waiver. Jones said that she has been told that the developer is not interested in constructing anything but attached, single-family units.

Applicant Rebuttal:

Eckert addressed Commissioner Corr's question, stating that this is a solid plan with every intention of building the way it is shown. Typically, Administrative Amendments are allowed to increase density up to 20%. The applicant would be willing to accept a note that would limit the amount that could be increased administratively. Given the level of neighborhood involvement, it is his guess that the Planning Director would probably request a Public Hearing on changes, if they were made.

Corr had a question about the water issue. There is also a remark that since you will drain onto someone's property, are they okay with that? Eckert stated yes; we met with the Sievers Family. We also had to acquire a sanitary sewer easement from them in addition to the discharge of the stormwater, so we are working with them.

CHANGE OF ZONE NO. 15033
ACTION BY PLANNING COMMISSION **November 18, 2015**

Beecham moved approval, seconded by Harris.

Corr thanked the developer for working with neighbors to alleviate some of the concerns. That goes a long way.

Hove stated he agreed and believes this is a good development.

Motion carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, and Sunderman voting 'yes'; Weber absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 15069
ACTION BY PLANNING COMMISSION **November 18, 2015**

Cornelius moved approval. Harris asked if that was with the conditions. Cornelius said yes. Seconded by Beecham.

Motion carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, Sunderman and Weber voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

WAIVER NO. 15018 - WAIVE SIDEWALK REQUIREMENTS
ON PROPERTY GENERALLY LOCATED AT
731 GLENRIDGE ROAD.
PUBLIC HEARING BY PLANNING COMMISSION: **November 18, 2015**

Staff Recommendation: Denial

STAFF PRESENTATION:

Paul Barnes of the Planning Department, came forward and stated that this requested waiver is in conjunction with a final plat that is currently under review. This property is near the intersection of South 7th and Glenridge Road. Barnes stated that there is a history in terms of how this area was developed and how it was platted. Referring to a site map, this property is located in Lot 1, Block of Wilderness Estates – the original addition. At that time, Glenridge Road ended and the remainder of the area was platted into an outlot. Sidewalks, street trees

and traditional improvement that are part of a residential subdivision, were required and installed. A few years later, the 1st Addition of Wilderness Estates came in and Glenridge was platted right-of-way, continuing with 7th Street north. There was a subdivision agreement as part of the this next addition that required all the traditional improvements be installed, including sidewalks. Therefore, sidewalks should have been installed. Over a period of a time, the developer had some issues and eventually went bankrupt. The city tired to get the bond to install the sidewalk but the bonds had expired and were essentially written off. Today, there is a new request to further subdivide this property, which is currently under review against the subdivision ordinance. Barnes noted that sidewalks are a requirement at the time of subdivision. In terms of the surrounding neighborhood, there are sidewalks on both sides of the street. There is a gap in the sidewalk, which really should be installed as part of this plat. There are seven houses on the west side of 7th Street with sidewalks in front of their properties. If the sidewalk is constructed, there would be a consistent path to continue further to the east. The city's sidewalk policy states that sidewalks are a requirement to be installed on both sides of the streets whenever subdivisions are reviewed to provide a separation between pedestrians and vehicular traffic in a consistent manner and ensures that we are meeting ADA standards. The applications states that there is some obstacles to putting in the sidewalk in this area, consisting of street lights, street trees and some grading. The staff views this as undeveloped land. In order to build a house, grading will likely need to be done. In terms of the street light being an obstacle, there are street lights and sidewalks located throughout the rest of the neighborhood and there is adequate separation between the two. Parks and Recreation has noted that there is one street tree that will probably need to be removed for the sidewalk to be installed. Barnes noted that it is standard requirement to also replace the street tree as part of the final plat.

