REVISED MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, December 6, 2017, 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	Tom Beckius, Tracy Corr, Tracy Edgerton, Deane Finnegan, Maja V. Harris, Chris Hove, Cristy Joy, Dennis Scheer, and Sändra Washington. David Cary, Steve Henrichsen, Tom Cajka, Rachel Jones, George Wesselhoft, Brian Will, Dessie Redmond, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission meeting

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

Scheer requested a motion approving the minutes for the regular meeting held November 15, 2017. Motion for approval made by Harris, seconded by Washington and carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Joy, Washington, and Scheer voting 'yes'; Hove abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Washington; Scheer absent.

The Consent Agenda consisted of the following items: **TEXT AMENDMENT NO. 17013, COUNTY TEXT AMENDMENT NO. 17014, TEXT AMENDMENT NO. 17017, COUNTY TEXT AMENDMENT NO. 17018, TEXT AMENDMENT NO. 17020, ANNEXATION NO. 17023, CHANGE OF ZONE NO. 07063B, CHANGE OF ZONE 17033, PRELIMINARY PLAT NO. 17005, SPECIAL PERMIT NO. 1219N, SPECIAL PERMIT NO. 17041, COUNTY SPECIAL PERMIT NO. 17043, PRE-EXISTING USE PERMIT NO. 3AH, AND USE PERMIT NO. 140F.**

Scheer declared a Conflict of Interest on Change of Zone No. 17033 and Preliminary Plat No. 17005, and recused himself from voting on the Consent Agenda.

Hove and Finnegan disclosed that they read an article in the Lincoln Journal Star regarding Pre-Existing Use Permit No. 3AH.

Text Amendment No. 17013, Text Amendment 17014, Text Amendment No. 17020, **Special Permit 1219N,** and **County Special Permit No. 17043** were removed from the Consent Agenda to have separate Public Hearing.

Vice-Chair Corr called for a motion.

Hove moved approval of the remainder of the Consent Agenda, seconded by Beckius and carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Washington voting 'yes'; Scheer absent.

Note: This is FINAL ACTION on **Special Permit No. 17041** and **Preliminary Plat No.17005** unless appealed by filing a letter with the City Clerk within 14 days. This a recommendation to the City Council or County Board on all remaining items.

Scheer returned to the Chambers.

TEXT AMENDMENT NO. 17013, TO AMEND TITLES 26 AND 27 OF THE LINCOLN MUNICIPAL CODE FOR CAD (COMPUTER AIDED DESIGN/DRAFTING) STANDARDS FOR SUBDIVISION SUBMITTAL. **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Approval.

AND

COUNTY TEXT AMENDMENT NO. 17014, TO AMEND THE LANCSTER COUNTY ZONING AND SUBDIVISION REGULATIONS FOR CAD (COMPUTER AIDED DESIGN/DRAFTING) STANDARDS FOR SUBDIVISION SUBMITTAL. **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff Presentation: **Brian Will of the Planning Department** stated these two items are identical changes moving forward to either City Council or County Board, if approved today. Under the amendment, CAD files will be required as part of application submittal for preliminary plats, final plats, special permits, use permits, and CUPs. As it is today, electronic submissions are PDF files which are difficult to modify. The CAD file will provide a usable file that can be overlayed and commented upon as part of the review process.

Pam Dingman, County Engineer, said that she and **David Young, Public Works Department**, have been collaborating on this for two years, along with the Planning Department and the County Assessor. This is a modern and efficient way to handle the plats. Currently, paper

copies of plans might go back and forth several times to make sure things are correct, which is important for legal boundaries. They are entered and reentered several times along the way and in some cases, they have to be corrected with an affidavit. This new process will significantly reduce review time.

David Young, Public Works, said that in 2012, the City and County task force looked for opportunities to work together by using the same software and standards and to share the agreements and costs. By doing the review with electronic files, we hope to go from a 14-day process to a 1-day process. Omaha currently uses this system.

Finnegan asked if the development community had input. Dingman said yes, and there are a couple here today to speak. Young added that there is no other change to the process other than accepting the electronic documents.

Hove asked if the cost of implementation has been budgeted for. Dingman said this is an effort to create more efficiency within the existing system, so it is up to staff to find efficiencies. Overall, it will amount to a cost savings.

Proponents:

1. Brad Marshall, Olsson Associates, said Olsson Associates has been working with the County and City on CAD standards and very much appreciates the involvement of the development community as they submit many documents. This is an upgraded system and will make it easier and faster. Personnel time will also be saved. A test run of the system went very smoothly.

Corr asked if this causes any changes to current practices. Marshall said it does not create much work. As consultants, each firm has their own standards and practices. Everyone has been cooperative to make sure it is not too difficult for each to meet practice standards.

Washington mentioned concerns about the potential for loss of proprietary information. Marshall said that from a business perspective, everything we do could be proprietary so we worked carefully deciding what information will be shared.

There was no testimony in opposition.

Staff Questions:

Washington asked if there are any developers who do not submit drawings, whether CAD or PDF files. She wondered if hand-drawn plans are ever submitted. Will said not for the types of applications these rules would apply to.

Washington asked what steps staff will take to make sure the City and County do not give out proprietary information to others. Will said that issue was specifically addressed. The text says that only final plat and boundary survey will be shown.

Washington noticed the staff note that a bigger proposal will come forward in the future. Will said there are other issues that will be revised. Young said this is the first, incremental step and it will allow issues to be solved as they come up.

TEXT AMENDMENT. 17013
ACTION BY PLANNING COMMISSION: December 6, 2017

Finnegan moved for approval, seconded by Corr.

Washington expressed her appreciation for the small steps being taken to save money.

Corr thanked staff and developers for working together and investing so much time. This will be a valuable tool.

Scheer expressed his appreciation for the incremental steps being taken.

Motion carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer voting 'yes'.

Note: This is a recommendation to the City Council.

TEXT AMENDMENT. 17014
ACTION BY PLANNING COMMISSION: December 6, 2017

Finnegan moved for approval, seconded by Joy and carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer voting 'yes'.

Note: This is a recommendation to the County Board.

TEXT AMENDMENT NO. 17020, TO AMEND TITLE 27 OF THE LINCOLN MUNICIPAL CODE REGARDING SIGNAGE REGULATIONS PERTAINING NONRESIDENTIAL HEALTHCARE FACILITIES AND POST-SECONDARY SCHOOLS TO PROVIDE FOR INTERAL WAY-FINDING SIGNS AND FREESTANDING SIGNS. December 6, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Approval.

Corr disclosed the text amendment was discussed at a Mayor's Neighborhood Roundtable meeting that she attended. No other ex parte communications were disclosed.

Staff Presentation: George Wesselhoft of the Planning Department stated this text change would apply to nonresidential healthcare facilities and post-secondary schools. Currently, the regulations do not provide for marquee and directional signs and limit wall signage. Anything beyond the 50-foot requirement can be amended by the City Council. The basis for this proposal is to allow for more flexibility for campus signage associated with these larger uses which are generally located within residential areas. The regulations are still limited compared to other districts like commercial.

Corr said there were questions raised at the Mayor's Neighborhood Roundtable meeting about the differences between major and minor streets. In this case, Sumner is not a major street, so it is possible to put a huge sign there. That causes her hesitation. Wesselhoft said it can be expected that these uses will grow over time and there are other streets that could be impacted; however, as a general rule, there are other types of land uses and transportation issues that would be far more impactful than signage, and there are still protections written in for neighborhoods relating to size and illumination.

Corr asked about the impact of different types of illuminated signs. Wesselhoft said he is not an expert on illuminated signs and the proposed changes do not address illumination.

Corr wondered about the limitations placed on the number of monument-type signs allowed. Wesselhoft said he believes the limitation is one per campus.

Corr asked about removing the requirement that proposed signs be shown as part of the landscaping plan. Wesselhoft explained that these changes would not remove any landscaping requirements. It is simply unnecessary to address landscaping in the signage plan.

Washington asked for clarification about illuminated sign definitions. **Steve Henrichsen, Planning Department**, said signage in these areas shall have no exposed illumination. Most signs in these areas are backlit. There is already a section that says a campus can have additional signs, as approved by City Council, so that should alleviate concerns about any limit on emergency signs, which obviously need to be highly visible. Sumner is a local street, but it is important to the Bryan East Campus. The sign ordinance has a definition for a marquee sign. In the case of a hospital, these signs would be attached to a canopy or other area that projects from the building. A campus of this type has four or five major components, each with a different name, that are interconnected, so the additional signage helps the public to know which entrance to use.

