

## FACTSHEET

**TITLE: CHANGE OF ZONE NO. 05035**, a text amendment to Title 27 of the Lincoln Municipal Code, requested by Mark Hunzeker on behalf of Eiger Corporation, to amend Section 27.63.630 ©) of the Zoning Ordinance for theaters in the B-5 Planned Regional Business District, to allow theaters with more than six screens, provided they are located outside a 6.5 mile radius measured from the center of the intersection of 13<sup>th</sup> and O Streets.

**STAFF RECOMMENDATION:** Denial.

**ASSOCIATED REQUESTS:** Comprehensive Plan Amendment No. 05014 (05R-134); Change of Zone No. 05036 (05-86); Letter of Appeal to Special Permit No. 05023 (05R-135); and Letter of Appeal to Use Permit No. 140B (05R-136).

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 06/08/05  
Administrative Action: 06/08/05

**RECOMMENDATION: Denial** (5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent).

1. This proposed text amendment to Title 27 was heard before the Planning Commission in conjunction with Comprehensive Plan Amendment No. 05014 relating to the Theater Policy, and Change of Zone No. 05036, Special Permit No. 05023 and Use Permit No. 140B to allow an 18-screen theater/entertainment complex at S. 91<sup>st</sup> Street & Pine Lake Road (Prairie Lake shopping center).
2. The applicant has proposed to amend Section 27.63.630©) of the Zoning Ordinance to allow theaters with more than six screens in the B-5 district if located outside a 6.5 mile radius from 13<sup>th</sup> & O Streets. The specific text amendment proposed is found on p. 23.
3. The staff recommendation to deny is based upon the "Analysis" as set forth on p.4-7, concluding that the Theater Policy, which has been in place for 21 years, has helped implement the Comprehensive Plan goal of maintaining the downtown as the heart of the community and the focus for community entertainment and other activity. The study completed by an outside independent theater consultant concludes that the Lincoln theater market is already over-served, and that allowing theater complexes over six screens outside downtown, even 6.5 miles away, would have a serious negative impact on the continued viability of existing downtown theaters. Reduced attendance at downtown theaters will have secondary effects on revenues at downtown eating and drinking establishments, and could lead to the closing of the downtown theater, which would be a serious blow to all the other efforts to revitalize the downtown. Neither the proposed comprehensive plan amendment or the associated zoning text change would further the goal of reinforcing downtown as the unique central place of the community, and in fact would have the opposite effect.
4. The Market Feasibility and Impact Study is attached to the Factsheet for Comprehensive Plan Amendment No. 05014 (05R-134) on p.26-64, and is incorporated herein by this reference.
5. The applicant's testimony and other testimony in support is found on p.9-13 and 18, and the record consists of one written communication in support (p.30-31). The additional information submitted by the applicant in support of the proposal and referenced in the applicant's testimony is found on p.26-29.
6. Testimony in opposition is found on p.13-17, and the record consists of one letter from the Lincoln Haymarket Development Corporation in opposition (p.32).
7. Testimony by the Director of Planning and Keith Thompson, who conducted the Market Feasibility and Impact Study, is found on p.17-18.
8. On June 8, 2005, the majority of the Planning Commission agreed with the staff recommendation and voted 5-2 to recommend **denial** (Pearson and Krieser dissenting; Bills-Strand and Esseks absent). See Minutes, p.19-20.
9. On June 8, 2005, the Planning Commission also voted 5-2 to recommend denial of the associated Comprehensive Plan Amendment No. 05014 and Change of Zone No. 05036 from AG Agricultural District to B-5 Planned Regional Business District, and took "final action" denying Special Permit No. 05023 and Use Permit No. 140B for authority to develop an 18-screen theater/entertainment complex at the Prairie Lake shopping center at S. 91<sup>st</sup> & Pine Lake Road.

**FACTSHEET PREPARED BY:** Jean L. Walker

**REVIEWED BY:** \_\_\_\_\_

**REFERENCE NUMBER:** FS\CC\2005\CZ.05035

**DATE:** June 14, 2005

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**LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**

**for June 8, 2005 PLANNING COMMISSION MEETING**

**PROJECT #:** Comprehensive Plan Amendment #05014  
**Change of Zone #05035**

**Note: This is a combined staff report for related items. This report contains a single background and analysis section for both items.**

**PROPOSAL:** 1. Amend the Comprehensive Plan by deleting several statements that refer to the Theater Policy and entertainment in the downtown, and by deleting one statement requiring market studies for proposed new theaters outside the downtown.