PROPONENTS:

Dennis Slama, 731 Glenridge Road, the applicant, stated he is requesting the waiver, as putting a sidewalk and retaining wall here would be a great financial burden on them. It is estimated to cost between $7,000 and $10,000. This piece of missing sidewalk has not been a problem for anyone in the neighborhoods in the 15 years that they have been there. The sidewalk would not benefit anyone in the neighborhood. Referring to a picture of the lot looking from east to west, he pointed out the street light and the street tree that would need to be removed. The sidewalk would go into an adjacent property owner's side yard and really would go nowhere. The grading differential is about four feet. The property on the other side of the fence is where he is going to build a house which will face to the west. There will be no grading that would affect this area at all. Slama stated that this lot has been designated as Wilderness Estates 3rd Addition, which makes it sound like it is going to contain several lots, when it is in fact a single lot. He suggested that a more appropriate name would be Wilderness Estates Addition, Block 1, Lot 4, since it is a single lot. He asked if there were any questions regarding his statement previously provided to the Planning Commission. None were asked. In the staff "Analysis", references the Planning Commission's resolution

of 1997, requiring sidewalks to be installed within the plat, specifically requiring the sidewalk on the south side of Glenridge Road to be constructed, but it never was. The fact that the developer failed to install the sidewalk and retaining wall, and poor oversight to ensure that this was done, occurred before they purchased the property. The installation of this sidewalks makes no commonsense in their neighborhood. Planning practice was not followed when this area was developed and a sidewalk was required to be put in at that time and should now not become their burden.

Staff Questions:

Commission Corr asked Barnes if the last house that sits on 7th Street, if that sidewalk goes all the way up to the border. Barnes that this sidewalk would have to go to the edge of the existing sidewalk on that property. The site plan that the applicant referred to may be using the stub as a driveway but essentially the sidewalk would come across the property and connect to the existing sidewalks on both sides. It is a gap.

Beecham asked if it is common practice currently for sidewalks to go in at the time a property is developed? This didn't happen earlier because nothing was built on the property yet. Barnes stated that there have been a couple of changes on that over the years. He understands that in the past, generally sidewalks required a bond, whether it was a commercial development, industrial or residential. Now, with residential subdivisions, sidewalks are required to be installed when a building permit is pulled.

Cornelius asked there is any kind of public access across the parcel from north to south? Barnes stated that this has been discussed quite a bit in the past. There were some earlier plans that would have continued South 7th farther to the south. Cornelius asked if there was any pedestrian right-of-way or easement? Barnes stated no there is not.

Cornelius stated that there is a cul-de-sac to the south and asked how is the area to the west of the cul-de-sac is zoned. Barnes stated that he believes it is R-2 also, which is the same as the area in question.

Applicant Rebuttal:

Mr. Slama returned and referenced Item No. 4 of the staff "Analysis" requiring that the sidewalk should have been done. This should have been done and this discussion should not be taking place. The sidewalk should be there and it is not their fault that it was not put in.

WAIVER NO. 15018
ACTION BY PLANNING COMMISSION: **November 18, 2015**

Lust moved DENIAL, seconded by Corr.

Corr stated that it has been a longstanding practice of the city that we promote sidewalks and connectivity for walking and I support that so that means we need to connect the two here.

Cornelius stated that in an unusual position for him, he disagrees. He is a huge advocate of sidewalks in almost all cases. However, here he sees that on the north side of Glenridge there is a sidewalk. On the south side, there are stubs on the east and west area of where we are talking about but, if there is no means of crossing this parcel, it won't connect to anything to the south and it is not going to go any farther to the west because of the railroad tracks. I think that the needs of the pedestrians in the area are likely served by the sidewalk to the north. Requiring the sidewalk after a result of sort of malfunction in the system which places the burden on this one property owner, is unnecessary.

Beecham respectfully disagreed with Cornelius. When we are looking at a subdivision that has sidewalks on both sides throughout, as this one does; she feels very sympathetic for the applicant, as this is a tricky and not a problem of their making. However, I think when you purchase land, unfortunately, you are purchasing the problems that come along with that land and you are needing to deal with them as part of the development of that piece of land. If we had a developer coming in here platting something, I think we would be requiring sidewalks and this connectivity. If I am in a wheelchair and I'm on the south side of the street and it is a snowy day, I shouldn't have to take my wheelchair across a snowy street to get to the sidewalk on the north side when there are sidewalks. This seems to me to be a very straightforward connection and I think it is important that we complete it. I am going to support Lust's motions.