Corr asked if signs are being removed from landscape plans because they are going to be separate. Henrichsen confirmed that there are separate plans for screening.

Proponents:

1. DaNay Kalkowski, Seacrest & Kalkowski, 1128 Lincoln Mall, stated the Bryan East campus has special signage needs. The signage plan exists as part of the codes and the regulations are quite limited in the context of a large campus. The main goal specifically for Bryan is discussed in the application for Special Permit 1219N, but it seemed useful to propose a text change at this juncture to create more flexibility. The proposed change will specifically allow marquee and directional signs, which have been allowed, but not expressly so within the code. These types of way-finding signs are very important on a hospital campus. The second aspect of the proposed text change is to allow more flexibility with sign size, again, given the large size of these campuses. A 50-foot sign is not as overwhelming on a multi-story building. Even if the text changes are passed, there are still two instances where the applicant will go to City Council asking for additional size.

Washington asked if requiring a signage plan for campuses was considered. Kalkowski said that most proposal will require a plan, just by the nature of the request. Washington clarified that she wondered if the legal language should include "must", in other words, specifically require a sign plan be submitted. Kalkowski responded that one can presume that if signage is being requested, a plan is required.

Harris asked if there is a "best practices" when it comes to signage for hospitals. Kalkowski said she is not aware of any and they might all be unique due to the variable nature of healthcare facilities.

There was no testimony in opposition.

Staff Questions:

Washington asked staff about the necessity of requiring a sign plan. Wesselhoft said that is a requirement of the special permit. He noted that there are those who meet the sign guidelines for their District who do not necessarily need to request an amendment.

Corr had questions about what other uses would be allowed in terms of signage. Wesselhoft said they would have to meet the guidelines for their area. Some areas are permitted up to 100 or 200 feet of signage space and beyond that, they could go to City Council. He noted that this is not like comparing "apples to apples" because this is a specific use type. Corr said her concern is that these uses are found in residential areas. Wesselhoft explained that while these proposed changes are more permissive, they are nowhere near as permissive as what is allowed in a commercial area.

Applicant Rebuttal:

Kalkowski said that in an O-3 District, for example, a business would be allowed significantly more signage. These provisions are still restrictive. Corr thank Kalkowski for the information as that was the point she was trying to get at.

TEXT AMENDMENT. 17020
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Hove moved for approval, seconded by Beckius.

Corr thanked the applicants for removing this from the Consent Agenda. She had lingering questions from the Mayor's Roundtable meeting and this cleared things up.

Scheer stated these changes are sensible for these larger sites where way-finding is so important and this is a good move.

Motion carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer voting 'yes'.

Note: This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1219N, TO ALLOW BRYAN MEDICAL CENTER EAST CAMPUS TO CONSTRUCT WALL SIGNAGE LARGER THAN 50 SQUARE FEET AND AMEND THEIR CAMPUS SIGNAGE PLAN, GENERALLY LOCATED AT 48TH AND A STREETS. December 6, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Conditional Approval.

Corr disclosed the text amendment related to this item was discussed at a Mayor's Roundtable meeting that she attended. No other ex parte communications were disclosed.

Staff Presentation: **George Wesselhoft of the Planning Department** stated this application to amend the special permit for the Bryan East Campus will add several new signs, two of which will exceed the regulated limit and will require City Council approval. Two of the new signs will be in the newly expanded area at the northeast of the site. Overall, the proposal will not be a detriment to any nearby residents because they are largely internal to the campus and the new buildings have large setbacks from streets.

Proponents:

1. DaNay Kalkowski, Seacrest & Kalkowski, 1128 Lincoln Mall, said this request is to amend the special permit because even if the associated text amendment passes, there are two instances where her client's request will exceed the maximum limit. The main purpose of the signs is to assist with way-finding for patients, their families, people from out of town, or those in stressful situations. Having each building clearly identifiable will make it easier for people to determine where they are heading when they enter the site. Though the aspects of the signs sound large, they are in keeping with the size and scope of the buildings. A few of the signs are pulled down so they are not visible by area residents. On one tower, the sign is up higher due to the fascia of the building. The new building will include a sign and Bryan would also like to incorporate their logo on the north side, so it equals 350 on the north face of the new building.

Beckius said he understands the need for way-finding. He asked how the towers are named because he has concern about changing the ordinance to help with a fundraising effort. Kalkowski said she will defer to the applicant to answer that but noted the importance of having easily identifiable buildings.

2. David Reese, Vice President of Clinical& Support Services for Bryan Health, said that several of the buildings have longstanding names that were chosen to commemorate prominent citizens in the community who were affiliated in some way with Bryan. He reiterated the importance of providing easy markers to provide visitors with so they start out in close proximity to their destination. In answer to Beckius' question, there are many aspects

to choosing a name and fundraising is just one. It is an opportunity to honor a prominent person or volunteer who has done great work for Bryan.

Washington noted that the characters appear to be a different scale on the 5055 Building. She wondered if that is accurate, or if it just appears that way in the rendering. Reese said it could be because in graphic design terms, the black on white skews the scale. It will not be larger. Washington expressed her concern that the illumination will impact neighbors. Kalkowski said they held a neighborhood meeting to explain the changes. Washington asked if they showed the wattage of the signs. Reese said they did not; only about the sign and the fact that it would be lit and would face north.

3. Don Sheets, Director of Facilities at Bryan Health, said the larger appearance is related to the scale. The other buildings are eight stories so the same letters appear smaller. The lettering will be black with halo lighting from behind. Scheer asked if there would be lighting for parking. Reese said yes.

4. Bob Norris, Nebraska Sign Company, said a good sign for reference is located at the medical center on 40th & Pine Lake Road. There is no exposed light source. The letters are acrylic, which mutes the LED lights.

There was no testimony in opposition.

SPECIAL PERMIT NO. 1219N
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Corr moved for approval, seconded by Finnegan.

Corr thanked Kalkowski for taking the initiative after finding an area where the regulations could be improved.

Beckius said this proposal is entirely appropriate.

Scheer commented that having clear signage is helpful for visitors.

Motion carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer voting 'yes'.

Note: This is a recommendation to the City Council.

COUNTY SPECIAL PERMIT NO. 17043 TO ALLOW SOIL MINING AND EXCAVATION ON PROPERTY GENERALLY LOCATED AT SW 112TH AND VAN DORN STREETS. **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: **Tom Cajka of the Planning Department** stated this application is for soil excavation on 7.5 acres in the northwest corner of this 20-acre property. The applicant states the volume to be removed is between 110,000 - 160,000 cubic yards. With these types of permits, it is generally required that the land be reclaimed and returned to its original condition when the excavation is done and a bond is required to guarantee that happens. There would be at least two miles of travel on gravel roads to get to the site. The Health Department has commented that the dust from the site must be controlled. One condition from County Engineer is that any damages to the road will be repaired. Only one entrance is allowed and it is in the center of the property on Van Dorn Street.

Washington asked how damage to the roads is determined. **Pam Dingman, County Engineer**, said Lancaster County has a very aggressive asphalt maintenance program that includes photo-documenting roads to sort paving needs. Those photos and inspections are the starting point. It is standard to have a maintenance agreement. The County also has the right to limit weight on asphalt roads, if necessary. Washington asked if that process also includes gravel roads. Dingman said they are not looked at as often, but it has come to light recently with various construction projects.

Proponents:

1. Nate Burnett, REGA Engineering, stated High Plains Enterprises is currently putting together the maintenance agreement, haul routes, and frequency of trucks entering and exiting. The permit covers a larger area that will be excavated. There are 2 wells within 1,000 feet of the area so as required, a hydrology study was conducted to confirm there will be no effect on the wells. It is estimated there could be 40 to 50 trucks per day at peak hours. The applicant is required to only operate during daylight hours, with no trucks allowed on Sundays. West Van Dorn is wide and is in good condition. There will be a water truck onsite to control dust. If approved, the fill from this area will be used on nearby projects to minimize the cost of hauling dirt from farther away.

Finnegan asked about the residential neighbors. Burnett said they received notice of this application and he has spoken with the resident farther to the east about the project.

Opponents:

1. DaNay Kalkowski, Seacrest & Kalkowski, stated she is appearing from John Benes who lives down the road, adjacent to the west on Van Dorn. His position is really neutral, but he wanted to express for the record that there are concerns that the conditions regarding dust control are met and, if they are not, that there is some actionable consequence. His family has had first-hand experience with the problems related to this kind of operation and hopes that they will now be addressed with the agreement in place.

Harris asked if there was any problem about the hours of operation. Kalkowski said the concerns are with the dust control.