**2. Amend Section 27.63.630©) of the Zoning Ordinance for theaters in the B-5 district to allow theaters with more than six screens provided it is located outside a 6.5 mile radius measured from the center of the intersection of 13<sup>th</sup> and O Streets.**

**CONCLUSION:** The Theater Policy, which has been in place for 21 years, has helped implement the Comprehensive Plan goal of maintaining the downtown as the heart of the community and the focus for community entertainment and other activity. The attached study completed by an outside independent theater consultant concludes that the Lincoln theater market is already over-served, and that allowing theater complexes over six screens outside downtown, even 6.5 miles away, would have a serious negative impact on the continued viability of existing downtown theaters. Reduced attendance at downtown theaters will have secondary effects on revenues at downtown eating and drinking establishments, and could lead to the closing of the downtown theater, which would be a serious blow to all the other efforts to revitalize the downtown. Neither the proposed comprehensive plan amendment or zoning text change would further the goal of reinforcing downtown as the unique central place of the community, and in fact would have the opposite effect.

<b>RECOMMENDATION:</b>	
CPA#05014	<b>Denial</b>
CZ#05035	<b>Denial</b>

**GENERAL INFORMATION:**

**ASSOCIATED APPLICATIONS:**

**CZ#05036** - A change of zone request from AG to B-5 for approximately 14.11 acres to expand Prairie Lakes regional shopping center.

**SP#05023** - To allow an 80,000 square foot, 18-screen theater megaplex on approximately 24.52 acres near the intersection of South 91<sup>st</sup> Street and Pine Lake Road.

**UP#140B** - To amend the Appian Way use permit covering the Prairie Lakes regional shopping center to include an additional 14.11 acres and the theater megaplex.

## **HISTORY:**

**2004** - The Grand Theater with 14 screens opened downtown.

**2002** - A six screen theater was approved for North 27<sup>th</sup> & Folkways Blvd. This theater has not been built to date.

**2002** - The former three screen theater at Edgewood Shopping Center was expanded to six.

**1996** - The three screen theater at Eastpark was expanded to six.

**1996** - The special permit for theaters in the B-5 district was amended to raise the maximum number of screens in a theater complex from 3 to 6 (it was accompanied by a request from Southpointe Pavilions for a 6-screen megaplex, which has since been constructed).

**1994** - The current reference to Theater Policy was included in Comprehensive Plan.

**1992** - The Zoning Ordinance was amended to make theaters in the B-5 a use approved by special permit rather than “by right”, and subject to conditions that the B-5 District must have 400,000 square feet of other floor area with at least 3/4 occupied, and that the District may have no more than one theater complex per district with no more than 3 screens in the complex.

**1984** - The Zoning Ordinance was amended to remove indoor movie theaters from all districts except B-4 (downtown) and B-5, and required a market study in B-5 to assess the impact of new theaters.

## **COMPREHENSIVE PLAN SPECIFICATIONS:**

**Page V2** - Vision - Downtown Lincoln belongs to all residents of Nebraska because “downtown” is synonymous with the University of Nebraska, State government, and the State Capitol building. This state-wide ownership has strong economic implications, and for that reason, as well as the desire to maintain downtown as the “heartbeat” of the community, the Comprehensive Plan will ensure that downtown remains a special place. The plan will seek to preserve vistas and institutions of cultural importance, to reinforce the district as a center of entertainment, and to promote a rich diversity of activities and uses, including housing, education, government, offices and commerce.

**Page F16** - Community Form - Downtown Lincoln continues to serve its role as the central location for commerce, government, entertainment, and the arts. Views to the State Capitol have been preserved, as they have in the past, as part of our community form.

**Page F44** - A key element to this role has been the longstanding and successful “theater policy.” This policy has allowed downtown to retain an appreciable share of the area’s movie theaters. It is intended that this policy would continue as part of the present Plan.”

**Page F44** - Market impact studies will still be required for movie theaters.

**Page F48** - The City should preserve and enhance Downtown's role as

- the major office and service employment center of the City
- the focus of all levels of government
- the City's principal cultural and entertainment center
- the hotel and convention center for the City
- the City's financial center
- a hub of higher education
- specialty retail geared toward employees, area residents, convention visitors and University population

- Lincoln's successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown.