Lust stated that she is going to echo what Beecham said. Unfortunately, the cost of development is sidewalk installation. We always require it for more traditional developers and while I understand that the burden is falling on just one particular property here, it is still the cost of developing this property further, and I don't see a compelling reason to waive what is a standard in the city for sidewalk connectivity in this case.

Hove stated that he plans to support the motion. He is very sympathetic to the folks but the fact is that the sidewalk does connect to other sidewalks.

Motion for DENIAL carried 7-1: Beecham, Corr, Harris, Lust, Sunderman, Scheer and Hove voting 'yes; Cornelius dissenting; Weber absent.

SPECIAL PERMIT NO. 15064,
TO ALLOW AVALON EVENT PARADISE
TO BE USED FOR SPECIAL EVENTS
INCLUDING A PARKING WAIVER
ON PROPERTY LOCATED AT 12788 WEST ROCA ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: November 18, 2015

Staff Recommendation: Approval

There were no ex parte communications disclosed.

STAFF PRESENTATION:

Tom Cajka of the Planning Department came forward to state that this application is for an expended home occupation to allow large gatherings i.e. wedding receptions, graduation parties, family reunions, etc. This property is located approximately two miles east of Crete. The parcel is approximately 30 acres. There is an acreage subdivision to the east and large-lot agricultural uses on the other three sides. He referred to an aerial photo showing the layout of the grounds to show the areas used for the gatherings. The boathouse can be rented out. There is an island where the actual wedding ceremonies take place. There is also an area that is designated for large tents that may be used for gatherings. The parking area is located off of Roca Road. The boathouse is approximately 450 feet from their east property line and approximately 680 feet from the nearest house. The tent area is about 540 feet from the property line and 800 feet from the nearest house. The applicant states that the events are normally held between May and October.

Cajka went on to say that all but two of the conditions listed in the special permit regulations are met. The first requires that the parking lot is required to be graveled. The applicant is requesting a waiver to this requirement because the area is grass and they do not irrigate, so the area does not get muddy. Due to the infrequency of the use, staff supports this waiver. The second waiver has to do with a requirement that the outside area of use not exceed 15,000 square feet. The parking area and the tent area together equal roughly 30,000 square feet. Most of the time, they would not use the total parking area. Considering that, staff also found that acceptable.

Lust asked if the landowner could use the boathouse for a bed and breakfast without the Special Permit. Cajka said yes. The County allows home occupation and renting out part of the home or accessory dwelling, as long as the owner lives on the site. Lust asked if the larger events that the applicants currently host are non-conforming. Cajka said yes. Lust went on to ask how it came to anyone's attention that these events were out of compliance. Cajka said a caterer for an event was requesting a Special Designated License to serve alcohol, which goes through the County Board and on to Planning staff for review.

Corr noted that one condition limits the applicant to no more than 15 large events. She wondered if that was complaint driven. Cajka said yes.

Beecham asked if the County has noise restrictions. Cajka said he confirmed with the Health Department that there are no restrictions for noise in the County.

Hove noted that large events are classified as those with 100-350 attendees. He asked if there was a limit on smaller events. Cajka said no limits were placed on events with fewer than 100 guests.

Corr noted that the trees along the eastern edge of the property were mentioned as a potential sound barrier to neighboring properties. She asked if their presence has been verified. Cajka stated that he did not have an extensive look specifically at that. He is aware that most of the evergreen trees that were there were removed due to disease.

Beecham said the Special Permit application is based on the type of use they are requesting and not on the fact that events occur outdoors. She asked for confirmation that the applicant would still need the permit, even if events were held in a structure such as a barn. Cajka said that is correct and added for further clarification that approval of this permit does not allow them to build any structures, it is for the property as it is currently shown on the site plan.

Harris asked about the issues with traffic taking left turns from the property. Cajka said the County Engineer reviewed the plan and had no concerns. Harris asked what the speed limit is on the main road. Cajka said it is 60 mph.

Hove stated that he recalled a past application for events in the County that required an illuminated sign to draw attention to the fact that events were occurring.