2. Craig Johnson, 10365 W. Van Dorn Street, stated that his testimony is also neutral and has nothing against the borrow pit. He does have concerns about the topography of Van Dorn Street. Due to the width and good condition of the road, people tend to speed in that area. He is also concerned about the noise generated by trucks engine or "jake" breaking. Due to traffic being diverted to the area from other road and bridge closures in the area, some of the gravel roads are rutted and deteriorated. Dust control is key since visibility on the hilly road will be further reduced by dust. A traffic study should be done on Van Dorn and the posted speed limit should be 40 mph or less.

Washington asked if the primary concerns were engine breaking, posting a lower speed limit, and conducting a traffic study. Johnson said that is correct. We don't know what the traffic will really be or how long they will be moving the dirt.

Staff Questions:

Corr asked how often a traffic study is done. Dingman said traffic counts are rotated on a 3- to 5-year basis. They do respond to requests, but the counters are down during this part of the year.

Corr asked how someone would go about getting a sign posted and how far apart they need to be. Dingman said they cannot put up every sign that is requested due to financial constraints. She is not allowed to simply reduce speed limits upon request. There are a few situation where that happens under detour situations.

Beckius asked about avenues to control dust. Dingman said they can file a complaint with the Health Department or call County Engineer. There is a condition that a sign warning of trucks entering and exiting be posted.

Harris asked if engine breaking is allowed and how sign posting comes about. Dingman said she does not believe engine breaking is allowed. In this area, posting a sign for speed control would be done after a speed and traffic study. Signs do not necessarily control bad driver behavior. One method used is to work with County Sheriffs and State Patrol to enforce the speed limit.

Harris asked if decreasing the speed limit would decrease engine breaking. Dingman said the breaking is done is association with speeding, so in that respect, reducing the speed is a "two-for-one" solution.

Harris asked what can be done if the applicant does not comply with conditions such as dust control. Cajka said the permit can be revoked. He has worked on several permits for this use and dust control is standard language. Dingman added that they have said they will have a water truck on site.

Cajka added that the prohibition of engine breaking should not be a condition of this permit because it affects everyone, not just this special permit. Dingman said that in regard to traffic signs, she has to come forward with an engineering recommendation and the situation will be monitored as are all signs that may have changing needs.

Washington asked if there is any opposition to conducting a traffic count in spring. Dingman said she is not opposed when it is counting season.

Cajka addressed the question about how long mining will occur. The special permit is for three years. Anything beyond that, the applicant would have to come back to request additional time.

Corr asked who neighbors can contact if they notice the engine breaking or other problems. Dingman said those are typical calls in her office and any concerns would be routed to the right people to help. She added that working in cooperation with law enforcement to discourage speeding is an option.

Applicant Rebuttal:

Burnett said the operating manager has submitted a list of items to the County Surveyor. He notes that no engine breaking will be allowed near the pit and the water truck will be onsite. Hopefully, that will put some minds at ease.

Kevin Mack, High Plains Enterprises, said that he has worked on other projects and dust control is a concern. He cannot control trucks of other contractors, but he does control his own and engine breaking will not be allowed. He estimates the average speed, given the hilly terrain and weight load of the trucks, will be around 45 miles per hour. His crew is experienced and travel lots of gravel roads. Safety is their priority.

COUNTY SPECIAL PERMIT NO. 17043
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Corr moved for approval, seconded by Beckius.

Washington expressed her appreciation for the additional information as there were many questions.

Beckius said the controls are in place for the appropriate use of the site. He encourages neighbors to monitor and report any conditions that cause concern.

Scheer thanked the applicant and said public officials are ready to assist in making this a good experience.

Motion carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer voting 'yes'.

Note: This is FINAL ACTION by the Planning Commission unless appealed by submitting a letter of appeal to the Office of the County Clerk within 14 days.

[Break at 2:50 p.m.] [Meeting resumed at 3:00 p.m.]

COMPREHENSIVE PLAN AMENDMENT NO. 17007, AMENDING TO DESIGNATE THE NW CORNER OF S. 98TH STREET AND VAN DORN AS (N) NEIGHBORHOOD CENTER ON MAP 5.1: EXISTING AND PROPOSED COMMERCIAL CENTERS, GENERALLY LOCATED AT THE NW CORNER OF S. 98TH AND VAN DORN STREETS. **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Approval.

AND

ANNEXATION NO. 17019, TO ANNEX APPROXIMATELY 73.53 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED AT 91ST AND VAN DORN STREETS. **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Conditional Approval.

AND

CHANGE OF ZONE NO. 17030 FROM AG (AGRICULTURAL DISTRICT) TO R-3 (RESIDENTIAL DISTRICT) PUD, WITH SINGLE-FAMILY, MULTIPLE-FAMILY, AND RESIDENTIAL TRANSITION USES, WITH VARIOUS WAIVERS, ON PROPERTY GENERALLY LOCATED AT 91ST AND VAN DORN STREETS. **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: **George Wesselhoft of the Planning Department** stated he will discuss the annexation and change of zone. Andrew Thierolf, Long Range Planner, will discuss the amendment to the Comprehensive Plan. The change of zone area is slightly larger than the annexation area because there is an area that was annexed as part of the Van Dorn Coalition. This rezoning consists of 72.66 acres and the developer requests approval of 104 dwellings, 595 total multi-family, a 489-person residential healthcare facility, and office. There are a total of eight waivers requested.

The site map shows the Phase I area. The multi-family units would be zoned R-5 and are along the west of the site. The office or R-T area would be the located at the south end in the center of the property. The remaining areas would be R-3, with the exception of the substantial green space. Key to this area is the extension of the Steven's Creek sewer line.

The application proposes that building permits be allowed prior to completion of that trunk line so long as there are street water mains. The main arterial for the area is Van Dorn. As a condition, a roundabout is proposed at the intersection of 91st and Van Dorn. 98th Street is scheduled to be paved in 2018. There is a 20-foot trail easement along the north side of the creek. A memo was sent out December 5th pertaining to additional clarifications to conditions. In the R-5 area, a few uses were deemed inappropriate, including broadcast towers, personal wireless towers, and solar energy conversion systems. A comparable development is land use, density, and scale is Lennox Village. This proposal is typical for suburban land use density and is compatible with adjacent developments. The property is adjacent to City limits and can provide a full range of municipal services.

Andrew Thierolf of the Planning Department, said the amendment applies to the southeast corner of the area, at 98th and Van Dorn Streets, and does not change the zoning but amends the future land use to show a commercial center. Neighborhood centers are usually between 50,000 and 150,000 square feet and have to meet several criteria, which are listed in the staff report. This would be the 2nd center in the square mile. A future trail is also shown for the area.

Corr said this is an early stage so nothing is shown in detail. She wondered if Planning Commission will see the area again. Thierolf said the annexation and change of zone would still need to be done and more details and the density would be shown at that time.

Corr asked if the topography limits areas of development on other corners. Thierolf said much of the area is flood plain and floodway. The perfect spot would be a little more to the west, but the drainage way prevents that.

Hove asked for more information about the roads. Wesselhoft said there is not a plan to turn this into a 4-lane arterial. Turn lanes will be added at other sections, along with the roundabout at 91st Street. Hove asked if that is included in the first phase. **Bob Simmering of the Public Works Department** said the roundabout and turn lanes will be built as permanent improvements, meaning they meet the full extent of standards required for City streets.

Harris noted there were public comments and concerns about the height of the multi-family buildings. Wesselhoft said there have been similar waivers granted for other developments. **Steve Henrichsen of the Planning Department** said there are multiple examples around town such as Woodlands at Yankee Hill. Lots of new complexes are going to first-floor and underground parking so it is difficult to keep the height under 40 feet. If there is a large buffer area and the development is planned in advance, this request is more routine.

Finnegan noted the hilly topography and wondered how it will affect traffic in the roundabout. Simmering said the roundabout will have a direct impact on the speed of traffic coming in -- 22 mph is the rate one can comfortably drive through, including the grade. There is a throat that extends out so drivers will know the roundabout is coming up.

Proponents:

1. DaNay Kalkowski, Seacrest & Kalkowski, 1128 Lincoln Mall, came forward representing the applicant. In 2016, the owner was part of the Van Dorn Coalition, along with five others. In total, they controlled 300 acres. At that time, they worked with the city to amend the Comprehensive Plan to show the majority of the area as Tier I, Priority B. They then worked on the annexation agreement that would master plan 280 acres, including roads, water, trails, and parks. That plan also contained preliminary plan of site use. The reason for this planning is that the City opened up this vast area for development by deciding to fund the extension of Steven's Creek.