## **ANALYSIS:**

1. The Theater Policy is referenced in the Comprehensive Plan and embodied in the Zoning Ordinance. According to the key provisions in today's ordinance, theaters outside the downtown area are allowed only on land designated B-5 (Planned Regional Business District), and only through approval of a Special Permit and Use Permit. A key condition for approving a Special Permit is that only one theater with no more than 6 movie screens is permitted in any one B-5 district. The areas zoned B-5 to accommodate regional-type businesses include: North 27<sup>th</sup> Street corridor north of Cornhusker, Westfield Mall, Southpointe Pavilions, and the Edgewood and Prairie Lake shopping centers (see map included with this report). The Theater Policy has encouraged the continued concentration of theater screens in the downtown area, with smaller theater complexes constructed or approved in outlying areas. The policy also has encouraged private investment in the Grand, a new 14-screen complex on the downtown block bounded by O and P Streets and 12<sup>th</sup> and 13<sup>th</sup> Streets to replace a similar number of screens in outmoded facilities.
2. Theaters are an important part of an overall entertainment package offered in the downtown area that makes the area more vibrant and attractive for other uses: office and services, retail, residential, and hotels. Today's downtown contains nearly 20 percent of the city's jobs and its hotel rooms, and contributes a tax base valued at nearly \$300 million. Recent studies sponsored by the Lincoln Chamber of Commerce have underlined the importance to our tourism and convention business of having a concentration of event facilities, hotel rooms, restaurants, retail and entertainment all within walking distance of each other. Downtown Lincoln is proposed in the Comprehensive Plan to continue as "the heart" of the community. Communities act like organisms, and successful communities must have healthy hearts. Much of Lincoln's past and continuing success is attributable to the vibrant, active mix of uses and the special history and character of its downtown. The theater policy has been important in maintaining that activity downtown, along with the City's continuing efforts to reverse slum and blighting conditions through public investment and redevelopment agreements. The redevelopment agreement resulting in construction of the Grand 14 has kept Lincoln theater screens lit in an era where few if any theater screens remain in the downtowns of our peer cities.
3. Regarding the Comprehensive Plan, the proposed amendment would delete the following language, as the applicant states: "...to adopt a neutral position with respect to the location and number of movie theater screens." Specific passages proposed for deletion fall under "Future Conditions – Business and Commerce" in the Plan:

*A key element to this role has been the longstanding and successful “theater policy.” This policy has allowed downtown to retain an appreciable share of the area’s movie theaters. It is intended that this policy would continue as part of the present Plan” (page F-44).*

*Market impact studies will still be required for movie theaters (page F-44).*

*Lincoln’s successful Theater Policy must be maintained and reinforced. Newentertainment attractions should be encouraged to locate in the downtown (page F-48).*

The applicant also requested that the Planning Department identify any other passages in the Comprehensive Plan which might be in conflict with their objective. Staff believes that the current policy has played a critical role in reinforcing the number of theater screens downtown, and theaters are a major component of entertainment. Therefore the references to entertainment in the passages below probably should be stricken as well, if the goal is to reflect the applicant’s desire for a “neutral” policy with regard to theaters:

*In the Vision Statement at the beginning of the Plan: “The plan will seek to preserve vistas and institutions of cultural importance, to reinforce the district as a center of entertainment, and to promote a rich diversity of activities and uses, including housing, education, government, offices and commerce” (page V2 under “Vision”).*

*Downtown Lincoln continues to serve its role as the central location for commerce, government, entertainment, and the arts. Views to the State Capitol have been preserved, as they have in the past, as part of our community form (page F16 under “Community Form”).*

4. The proposed amendment to the zoning ordinance involves a change to one of the conditions required to obtain approval for a Special Permit for theaters in the B-5 District. The current language states that *“Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than 6 movie screens.”* The applicant is requesting to add the following language to that sentence: *“...however, if the proposed theater complex is located outside a 6.5 mile radius from the center of the intersection of 13<sup>th</sup> and “O” Streets, it may have more than 6 screens.”*
5. This proposed amendment only modifies the current Theater Policy, as opposed to deleting it entirely. Yet the applicant is asking to delete all references to the current Theater Policy in the Comprehensive Plan. This seems to be a conflict in intent, which staff has noted to the applicant.

Also, the applicant has asked to delete reference to performing market studies for proposed new theaters in the Comprehensive Plan. But he did not ask to amend the corresponding provision in the zoning code, under the provisions for use permits in the B-5 District, that require any change in zone or use permit that is in conflict with the Comprehensive Plan to be accompanied by an environmental impact statement and market study, or the corresponding provisions in the Design Standards that detail the information expected in an environmental impact statement.