Steve Henrichsen of the Planning Department came forward to state that was a Historic Preservation Permit which later expanded use to a barn. That particular applicant had offered adding use of the electronic board to address concerns about people slowing down for those events.

Corr asked if in that case, they were also required to put in a turn lane. Lust added that she also recalled that the County Engineer required that. Beecham noted that the County Engineer has reviewed this current application and approved it. Cajka confirmed this.

Harris asked if there is any form of lighting that would identify people that guests might be exiting. Cajka said he was not aware of that.

Beecham asked if any consideration was given to putting restrictions on how late music can play. Cajka said that was considered but not added as a condition. Corr asked whether that type of restriction would be complaint enforced. Cajka said yes. Any conditions placed on any Special Permit are complaint based because the City does not have the staff to regulate that.

Lust asked if there were restrictions on the use of fireworks in the County. Cajka said he was unsure of that.

Sunderman commented that the 450-foot distance to the edge of the property is a relatively significant distance, however, it is across water, so sound carries. He said he has concerns about that.

Applicant Testimony:

Mike Martin, 2315 Winding Ridge Road, came forward as one of the owners of the property. This property is 32 acres including a private lake. It was purchased as a single-family dwelling for use by his parents and for family gatherings in August of 2011. Since that time, it has undergone significant renovation. With respect to the trees, there are many on the property and they require a great deal of maintenance, mostly due to Pine wilt. He presented a current aerial image of the property and indicated that about 30% of trees had to be removed, which was a disappointment. The goal has been to replace them in order to create a buffer and improve aesthetics. Thus far, roughly 200 new trees have been added. His daughter's wedding was held on the property in June 2013. A shuttle service was utilized to transport guests to and from Lincoln, so there were very few cars and this helped to prevent any drinking and driving. There was a fireworks show which was conducted by a professional under permit. We were informed that the Fire Marshall had spoken with neighbors. Up to this point, we have not had any complaints.

In 2014, there was a single tent wedding that took place in the autumn. Again, there were no complaints. In 2015, there have been a total of 14 events- 10 could be categorized as small weddings. They were held on the island with maximum seating up to 200, but usually more like 100-150. These last for four hours during daylight hours and the vast majority do not use any form of electronic sound system. The boat house is also used for the bride and family. All restrooms are provided through mobile services. For larger weddings, only three had tents. Two had live bands and one had a live dj. The larger weddings tend to be all day events, so most guests are tired and leave by 11:30.

Since the last public hearing, we met with homeowners to the east. This property was not designed to irritate people. There was misunderstanding as to the nature of the events and we hoped to alleviate concerns. Noise will always be an issue when it is present, though as stated, most events do not have bands, and the number of large events will be limited. Sound can be oriented to face west to block some sound and cutoff time can be 11:00 p.m.. Mr. Martin stated that it is not an issue to discontinue fireworks, though as a private

homeowner, he would like to reserve the right to apply for them on the 3rd or 4th of July. Traffic is another thing that will always be an issue. Everyone agrees that it is busy, but the events are held on Saturdays so it is not as much of an issue. The large number of guests mentioned is generous and it is very unlikely events would approach that size.

[Scheer exited the meeting at 3:50 p.m.]

Lust asked who resides in the house and what role they have in the business. Martin said the home is occupied by his parents. They are equal owners along with the rest of the family and they are there at every event, but do not run the business. Lust asked for clarification about the role of his parents, noting that they are there and are equal owners, but have no role in actually running events. Martin said they act as hosts, as much as anything.

Harris asked if the sign at the entrance includes any lighting so people could anticipate that people will be exiting. Martin answered that there are two stone pillars that are wired for lights. It is on the to-do list. Harris went on to ask the distance from the island to the nearest property owner. Martin said the island is roughly 30 to 50 feet closer to the property line. It is located right off the deck of the boathouse. Harris asked if a DJ is there sometimes. Martin said no. Weddings on the island take place during daylight so guests are gone by dusk.