These applications are for the first 78 acres of development. The uses are consistent with the Land Use Map. This proposal creates a unique environment with a mix of uses. One thing that stands out is the amount of drainage and green space being preserved, particularly in this first phase. Those open spaces provide ample buffering.

The anticipated uses for the higher density R-5 area include multi-family and elderly housing. The height waiver for the area is supported by staff. The property to the west is anticipated to be commercial, so these proposed uses will provide a nice transition to the single-family residential to the east. The large amount of natural buffers also mitigates the impacts to adjacent properties. The small R-T area is a unique property and is cut off from other residential uses at 91st street and also to the west because of the drainage. This makes the parcel appropriate for a small office or daycare. It could even be used for residential and the proposal is for 10,000 square feet of office, or 12-units density. The final area is R-3 which generally follows the rules for that zoning district. There is also a 20-foot buffer of green space between the R-T and the single-family.

Grading and drainage were areas of concern to neighborhoods. While this is only the first piece, the site plan shows a conceptual layout for the remainder and master plans the entire area in terms of grading. In September, we hosted a neighborhood meeting and presented the conceptual plan. It was well-attended. The concerns were related to the drainage, density, height and setback waivers, and traffic, especially at the 91st Street intersection. We did try to address those concerns as best as possible and copies of the plan were sent out to anyone who signed in at that meeting. A major concession made by the developer was the agreement to fund and install the roundabout. The annexation agreement master planned all of the road improvements and the left and right turn lanes were included. These are intended to be permanent improvements that will not have to be removed in the future should the City widen Van Dorn Street. There were many conditions and we worked through many of them. There is only one item of disagreement with regard to Waiver No. 8 related to vertical deflections or vertical curves and we submit a motion to amend that.

2. Brad Marshall, Olsson Associates, noted the amount of trees and green space being retained. There is a stream stabilization project completed by the NRD and the site plan was modified to work around that. Considerable grade separations from street to drainage are proposed to slow down water flow to dissipate energy. This may be an area that can be worked out with Watershed Management in the upcoming year. Parks and Recreation has been

involved with the trail which will follow drainage and runs from the southwest out to 98th Street north of Van Dorn where it will continue to connect with the MoPac Trail. They are also working with LPS about the possible colocation of a park near a school.

Harris asked if the applicant agrees with the memo that was received. Kalkowski said they do with the exception of Waiver 8, which is the only part that their motion to amend applies to.

Harris asked what the maximum density is for Phase I and how it relates to other developments. Kalkowski acknowledged that the density will appear skewed due to the fact that Phase I contains all of the proposed multi-family dwellings for the entire area. The rest of the area is anticipated to be single-family dwellings. The Comprehensive Plan encourages density to make for more efficient use of infrastructure.

Hove asked where the entry and exit points will be. Kalkowski said the first phase has two points to Van Dorn and there is the entrance to Firethorn at 91st Street. A connection to the west can be expected when they develop and there will be multiple access point once other areas included in the master plan develop.

Opponents:

1. Mark Hunzeker, Baylor Evnen, 1248 O Street, came forward representing Firethorn. These applications should be delayed. There should also be a roundabout at 88th Street and his client also disagrees with the use of waiver. Changes were made and we only found out via email yesterday. There has been no comment regarding the waterline for the golf course. Firethorn was asked and agreed to dedicate right-of-way. The roundabout at 91st Street is offset to the south. We request a deferral to the December 22nd hearing to allow for time to discuss these changes. The request is to put 495 dwelling units in 20 acres. That is a larger population than most Nebraska towns. The request for the height waiver is necessary because it is impossible to build to that density and not put parking underneath. The use of waivers in R-5 and R-T give us pause. There are a lot of uses that are conditional or specially permitted that require some degree of compliance or use of a public hearing. There is high potential for unforeseen consequences that could be avoided by denying the waivers. This project is not so special that it should be permitted to avoid traffic issues or waive due process.

Harris asked what scenarios are of concern with the use of waivers. Hunzeker responded there are special uses that could raise concerns, like an outdoor recreational facility or some group living uses like imprisonment facilities.

2. Tam Allen, 1045 Lincoln Mall, stated he is a developer and he believes this area was always destined to be developed. He will live on the corner where the roundabout will be located. More traffic control should be considered for the area. The hills make those intersections dangerous and he is strongly in support of adding roundabouts at other intersections. The answer he received from the developer is that it is too expensive to add more. He also believes the very high density use will be problematic. Though many access points are planned, there are only two in the highest density area of the development. He supports the request for a delay in order to better understand the proposal. Firethorn is willing to donate the property for the roundabout, but there is a waterline there that feeds

the golf course. His final concerns are related to the spacing between the intersections and whether they comply.

3. Kristine Sewell, 3605 Doonbeg Road, has lived in the area for six years and has two children. She is not opposed to development but her main concern is safety. The roundabout is needed at Resort Drive where kids access the pool and restaurant.

4. Mark Wibel, Manager of Firethorn Golf Course, stated he is also not opposed to development and thinks this will be good for the community. However, there are concerns about the density being added. He receives numerous calls about close-call accidents from residents who exit onto Van Dorn. Firethorn is willing to donate property for another roundabout. There is also concern about the waterline located in right-of-way. Some of the assurances made should be formalized. It is important moving forward to consider how we can get creative with funding to make sure citizen safety is a priority.

5. Kandice Denker, 8931 Eagle View Way, came forward as chairman of the Firethorn Board. She echoes the concerns of previous testimony regarding citizen safety.

Staff Questions:

Corr asked for Staff position on the motion to amend Waiver No. 8. **Jared Nelson, Watershed Management**, said that water is heavy and has momentum. By changing direction, water slams into the pipe and this leads to the eventual creation of a weak point. This is a standard that the City does not allow deviation from. A second concern is safety. If something gets stuck, it could cause flooding. A final point is the ease for inspecting the system, as is required by Federal law.

Corr asked how long Nelson has been on staff. Nelson said over five years. The developer is building up the site next to drainage ways. In general, the City prefers to dissipate the energy of the water in more sustainable ways rather than doing it within the pipes.

Corr asked if he would still recommend denial. Nelson said yes.

Harris asked staff to address the issues presented by Mr. Hunzeker. Wesselhoft said that with regard to the waivers, the original report was looser. It referenced Planning Director approval for some of the uses. We looked at what should be permissible. One of the criteria that was significant in our minds was the considerable amount green space.

Harris asked where staff stands on the argument that changes were made late in the process and the opposition did not have enough time to respond. Wesselhoft said work has been down with the applicant the past several weeks. It is true that a memo was just issued yesterday. **David Cary, Director of Planning**, stated that the question about taking action is up to Planning Commissioners. Good-faith negotiations have taken place. From a staff perspective, we have had enough time to work out issues. If this body feels it does not have enough answers, then it is possible to delay.

Washington asked about the possibility of having two roundabout in such close proximity to one another. Simmering said there are other examples in town. The issue is funding the building of an additional roundabout.

Hove asked for comment on the fact that the proposed roundabout on 91st Street is curved and there appears to be another drive just to the north. Simmering said these issued are addressed in the Access Manual. The driveway just north of the roundabout at 91st would need to be at least 50 feet away.

Edgerton asked staff's view on having two roundabouts in this area. Simmering said that it is true that it would increase safety, but no force has been exercised to require that many. The impact fees for the area would probably not be enough to build both.

Hove asked why the roundabout is more south of the street. Simmering said they are generally offset, but he would have to defer to the designer as to why it goes south instead of north.

Scheer asked if this plan is still conceptual. Simmering said yes.

Corr asked how the right-of-way plays into the waterline. Simmering said it is substantial that it could remain under the road by permit. It is still the responsibility of the owner of the line.

Washington said if it is under that part of the road, it is the responsibility of Firethorn, but their cost for accessing it becomes more expensive. Simmering said that is correct.

Cary said that the topic of two roundabouts is a good example of plans that are generally in conformance and have staff support, but cannot be afforded. Our current plan does not include the widening of Van Dorn until 2040. This is a topic staff is working on - if there were an opportunity to take impact fees from elsewhere to use City-wide so that they are used in the best way. The 2nd roundabout is preferred, but there is not the funding or directed impact fee to pay for it. This is something that will be heard again as new developments come forward so it was important to let Commissioners know that it is being discussed.

Corr asked if the road is eventually widened, would the roundabout have to be rounded to two lanes. Cary said there is not enough information to answer that at this time.

Corr asked if roundabouts are more difficult to maintain. Simmering said they are less expensive to maintain than stop lights.