Harris asked at what point was this business advertised as an event business. For clarification, she acknowledged that the first event was private, and wondered how long after that first private event would a potential buyer of an adjacent property have been aware that they were buying a home next to an event business. Martin said that his guess would be 2014. There were many inquiries after his daughter's wedding about renting the property. It is not the desire of the family to have an excessive number of events because it limits their own use of the property. Much consideration was given to appeasing the concerns of neighbors. He stated no one has ever personally approached him to say anything. Neighbors were provided with a phone number to call any time. He said his family is affable and easy going and has no desire to aggravate neighbors.

Hove asked how they regulate events themselves to make sure they are not irritating others. Martin said there is an event contract that addresses what people can and can't do. Golf carts are used only to transport elderly and that was only for two events. Access to the east side across the lake and on the lake itself is not allowed. The property is covered by liability. We can arrange to address noise issues.

Lust asked if they would be willing to limit altogether having bands, DJ's, fireworks and other things of that nature. Martin responded that it seems aggressive to place that type of limit on this type of celebratory events. People spend a lot of money on these events. That would be like having a bar without alcohol. There was a time where there were large events close together. That will probably not happen again due to the maintenance of the property

that is required. Most people will not have these large events because it is too expensive simply to rent a tent.

Lust commented that it is the job of Planning Commission to balance the needs of everyone. She asked, if they are already only having four of the large events, if they would consider only having the smaller events and no large ones. Martin said that he would venture to say that neighbors probably are not even aware that the small events are taking place. Even with the trees that were removed, there is still a good tree buffer. He said he would not want to eliminate the possibility of large events. They are a lot of work, but the family enjoys them. The demand is just not that high for them.

Corr asked how they enforce the rules to keep people from entering the lake or other prohibited parts of the property. Martin said they present on the property and people are dressed up, so up to this point, no one has attempted that.

Lust referred to the shuttles used for the applicant's daughter's wedding. She wondered what is done for other weddings. Martin said all of the tent weddings have used shuttles. We recommend it, and they love the idea. He does not believe they have ever had more than 50 cars.

Corr asked if anyone is there to direct traffic. Martin said the parking area is marked.

Lust said that if this body were to issue a Special Permit, even though the current practice is to have fewer events, there is no guarantee that the number will be limited. She asked if there are limitations that they would be willing to accept as conditions of approval. Martin said 14 events is too many because the family would lose personal use of the property. There is a 6-month window for events. If there is an average of one tent event per month, that would be six. He said he would never do more based on property maintenance. The smaller events do not seem to impact anyone. They do not have bands. They are on Saturdays.

Beecham asked if bands were prohibited at the small events. Martin said yes, it is a tent wedding if they are having a band. Corr said that the difference for her is whether they are just having a wedding, or a wedding and a reception, because the reception is where you would see the band. Martin said the smaller events tend to have a cocktail reception. That is the trend.

Opponents:

1. Steve Schmidt, 15700 Lakeside Estates Drive, stated that the two most important purposes of zoning are to conserve the value of property and to encourage the most appropriate use of the land. This Special Permit accomplishes neither of those purposes.

This area is not intended to be used for commercial purposes, as the current zoning reflects. This was a single-family dwelling before. Neighbors recognize that there are exceptions, but this business is not of the appropriate type to receive the dispensation the expanded home occupation provides. A quick review of the types of businesses allowed under expanded home occupation revealed only small, family-owned and run type of businesses. There were no examples of businesses that bring in 350 plus people for drinking and loud events. To fit within the permit, there are restrictions. There should not be more than two non-related employees residing on the premises. Mr. Schmidt showed images taken from the Avalon Event Paradise website. These are large, extravagant events that must require more than one employee to set up and run these things. The Martins claim to only have only one employee. It probably takes more than that just to maintain the property itself, not to mention the business. There is also more to the story. The first vendor listed on their recommended vendors list is owned by the family. The size of the activity exceeds limitations. The parking is not all-weather. The people who live on the property, though technically owners, do not run the business. The owners live in Lincoln. This is not the type of business envisioned for expanded home occupation.

Lust asked if there is a definition of “employee” given under the home occupation regulations. Schmidt said it says it has to be “no more than two persons who are members of the family residing on the premises may be employed to carry out the occupation or activity on the premises”. Lust said it says “employed” so we do not know whether independent contractors would qualify. Schmidt said he understands but believes it is important to note that the people they hire as independent contractors is one of the owners of the business. Lust asked if it uses the word “employee” or just mentions “one who is employed by”. Schmidt said it refers to “employed”. Lust asked if it defines “related” people. Schmidt said it does not.

Harris asked if he would be supportive of any limit on larger events. Schmidt said he is opposed. He was not opposed when it was a bed and breakfast, though neighbors were not informed, but he is not in favor of any receptions.

Corr asked how many times he would estimate that noise from events has been heard. Schmidt said that neighbors did not keep track because people thought they were family events. He stated that Martin referred to this as a “hobby property”. Corr asked if he has heard fireworks. Schmidt said yes. The applicant also indicated that they would remove advertisement for that, but it still appears on their website and Facebook.

Corr went on to ask if it would be more acceptable if they required a more substantial buffer. Schmidt said he would not be for it. The buffer would be great, but it would not stop the noise.

2. Pam Sholz, 15855 Bobwhite Trail, stated that their house borders the Martin's. The properties in this area are of substantial value which reflects that this not an unpopulated area. There are a total of 38 homes in this section alone. Our home was purchased 19 years ago and a main reason we moved to the area was for the quiet. The fireworks that were mentioned go off from the northeast corner of the Martin property, which is only 125 feet to the property on the north and 138 feet to the property to the east. That is very close to neighbors and it seems the County was negligent in issuing a permit to approve the use of fireworks.

3. Peter Dowban, 12251 Bobwhite Trail, stated that he wished to expand on the noise levels. He showed exhibits during testimony, including a view of the neighborhood and its proximity to other sources of noise such as the railroad tracks and a motor cross area. He can clearly hear noise from the Martin property. He works 60 to 70 hours per week and sometimes wants to work from home and does not want the noise. He stated that other neighbors to the west can also hear events clearly. He also mentioned the difficulty in issuing complaints. Calling the Sheriff may not do much good because they are so far out in the County. In addition to that, he would not want to ruin a wedding party because they do not understand the situation they are embedded in. It is the organizers who should be responsible. He stated that there is no compensation if he is unable to work the next day. He also pointed out that the Planning Commission has no enforcement powers. If this permit is approved, it opens the window for them to do anything. Restrictions could be made but there is no way to enforce them.

4. Pam Wakeman, 15751 Bobwhite Trail, stated that they purchased their property in January 2015. They did not know there was a business of this type, literally in their backyard. Neither realtor knew. If they had known, they may not have purchased the house that they love. She can see the Martin property from her home and can hear events in her bedroom and basement. At times, it is lovely to look out and see happy people celebrating. However, she feels restricted on her own property and it has an impact on her quality of life. Planning staff said there should be no impact to neighbors. Trees will take time to fill in.

Harris asked if she would be supportive if fewer events were allowed and if there was a specific number she could tolerate. Wakemen said one small, 4-hour wedding per month, so that her weekends are not tied up and so she will not feel she is disrupting someone's wedding by mowing, or other similar activities.

Corr asked if she was able to discern between the large and small events. Wakeman said she has seen the small events and they do not last as long and take up her entire day.

Cornelius asked how she would feel if the smaller events were more frequent. Wakeman said she would still feel imposed upon. It impacts the ability to live in her own house. Cornelius went on to ask Wakeman to describe the impact of a smaller event. She said they are shorter and there are fewer people. Cornelius asked if it seemed like a problem because the ceremony is visible and it creates a situation where it feels as though normal activity might interfere with other people's wedding. Wakeman said yes, it is restrictive.

5. Jana Foulton, 15791 Lakeside Estate, stated that according to the website, Avalon Events started in November of 2012. There is increased traffic and drinking, which is a major concern. The logistics of getting that many people in and out of one entrance and so near to their own neighborhood entrance is a concern. The highway is very dangerous. There are big businesses three miles to the west, but they have three lanes, which makes a big difference. Drinking and driving and passing are problems on this highway. Neighbors moved to the area with good faith that this body would uphold the conditions that were in place when we moved there.