Finnegan asked how the decision to put the roundabout at 91st street, versus another intersection, came about. Simmering said that the conclusion was that it is the best location to catch and slow down traffic travelling in both directions.

Washington asked if Van Dorn will eventually be an exit to the East Beltway project. Simmering said he cannot answer that.

Applicant Rebuttal:

Kalkowski said that a deferral is not warranted. The use of waivers was related to each zoning district used and what did or did not meet the regulations for those districts. The original proposal was broader and Staff asked that it be narrowed. The R-T area was originally open to all uses so we went back and said we would follow code with a couple of exceptions for uses that are appropriate, such as a childcare facility. The only area that was kept broad was use in the R-5 area. The applicant is not asking to be treated specially. The PUD grant more flexibility for uses when it makes sense in a specific area. In this case, the significant buffer areas allowed some leeway. There are still provisions in place to protect neighbors, and there were no specific concerns mentioned about the uses. The annexation agreement was approved for 300 acres in the area. The agreement maps all of the access points. In that agreement, all that was said was that right and left turn lanes must be installed. While the R-5 is dense, it is not more than requested in other similar areas. Despite the fact that our original agreement did not require a roundabout, the applicant has agreed to fund one because it will be a benefit and will address some of the safety concerns. This is a permanent improvement, done to the ultimate grade and with a $750,000 price tag. There is no funding for a second roundabout, nor is one necessary. In addition to the cost, there is a large drainage way that will need to be moved. These are all issues that the City will run into in the future when they widen the road, and it is not fair to make the developer address all of these things at this time.

Marshall said a revised speed study has been considered. The road may or may not warrant a reduction in speed so we asked what other means of traffic control could be used. This concept is a work in progress and he is confident that many of the concerns can be addressed. Roundabouts are not centered which is part of the mechanism to slow cars. He is willing to talk more about lessening the impact to Firethorn. Part of the annexation agreement language is to work out issues related to the waterline. While staff's input is appreciated, we have presented a proposal that we believe is industry standard. It is possible the interpretation of design standards may be outdated and we should look harder at them.

Kalkowski noted that her clients have been upfront about not being able to fund a second roundabout. More specific questions about the design will be taken care of as we move through the process. There is an amendment to the annexation agreement to address the addition of the roundabout at 91st Street.

Beckius asked about the southward skew of the roundabout. Marshall said the roundabout is over 150 feet in diameter and is shifted 10 feet to the south. There are angles built in to slow traffic. Another consideration was the driveway to the north and providing a decent separation. Those things can be looked at and Firethorn has been gracious enough in dedicating that right-of-way.

Beckius noted the large buffer to the R-5 area to the south. He wondered what the northern buffer is. Marshall estimated that it is between 80 and 100 feet. Extending the minimum corridors has been discussed and it could easily be extended.

Corr asked if the channel will have to be moved to accommodate the turn lanes. Kalkowski said no. Corr said that even though there is no roundabout, there will be turn lanes installed for safe turning. Kalkowski said that is right. There are many instances of coming in and out at an unsignaled access point. Marshall added that as the commercial ground becomes viable, that may also warrant some additional infrastructure.

Hove asked how many vertical manholes there will be. Marshall said 15 to 20. He wonders about problems with many discharge points. Water will be collected from surrounding areas and the streets.

Washington asked if there are others that are that concentrated. Marshall said Waterford Estates, Charleston Heights, and Fallbrook are all examples. Hove asked why those were approved. Marshall said it is based on the interpretation of standards. He is not saying those standards have changed, but staff made a different determination in those cases. He is not aware of any issues or failures that ended up as expenses for the City. Scheer wondered why previous proposals were approved. Marshall said he does not know but the processes were different.

Harris wondered if there is any future phase where a second roundabout might be considered. Kalkowski said that in this area, once these are built to permanent grade, that will be it. If the commercial corner develops, the City has the right to ask us for a traffic study to see what needs to be done.

Scheer said that one thing that gives him pause is whether the roundabout is in the best location. He wondered if the greater volume and density to the west would make another location better. Kalkowski said that was considered. After weighing the factors, the scale tipped towards the 91st Street intersection that will serve traffic coming from both directions.

Washington said it is hard to look at past decisions. Kalkowski said that is a city-wide problem where access points are needed but do not have adequate funding. The permanent improvements will already be installed when the City does the road widening, but the problem is that those projects are in the future, so how do you attach that to one developer.

Scheer gauged if there would be any interest in deferral among Commissioners. They agreed there was no interest in deferral.

Cary noted that the East Beltway would be a State project, generally along 126th Street. As of now, it will connect at Pine Lake Road, Pioneers Boulevard, O Street, Adams Street, and Fletcher Avenue. 98th Street will be paved to County standards in the immediate future.

COMPREHENSIVE PLAN AMENDMENT NO. 17007
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Corr moved for approval, seconded by Beckius.

Hove said he will support these applications even though the discussion about the roundabout is difficult as safety is a big concern. 91st Street makes the most sense. As far as uses go, each

party will have to trust each other and work through details. Hopefully, they will find solutions that work for all.

Beckius stated he will support this motion with the December 5th memo and deferral is not warranted. He would like to see a change to the roundabout from its off-center placement to the south. The waivers do not concern him because of the buffers.

Finnegan said she will support the motion as presented. She struggles with the waiver because if it has worked in other neighborhoods, she thinks it could work here, too.

Joy echoed the thoughts of her fellow Commissioners and will support the project.

Scheer said he would find it difficult to oppose this proposal. There are some issues to work out and there is some validity to the timing issues brought up by Mr. Hunzeker. He agrees that the roundabout should not be offset to the south. The developer should bear that consequence and not expect Firethorn to go above and beyond.

Harris said discussion about the location of the roundabout should continue and that can be done at the Council level. Another broader issue is dealing with annexation agreements. We have to ask what changes are reasonable and in the interest of having the predictability the Comprehensive Plan calls for. Deferring at this point will not yield more answers.

Motion carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer voting 'yes'.

Note: This is a recommendation to the City Council.

ANNEXATION NO. 17019
ACTION BY PLANNING COMMISSION: December 6, 2017

Corr moved for approval, seconded by Edgerton and carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer voting 'yes'.

Note: This is a recommendation to the City Council.

CHANGE OF ZONE NO. 17030
ACTION BY PLANNING COMMISSION: December 6, 2017

Beckius moved for approval, seconded by Hove.

Corr noted that due to holidays, there will be extra time to work things out.

Motion carried, 9-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer voting 'yes'.

Note: This is a recommendation to the City Council.

[Break]

TEXT AMENDMENT NO. 17001, AMENDING CHAPTER 27.63.685 OF THE LINCOLN MUNICIPAL CODE RELATED TO DELETE THE ACCESS DOOR LOCATION REQUIREMENT, AND TO ADD EXTERIOR DOOR OPENING REQUIREMENTS FOR A SPECIAL PERMIT FOR OFF-SALE ALCOHOL SALES: **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Staff Presentation: **Brian Will of the Planning Department** said this is the third time this appears before Planning Commission. The only new thing is a brief memo that includes some revised text from the applicant.

Edgerton asked if the item will advance to City Council no matter what the vote is. Will said that is correct. This is not final action but a recommendation to the City Council.

Harris said that at the last hearing, there were concerns raised by Commissioners that this amendment would increase the City's liability and the risk for lawsuits from other retailers that would argue that their service is equally essential as food. She wondered where legal staff stood on the actual, calculated risk. **Tim Sieh of the Law Department** said the City is always at risk of that. This is a legislative action where a distinction is being made. If someone were to challenge, they could question whether the distinction made was somehow arbitrary. Harris asked if this opens the door for other entities and make it more difficult to say "no". Sieh said it absolutely does. Retailers will come forward asking "why not me?" It is part of your role to make those kinds of decisions. There is always risk of someone challenging decision by Planning Commission or City Council and there could be enforcement issues down the road, but legally, it can be done. It is up to you whether or not it should be.

Corr believes that if this is granted, others will want an exception from retail in order to sell alcohol and it would be difficult to justify a 'no' if they seem just as essential. That will become very problematic and will dilute the zoning codes.

Washington said that looking at what is before them today, a third version is presented. Every time a change is made, it creates another opportunity for misunderstanding. There have been changes made to the definition of grocery, changes to how goods are displayed. The intention seems to be to clarify but instead it has given her more pause. Due to changes in legal language, it appears that now there are four options instead of two clear options. That makes the language seem much softer and more tenuous. Her concern is that the changes proposed today do not make the amendment clearer. Sieh said the amendment was not drafted by Law, but by the applicant. Washington asked if Law interpreted it the same way. Sieh suggested that the applicant be allowed to address the question first.