6. Michael Scholz, 15855 Bobwhite Trail, stated there was a meeting held with neighbors and there were over 30 people in attendance from a 2-mile radius. It was on the neighborhood association's next agenda to speak with the Martins to let them know of our complaints. The biggest concern is noise which can be heard up to a mile away. They do not fit the expanded home business use. It will be difficult to appease everyone, but it is his opinion that restrictions should be added. There should be no fireworks due to proximity, no tent weddings, and hours of operation should be between 2:00 and 5:00 in the afternoon to keep it simple. There should be a restriction on the number of vehicles.

Harris asked if he would support the permit with those restrictions. He said yes, but is still strongly opposed.

Lust asked Deputy County Attorney David Derbin to approach for questions. She stated she has concerns that this proposal does not fit within expanded home occupation because she has concerns about the lack of definition for "family" and the lack of clarity regarding employees. It seems like independent contractors are "employed by".

David Derbin, Lancaster County Attorney's Office, stated that it was determined that the applicants are not the ones employing contractors, but the people holding events are.

Lust asked if Derbin agreed that this business is much larger than the other businesses listed as examples. Derbin replied that the regulation is very broad. There is one example, conference center, that we felt was similar.

Lust asked if it is true that there are no regulations for noise in the County. Derbin said yes. Lust asked who could be called for a noise complaint. Derbin said the County Sheriff would classify a noise complaint as a party complaint. It would end in dispersal and a disturbing the peace charge. Harris asked if someone would have to evaluate while the event was still happening, and the person calling would have to weigh disrupting a wedding with their own enjoyment of their property. Derbin said yes.

Lust asked if there was any sanction for the applicant being in violation by operating this business without a permit for over a year. Derbin said there are sanctions that could be imposed for zoning violations.

Staff Questions:

Cajka returned to answer questions.

Corr asked whether the applicant would need to file a permit for fireworks, whether they are running this business or not. Cajka said maybe for commercial fireworks. The County Attorney informed staff that there is no restriction for fireworks in the County. Derbin added that is only if they are legal in the State of Nebraska, so commercial fireworks would not be legal and would require a permit. Corr asked if the fireworks viewed from the Avalon website were legal. Derbin said that he is not a fireworks' expert, but if they had to get a permit as stated, then he assumes they were not legal.

Corr asked if a permit had to be filed for alcohol on the premises. Cajka said it appears that in the past that was done through the Special Designated License. Lust said the caterer could have had the license to serve. Cajka said he did not know how it would be regulated if the family were serving.

Beecham asked who assumes the liability for over-serving if there were DUIs. Derbin said that would be a question for the owner to determine how they are shifting liability.

Harris asked what is allowed in terms of special events without the Special Permit. She wondered if by allowing the big events, they are still allowed to have as many events they desire. Cajka said the Special Permit is for holding the receptions, whether big or small. In the County zoning under Article 15, you are allowed the home occupation which has its own rules.

Beecham asked if they could do a bed and breakfast without the permit, but not weddings. Cajka said that is correct.

Cornelius said it is confusing because the staff report specifies large events and he does not understand the definition of a large event. I think I understand that a bed and breakfast is allowed by right, and I have attended weddings which included receptions and bed and

breakfasts. Cajka said it is a grey area and suggested an example where there might be a very small wedding on the island with small reception in the boat house. Cornelius went on to say that he does not complain about parties he does not know about.

Hove pointed out that if the permit is approved for weddings, there is really no way to regulate small or large weddings, fireworks or none. Cajka said that conditions could be placed on the approval of this permit. Cornelius said that is true, but he questioned how those would be controlled for a by-right use. Cajka said it is like any other permit with conditions. Cornelius said he understands, but does not know the by-right uses as a bed and breakfast for property owners to allow the guests staying at the bed and breakfast to have a wedding. It seems there are not any, any more than any other private property who wants to allow someone to have a private wedding on their property.

Lust clarified that it is the outside gatherings that are the problem. Cajka agreed. Lust went on to say that if they want to get married on the island and then have the reception in the boathouse, in which they are staying, that might be allowed. Cajka said he thinks that would be allowed. Harris asked if there is a restriction on the number of people in that scenario. Beecham suggested that might be regulated by the Fire Code.

Lust asked if there was a way to research this to find out what is allowed because if the special permit is denied, she would like to know what the applicant is still allowed to do on the property. Cajka said that has been researched for the City, and he thinks that as long as they are just renting out the boathouse, there is nothing written what can and cannot be done. The boathouse is just being rented so there is nothing that limits you from having a small gathering. Lust said she is struggling with the difference between a large and small gathering, and what the reason for the special permit is. She wonders what they are allowed to do now without it, and if we would be better off by limiting the special permit with conditions restricting the use with no fireworks, bands, DJ's, etc., as far as the neighbors go. Cajka said that in his opinion, if that many restrictions were added, the application should just be denied.

Cornelius stated that he would be surprised if by-right uses could be taken away by conditions. Beecham agreed.

Steve Henrichsen came forward to suggest that if Commissioners wanted to discuss adding conditions, the application should be put on the Pending List for two weeks in order to allow a detailed list of what is the intended use of the home occupation and what could be allowed on the property by-right without the special permit. It would also allow time to develop clearly-worded conditions. We could also provide examples of conditions placed at other event locations, keeping in mind that each of them had unique characteristics. If you are looking to deny the application, no delay is necessary.

Derbin added that the Commission could add the conditions that are allowed. Harris asked if that would include noise restrictions. Derbin said it would under “health, safety, and welfare”.

Applicant Rebuttal:

Martin returned to state that he feels he has been mischaracterized. The property is a hobby but the business is run as a business. His parents live in the home and are part of the business and have a vested interest. This is also a private residence, so when he hears about noise complaints, he wonders what other activities would be restricted, such as use of the deck or a speedboat. He stated he lives near SouthPointe Mall in Lincoln and every Friday during the summer, he hears bands from there whether he wants to or not, and no one says that activity has to stop. People seem to have the misconception that this is a massive enterprise when it is not. Definitions are unclear. He asked if a wedding in a bed and breakfast with 100 to 150 guests is too large. He added that he was an emergency room doctor and cell phone use had increase accidents more than drunk driving. The only thing that would make neighbors happy is to eliminate all events. He does not employ people, the wedding parties do. He asked if he hired a high school student to mow the lawn over the summer if that is considered an employee. He does not believe so because that is their business. He stated that they have tried to be reasonable by coming back with ideas for how to accommodate concerns. That has been the goal from the start. There is a lack of communication and no one issued a complaint face-to-face.

Viann Martin, 2315 Winding Ridge Road, came forward to add that noise was discussed at the meeting with neighbors. It is her belief that noise can be limited. Fireworks can stop altogether, though the family would like to reserve their right as private property owners. In large events, shuttles are used to prevent drunk driving. People at weddings take care of their own guests, so that idea is easily accepted. Parking has not been a problem.

SPECIAL PERMIT NO. 15064
ACTION BY PLANNING COMMISSION: **November 18, 2015**

Lust moved to place this item on pending in order to allow more time for research regarding what would be allowed by the Special Permit, seconded by Cornelius.

Beecham remarked that she would like to see what was done in similar cases.

Lust said she does not feel this body has enough information to understand what would happen with denial of the special permit and what would be allowed in that case.

Beecham asked if there would be more public testimony. Lust said she would like to limit it to staff research with no public testimony.

Sunderman said the applicant is always allowed the final word. Cornelius agreed that the applicant should be allowed to respond to staff findings. Lust agreed that was included in her motion to place this proposal on the Pending List.

Motion to place Special Permit 15064 on the Pending List with no further public testimony carried 7-0: Beecham, Corr, Cornelius, Harris, Hove, Lust, and Sunderman voting 'yes; Scheer and Weber absent.

There being no further business to come before the Commission, the meeting was adjourned at 5:10 p.m.

Note: These minutes will not be formally approved by the Planning Commission until the next regular meeting on Wednesday, December 2, 2015.

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