Corr questioned the language "at all times" because it gives the impression a store will be open 24 hours. Harris said that language was her suggestion, intending to mean that food sales were ongoing and not intermittent.

Proponents:

1. Amy Tabor, 855 S. 35th Street, said that they reached out to other local grocers and made slight revisions with the intent of being more inclusive and to clarify the 100-foot distance. This was based on response from the Near South neighborhood. We realized that the 100-foot requirement from the public entrance was only required from the residential district and not building use like daycare, for example. We added language in an attempt to maintain as much separation as possible. We found that some stores have liquor licenses but are not definitively grandfathered in. They were required to file their status and if the premises is transferred, it would lost its status. In the case of A Street Market, a license under the current ordinance would not allow for the transfer or to rebuild.

Washington asked if the intention was to make certain that anyone in this situation would have 25 feet or a public street. Tabor said the language was modeled after the restaurant exception language.

2. Brande Payne, Chair of Open Harvest Board, said they were seeking more clarity in the language and not to bring in any loopholes. We were attempting to shore up concerns.

Harris asked why "public street or alley" was added. Brande said that the street behind Open Harvest is a public street though it is the width of an alley. In speaking with A Street Market, there is a first floor residential use nearby. The alley separates them, but not at the full 25 feet. There has been a long misunderstanding that they did not want to sell, but actually, this ordinance has preventing them from selling as well. Why they may not have the full 25 feet, there is still a clear line of separation.

There was no testimony in opposition.

Staff Questions:

Washington asked for Staffs' impression of the new language provided by the applicant. Sieh said their desire is to have a 25-foot separation between the licensed premises either to the residential district, or the property line of certain uses, and a 100-foot separation from the front door to a residential district or the property line. If he is right about their intent, the most recent language provided does not accomplish that. A motion to amend could be made, or it could be taken up that way at City Council.

Harris asked if the amended version offered at the last public hearing was clearer. Sieh agreed the previous version was clearer. Harris asked if the specific uses like daycare, park, etc. could be added to their last version to accomplish the intent of the applicant. Sieh said it would but the public street or alley would also have to be added.

Harris asked staff how they feel about the inclusion of "street or alley" in the language. Will said this is not about the definition of a grocery store. It is about the distinction made

between a grocery and everyone else. The concern is that other retailers will come in and ask why they are so different from a grocery store, and it will be harder to make that distinction to say 'no' in the future.

Beckius said he struggles with the idea that the City feels as though a retailer that sells alcohol is any different from say, a 24-hour drive-thru restaurant. They have no separation requirements. The same goes for conveniences stores. That use adds extra lighting, traffic, people and litter. Will responded that the City has not argued that. The ordinance in place was created through a cooperative effort among many different interests. It was more than just staff or Planning Commission coming up with the regulations. They considered the general safety of the community and the regulation of alcohol was part of that standard. Beckius asked if it was that case that community consensus is the reason for the current regulations. Cary responded that it is a good question. Will is correct that this has not been about defining grocery. All throughout our process this time, we did not hear community-wide opinion that warrants staff supporting the change in policy.

Beckius asked if community consensus drives planning policy making. Cary said it is a big part of the process. There has always been a community process and public discussion on some level and it informs the decisions of staff. It does not drive decision-making because we still use our professional experience to understand the impact.

Beckius asked if the policy would be the same in the B-1 and B-3 Districts were being set up today without any knowledge of the past. Cary said he does not want to speculate on hypothetical situations. There are many things that could be done differently and if we were going to make a big change, there would be a thorough public process. Beckius commented that he can't get a good gauge of what Planning wants. Cary said that staff is reacting to the proposal that was presented. The question presented was not a matter of cleaning the slate. This is a specific reaction to this proposal. Beckius noted that with other issues, he senses that the changes are moving towards an ideal, such as with the CAD designs passed earlier today.

Corr commented that what is on the books was borne of a compromise reached between many parties in the city. This is the ideal that has been working.

Will commented that staff does not have any sense from the community that the current regulations are missing the mark. This was not an evaluation of the existing regulations; it was an evaluation of the proposal that came in. Our review was based on that specific proposal and whether or not it makes the ordinance better, how it will affect the community, and what will happen if it is approved. We did not ask if we should go back and revisit all the regulations. These are the regulations in place and they have been working. This is a proposed amendment; we give you our best sense of its impact.

Corr asked for clarification about the ability for a grandfathered business to rebuild. Will said there is a provision for nonconforming uses that there is a two year deadline to rebuild once it is completely destroyed. Even that is not a simple, straightforward answer. There a nonconforming uses and pre-existing special permits; it's all about timing and there is no

blanket answer. Corr noted the applicant had mentioned the location of the former Sun Mart at 48th and Van Dorn. Will said that is in the B-2 District so the standards are different and that store would not have been impacted by this.

Applicant Rebuttal:

Brande Payne, Chair of Open Harvest Board, said that she has heard a few ongoing themes. First is that the change would open the potential for more lawsuits against the City. That is the case for any matter. The City previously decided on a similar exception for restaurants and there have been no issues. We argue that this request is similar. Next, there seems to be a theme that it is up to us to show how this will benefit the entire City. It is often the case that an individual entity sees a problem or a lack of forward-thinking and requests an update. That happened at the hearing today in the case of the signage for Bryan hospital. The applicant saw a way that the codes could be improved and submitted a solution in the form of a text amendment. Finally, many people have brought up the potential impacts of our proposed change. This disregards the fact that we may not understand the negative impacts that may have occurred because of the existing language.

Scheer asked if they are willing to accept the language clarification made at today's hearing. Payne said yes. That language more clearly expresses their intent.

Sieh drafted amended text that better addresses the intent of the applicant's December 5th memo, as follows:

MOTION TO AMEND TEXT AMENDMENT NO. 17001, AS OFFERED BY THE APPLICANT IN MEMORANDUM DATED DECEMBER 5, 2017

LMC 27.63.685

(b) The licensed premises of any building approved for such activity must be located no closer than:

(i) 25 feet, a public alley, or a public street from the property line of a premises used in whole or in part for a first-floor residential use, day care facility, park, place of religious assembly, or state mental institution or from a residential district, and

(ii) the nearest public entrance shall be located at least 100 feet away from the property line of a premises used in whole or in part for a first-floor residential use, day care facility, park, place of religious assembly, or state mental institution or from a residential district.

Harris asked if there needed to be further clarification of the phrase "at all times" in the text amendment. Payne said their understanding of that language is that it would be interpreted as meaning during business hours.

Will noted that the width of public streets and alleys can vary from 12 to 20 feet. Payne said the main protection is the 100-foot distance to the main entrance. She assumes no one would be allowed to build a building directly backing a residence.

TEXT AMENDMENT NO. 17001
ACTION BY PLANNING COMMISSION: December 6, 2017

Corr moved for denial, seconded by Finnegan.

Corr reiterated her concern that this change will weaken the codes. One day another type of retailer, such as a pharmacy, will appear with their attorney to argue why their use is just as essential. If that request is not granted, they could file a lawsuit. The language adding the public streets and alley makes this proposal even less desirable. She headed the downzoning of the 40th and A neighborhood and this is part of the reason. She has nothing against Moran's liquor store; they are a friendly business. But she does not believe that A Street Market would even be successful selling with the liquor store and a gas station so nearby. This will not benefit the neighborhood. The intent of the proposed text amendment is to find a way for Open Harvest to sell, but it creates a city-wide change.

Finnegan thanked the applicant for pursuing this change. For her, this has never been about Open Harvest, which she loves. This has been about changing an ordinance that applies to the entire city. She believes in the community process. Thirteen years ago, many groups came together and agreed on the ordinance that was put into practice. Caution should be used in changing an ordinance when there is no widespread community consensus to do so. Outside of the Open Harvest community, there have been no letters or testimony provided in support; in fact, there was more widespread opposition. It is a slippery slope to ignore what we have heard from the community. There are many ways to look at this situation and she does not believe this is the best answer. She is sorry from her heart, but her head is telling her the right thing to do is vote for denial.

Harris thanked the applicant for their patience. She is not completely sure how she feels about the public ~~comments~~ alley, but she is willing to move this proposal forward and is comfortable with the language settled upon today. When she first heard about this, she was reluctant to approve it, but the more she learned about the history of alcohol regulation in Lincoln, the more she changed her mind. In 2004, Mayor Seng proposed to eliminate the waiver system and Planning Commission at that time voted 6-2 against it, arguing that the change would hurt small, local businesses and groceries. Later, an exception was made for restaurants. If you argue that a restaurant brings enough value to neighborhoods, and that food sales mitigate the alcohol sales, then the same argument can be made here. We have repeatedly heard from those in the grocery industry that alcohol sales are a valuable tool to remain profitable. Without this tool, there are consequences, the worst being the creation of food deserts. Food deserts do not have to be large geographic areas; it is related to access to food without access to transportation. Neighborhood groceries within walkable distance are important for the vibrancy of neighborhoods. If we want groceries to locate within neighborhoods, we cannot regulate them out of existence. She decided that when we worry about the unintended consequences of new language, we cannot ignore the unintended consequences of the current ordinances. It is fair to say the situation Open Harvest finds itself in today is an unintended consequence of the 2004 ordinance change. Older neighborhoods do need protections. The question is how to balance protections without sacrificing access to goods and services that make for a vibrant neighborhood. The language presented today is flexible enough to accommodate that.

Beckius said he will vote against the denial. Although neighborhood safety is at the forefront of his mind, the model of grocery stores has changed and grocers today need alcohol sales to be economically viable. He does not believe alcohol sales are any more harmful than a 24-hour drive-thru or gas station. From a planning perspective, there are other factors mixed in, but overall, there are other allowed uses that are not diametrically different from a grocery that sells alcohol.

Washington stated she was supportive of the proposed text amendment at the last hearing. When she saw that the applicant had proposed another change, that muddied the issue and she would not have been able to vote to recommend approval. She was relieved to hear that was not the intention of the applicant. Commissioner Harris expressed concerns eloquently. Core neighborhoods do need protection and respect from within the growing city. Businesses should not be penalized because they did not take advantage of grandfathering. Allowing small grocers to sell in the B1 and B3 Districts will not be a detriment to the city. If problems do arise, they can be addressed.

Hove acknowledged that Open Harvest is a unique and positive business, but for him, this is a case of one business seeking approval for a change that would apply city-wide. He is also unsure that this would be a driving factor in creating more businesses in neighborhoods.

Joy said she echoes the thoughts of Commissioner Harris. She finds this proposed amendment to be a forward-thinking changes.

Edgerton said she will not support the denial. Looking for community consensus is important, as is considering the position of neighborhoods. It is also important to acknowledge that the marketplace has changed. A carte blanche rule without any exceptions does not provide protections. There are plenty of locations that have been grandfathered in.

Scheer said his vote has not changed. He appreciates all of the testimony from all three hearings and thinks it will be helpful for the City Council.

Motion for denial failed to carried, 4-5: Corr, Finnegan, Hove, and Scheer voting ‘yes’; Beckius, Edgerton, Harris, Joy, and Washington voting ‘no’.

Beckius moved approval, as amended by the applicant; seconded by Harris.

Sieh clarified that the motion is for approval, as amended in the proposal submitted by the applicant as of the December 5, 2017, amended memo.

Motion carried, 5-4: Beckius, Edgerton, Harris, Joy, and Washington voting ‘yes’; Corr, Finnegan, Hove, and Scheer voting ‘no’.

Note: This is a recommendation to the City Council.

[Harris exited the meeting at 6:25 p.m.]

TEXT AMENDMENT NO. 17019, AMENDING DEFINITIONS TO COMBINE WAREHOUSES, WHOLESALE AND DISTRIBUTION CENTERS INTO ONE USE DEFINITION, AND AMENDING RELATED REQUIREMENTS: **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff Presentation: **George Wesselhoft of the Planning Department** stated this amendment is simply to provide more clarity to language and definitions in the ordinance related to warehouses and wholesale and distribution centers. Under the current ordinance, wholesale distribution was considered a specially permitted use in certain zoning districts, but only warehouses were defined. The definitions keep the same 50% threshold for floor area for storing goods and material. The text change will provide greater predictability and will clarify and consolidate these uses under the definition of warehouses.

There was no public testimony on this item.

TEXT AMENDMENT NO. 17019
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Beckius moved for approval, seconded by Hove.

Beckius stated these are reasonable changes to accommodate these similar uses in the zoning.

Motion carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, Washington, and Scheer voting 'yes'; Harris absent.

Note: This is a recommendation to the City Council.

ANNEXATION NO. 17022, TO ANNEX APPROXIMATELY 11 ACRES, ON PROPERTY GENERALLY LOCATED AT S. 84TH STREET AND AUGUSTA DRIVE: **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Washington; Scheer absent.

Staff recommendation: Approval.

AND

CHANGE OF ZONE NO. 17019, FROM AG (AGRICULTURAL DISTRICT) TO R-3 (RESIDENTIAL DISTRICT), ON PROPERTY GENERALLY LOCATED AT S. 84TH STREET AND AUGUSTA DRIVE: **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Washington; Scheer absent.

Staff recommendation: Approval.

AND

SPECIAL PERMIT NO. 1423K, TO REVISE THE EXISTING HIMARK CUP TO ADD 29 SINGLE-FAMILY LOTS ON PROPERTY GENERALLY LOCATED AT S. 84TH STREET AND AUGUSTA DRIVE: **December 6, 2017**

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Washington; Scheer absent.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Commissioner Scheer declared a conflict of interest and exited the chambers.

Staff Presentation: **Brian Will of the Planning Department** said that this item would have been on the Consent Agenda and is straightforward, but because it is adjacent to a neighborhood and golf course, it warranted its own hearing. This area is covered by a CUP with portions within and outside of City limits. The annexation is contiguous to City limits, is urban in character, and can be served by a full range of services. There is a change of zone request from AG to R-3. The 10.9 acres coming in would also be R-3. The Land Use Map shows this area as urban and green space because of the golf course which is appropriate to convert to residential uses. The special permit application is to amend the HiMark CUP by changing the internal lot layout where there is golf today. The lots are consistent with others in the area and the street pattern is logical and provides for further development. No waivers were necessary.

Beckius asked if the lots were consistent with existing neighborhood lots in the surrounding areas. Will said yes.

Corr asked for clarification about the number of dwelling units proposed. Will said a certain amount of density is allowed by the design standards based on overall acreage of the CUP. There is a maximum number of 2,800. As it is, they only show potential use for up to 585 and they are not even getting to that. They only go up to 397. Corr asked if they would use the AG areas if they wanted to go up to the 585. Will said yes.

Washington if the proposal leaves the area outside of the change of zone as the golf course. Will said that is correct. Washington asked if it is consistent to annex a small piece. Will said everything about this proposal is straightforward because the original development showed a mix of residential and the golf course. Some expect the golf course would remain forever, but in reality, that is rarely the case.

Corr asked why the entire area is not annexed. Will said that at this point, the County maintains much of the roads and an improvement will be made to 98th Street. Since it is golf course, there is not much to gain. Plus, a major portion cannot be sewered easily, though the grading plan allows it to be served by gravity sewer.

Proponents:

1. Tim Gergen, Clark Enersen Partners, 1010 Lincoln Mall, said the question about annexing the rest of the property is over sewerability. This annexation represents the last piece that can easily be sewered. The housing market is good right now, so the goal is to bring in some single-family homes. The clubhouse and banquet space is not thriving, so it will be moved to a more central location. This proposal has been underway for the last nine months. There have been several neighborhood meetings and we listened to neighborhood concerns and came up with this concrete plan.

Hove asked if the golf course will keep 27 holes. Gergen said that is up in the air right now, but they may go to two, 18-hole courses, which might be easier to manage.

Corr said there were comments of concern regarding golf carts crossing streets. Gergen said based on experience, new holes are already designed with plenty of separation to yards. Still, there are a couple that cross the street. The Ridge has the same issue.

There was no testimony in opposition.

ANNEXATION NO. 17022
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Washington moved for approval, seconded by Joy and carried, 7-0: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, and Washington voting 'yes'; Scheer declared a conflict of interest; Harris absent.

Note: This is a recommendation to the City Council.

CHANGE OF ZONE NO. 17034
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Edgerton moved for approval, seconded by Washington and carried, 7-0: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, and Washington voting 'yes'; Scheer declared a conflict of interest; Harris absent.

Note: This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1423K
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Edgerton moved for approval, seconded by Washington and carried, 7-0: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, and Washington voting 'yes'; Scheer declared a conflict of interest; Harris absent.

Note: This is FINAL ACTION by the Planning Commission unless appealed to the City Clerk's office within 14 days.

[Scheer returned to the chambers]

CHANGE OF ZONE NO. 17028, TO CHANGE VARIOUS ZONES ON APPROXIMATELY 30.71 ACRES, GENERALLY LOCATED IN THE VICINITY OF THE FORMER MISSOURI PACIFIC RAILROAD CORRIDOR BETWEEN N. 22ND STREET AND N. 35TH STREETS: December 6, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, Washington, and Scheer; Harris absent.

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

Staff Presentation: George Wesselhoft of the Planning Department stated this request consists of 30.71 acres around a rail corridor between 22nd and 35th Streets. There are two subareas, the east and west. The primary aim is to remove I-1 zoning from the area and to do some associated zoning clean-ups. This is a City-initiated change of zone and is supported by the Health Department and the Urban Development Department. The basic premise is that I-1 zoning is not compatible with the surrounding residential areas due to potential negative effects involving chemical use. All existing uses were kept in mind and can continue under these new designation. As far as heights, setbacks, and other requirements within proposed zones, these changes are not drastically different. There was a neighborhood meeting held on November 1st. Notices were sent and those in attendance did not express any concerns. Staff also contacted property owners. There is one letter of opposition from Lincoln Lumber. Most of the questions were about intent and uses.

Beckius reiterated that those businesses currently operating will be grandfathered and can continue. Wesselhoft said the larger business, such as the lumber yard, are classified as specific uses and are permitted, by right, even in the proposed zones. They can continue to operate as they do today. The text amendment related to warehouses is loosely related to these changes of zones in that staff saw an opportunity to clarify definitions and uses while reviewing uses for this area.

Beckius asked if there are any current uses that would not be permitted as a result of these proposed changes. Wesselhoft said no. There is a house at 925 Short Street that is legal nonconforming now. Beckius asked if any other current uses would be made legal nonconforming. Wesselhoft said not that he is aware of.

Washington noted that her question regarding Lincoln Lumber Company has been answered since the change of zone would have no effect on their use. She was also curious about impacts to current uses. The East Campus Community Organization supported the downzoning and their only issue was with the R-6 zoning at the east end; they would prefer R-4 zoning.

Wesselhoft said the residential uses in the east include an 8-plex and a building with 15 units. The R-6 zoning was selected so that those uses are permitted. If the single-family units were ever to convert to multi-family, they are limited by the smaller size of their lots.

Opponents:

1. Allan Smith, 925 Short Street, stated he is concerned that he will lose value on his property by being down-zoned. In the I-1 district, he could built to 70 feet in height and this change takes him down to 30 feet. He would not be able to rebuild if his house burned down. He is not allowed to put a garage on his property because he is close to the University. They own a lot next to his house and they broke his waterline. They denied him an easement on the street and the waterline had to be moved to another street. They also cut down a large tree on his property. He is very unhappy with the University and no one will respond to his concerns. The property has been zoned Industrial since before UNL was there and it will cut the value of his property in half. He was told his gravel street would be paved years ago but that money got diverted. Water is also being diverted onto his property.

2. Don Hamill, President of Lincoln Lumber Company, stated the City sued him in 2004 for the railroad land. They wanted it for a bike path which his property is now in the middle of. The land is an active railroad and is not vacated. The City does not have jurisdiction over this railroad; it belongs to the Federal Surface Transportation Board. They specifically addressed zoning and said the City does not have any jurisdiction over this. Therefore, as the landowner, he should be excluded from this. He has been able to make good decision to compete with larger stores and this kind of uncertainty in unnecessary. He won his case in the District Court and then the 8th Circuit Court of Appeals and is able to provide written records for both. His business will be passed on to his daughters and they want to know what will happen. He would not have been so successful if he were not honest, and he has waited all day to present this testimony.

Finnegan asked where the line starts and ends. Hamill said he owns the lumber yard and the lumber yard owns the railroad. The City owns up to 19th Street and wanted the land for a bicycle path.

Beckius asked what Lincoln Lumber does on the land today. Hamill said they have primarily been a contractor lumber yard. They also have a manufacturing operation where they do interior trim. Most of that is direct selling and they have sold 90% of inventory at times. Beckius asked if any chemicals were used in production. Hamill said no, not in any way.

Staff Questions:

Beckius asked for more information about the railroad. Wesselhoft said it was noted that the rail line is private property. Staff contacted Roger Figard and the Law Department, but nothing was found that would prevent a change of zone. It does not affect them from a use standpoint. Sieh stated the Transportation Board does have exclusive use of the railroad. The item can move forward to the City Council and determination can be made if there are factual issues. There was a request to remove this property from the recommendation. This

body may not have the authority to do that. Planning Department could remove the areas from their application, or Planning Commission could recommend they be removed.

Hove asked if these zoning changes affect them at all. Sieh said it sounds like they would be able to continue to operate. He is confident there is not a preemptive issue. The questions can continue to be explored.

Washington asked if the zoning change would impact property value. Sieh said it may or may not; that is up to the County Assessor to make that change. Washington said she understood that, but at the same time, impact to the home or business owner is an issue that this body looks at tangentially. She went on to say that it would be up to the property owner to appeal. Sieh said that if we go with the argument that a change in zone results in a valuation change, then by that argument, their property taxes could go down. Washington said she does not know what each property owner would want. She just wanted to be aware that a change in zone could mean a change in valuation.

Finnegan asked if the uses would be grandfathered in. Wesselhoft said the uses are permitted. Cary said that the process was to take a careful look at uses and propose new zoning where uses are allowed, by-right. The bigger topic of discussion was removing as much of the industrial zoning as possible due to its close proximity to residential areas.

Washington commended Staff for looking out for the greater good by reducing industrial uses near residential uses. This proposal was brought forward and she had not heard from the opposition until today, so she is making an effort to understand the information.

Mr. Smith requested to speak. Chair Scheer informed him that, according to the Rules of Order, he is not allowed to provide any comments after his original testimony in opposition.

CHANGE OF ZONE NO. 17028
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Corr moved for approval, seconded by Beckius.

Washington said she has been on this commission for a year. There was a proposal looking at a change of zone south of O Street where there was one owner who was going to lose the option of height after the change of zone. She wonders if this situation is similar where potential future value is being taken away from a property owner. Corr noted they would only lose 20 feet.

Corr added that if someone wanted to develop at that height, they could put in a special request to exceed the height.

Beckius said he agrees with Washington that there could be some limitation on this owner's potential use of the property; however, he does not see that coming forward any time soon. This is an incremental step and there are other options to be explored should other uses be determined to be attractive.

Hove expressed his appreciation for the public testimony. He encourages further discussion with Planning staff between now and the City Council public hearing.

Scheer said he will support this application. The lot size will have an effect on how high a future building could go.

Finnegan said that she has to go with her head on the vote and the change in zone is appropriate.

Motion carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, Washington, and Scheer voting 'yes'; Harris absent.

Note: This is a recommendation to the City Council.

STREET AND ALLEY VACATION NO. 17011, TO VACATE RIGHT-OF-WAY, ON PROPERTY GENERALLY LOCATED AT 1200 AND 1221 BEECHCRAFT ROAD: December 6, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, Washington, and Scheer; Harris absent.

Staff recommendation: Conformance with the Comprehensive Plan.

There were no ex parte communications disclosed.

Staff Presentation: George Wesselhoft of the Planning Department stated this request is to vacate the right-of-way for Lots 7 and 8. Sky Ranch Acres was first platted in 1971. Sky Ranch Acres 1st Addition is to the west and there is a residential pathway. The pathway was left as right-of-way. The adjoining property owners mow and maintain the area and have now requested to purchase the property from the City. They have thought for years that they owned the strip. The recent review of the area showed the area was still owned by the City. It is unusual to have a 15-foot easement rather than an outlot.

Edgerton asked if the homeowners brought this to the City. Wesselhoft said yes.

Proponents:

1. Joe Borer, 1200 Beechcraft Road, said that Staff let them know this was right-of-way and the City no longer had an interest in ownership so we could start the paperwork to purchase the land back from the City. We have maintained it all this time.

2. Steve Shald, 1201 Beechcraft Road, was on hand to answer any questions.

Corr noted that the Assessor's website does not show the correct ownership. Wesselhoft said Staff is aware of that and it just hasn't been updated.

There was no testimony in opposition.

STREET AND ALLEY VACATION NO. 17011
ACTION BY PLANNING COMMISSION: **December 6, 2017**

Hove moved for Conformance with the Comprehensive Plan, seconded by Washington.

Commissioners thanked the applicants for waiting and for taking care of their properties.

Motion carried, 8-0: Beckius, Corr, Edgerton, Finnegan, Hove, Joy, Washington, and Scheer voting 'yes'; Harris absent.

Note: This is a recommendation to the City Council.

There being no further business to come before the Commission, the meeting was adjourned at 7:55 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, December 20, 2017.

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