6. The Comprehensive Plan forms the key basis for all of the regulations in the zoning and other development codes. The references to the Theater Policy in the Comprehensive Plan provide the legislative underpinning for the Special Permit requirements in the zoning code. Removing those references is likely to invalidate either the existing version of the Theater Policy or the applicant's proposed modified version.
7. The practical effect of restricting B5 districts to 6 screens unless they are more than 6.5 miles from downtown is depicted on the map included in this report. All of the current B5 districts would continue to be restricted as they are presently, except for the one district placed on the Prairie Lake development at Highway 2 and 84<sup>th</sup> Street, which is the subject of the associated Special Permit and Use Permit for an 18-screen theater. No other areas in the city or its future growth area, inside or outside the circle defined by the 6.5 mile radius from downtown, are designated in the Comprehensive Plan for regional commercial uses.
8. Based on the very limited information supplied with the application plus informal discussions with the applicant, the claims seems to be that:
  - The current policy has resulted in inadequate facilities that are underutilized by the population.
  - Because of this underutilization, a new megaplex outside downtown would draw new patronage and not have a significant effect on existing patronage at the downtown theaters – especially if it is more than 6.5 miles from those facilities.
  - A megaplex such as the 18-screen theater being proposed in the accompanying applications is the only model being constructed by the movie industry today, and is required to ensure favorable treatment on obtaining new films under the movie industry's film distribution policy.
9. In order to better understand the dynamics of the theater marketplace in Lincoln, City staff contracted with an individual with national experience in developing and operating theaters, as well as providing consulting services. The applicant could have been required to submit an environmental impact study and market study under the provisions for Use Permits in the B-5 District. But we informed the applicant several months ago that the Planning Director would waive this requirement and contract ourselves for this study to be done. The consultant has submitted the attached report on the dynamics of the theater market in Lincoln, national trends affecting the market, and the effects of constructing a new megaplex outside the downtown area. He will be present at the Planning Commission hearing on this item to make a presentation and answer questions.
10. The consultant, in his report and in informal discussions, directly refutes the applicant's claims, concluding that:
  - Lincoln has more screens for its existing population than the national average.
  - Local patronage at these screens is higher than the national average.
  - Based on existing demographics, a new theater would need to pull in customers from existing theaters, and it would not be profitable.

- The location of the proposed megaplex at Highway 2 and 84<sup>th</sup> Street suffers from two problems: an unfavorable location at the southeast edge of the existing and future urbanized area, and the proximity of the existing Edgewood 6, with which it would have to share new films under the movie industry's film distribution policy.
  
- The construction of a new megaplex would have a serious negative impact on the continued viability of the existing downtown theaters. Even at 6.5 miles from downtown, the market area for a megaplex would substantially overlap with the market area for downtown screens. The consultant estimates a 35 percent reduction in patronage and revenues at downtown theaters if the megaplex is constructed. Also noted is the fact that multiplexes as well as megaplexes are still being developed and operated profitably in other theater markets.
  
- The reduction in patronage and revenues at the downtown theaters could result in a City liability under the terms of the redevelopment agreement. The agreement requires that if the assessed value of the Grand 14 property is reduced below a certain level, due for example to a loss in revenues caused by changes to the theater requirements in the B-5 zoning districts and the valuation of the Grand 14 is reduced due to loss of revenues and is not sufficient to cover the payments on the TIF bonds, then the City would be responsible for covering the payments to cover the TIF bonds, the City will be responsible for paying the difference in taxes owed to the Tax Increment fund.
  
- A reduction in patronage at the downtown theaters will have secondary effects on patronage and revenues at downtown eating and drinking establishments, and a prolonged loss that darkens the downtown screens would be a serious blow to all the City's other efforts to revitalize the downtown, reducing its attractiveness for other investments and potentially affecting the assessed values of other downtown properties.
  
- The Theater Policy has been adjusted in the past, and it should be reexamined from time to time to consider adjustments that would account for changes in demographics and other factors. However, the consultant report demonstrates that no change to the policy is necessary or wise at this time.

Prepared by:

Marvin Krout  
Director of Planning  
May 18, 2005

**APPLICANT/  
CONTACT:**

Mark Hunzeker  
PO Box 95109  
Lincoln, NE 68509  
402-476-7621

**OWNER:**

Eiger Corporation  
16800 Pella Road  
Adams, NE 68301  
402-788-2572



**COMPREHENSIVE PLAN AMENDMENT NO. 05014,  
CHANGE OF ZONE NO. 05035,  
CHANGE OF ZONE NO. 05036,  
SPECIAL PERMIT NO. 05023,  
and  
USE PERMIT NO. 140B**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 8, 2005

Members present: Larson, Taylor, Pearson, Sunderman, Carroll, Krieser and Carlson; Bills-Strand and Esseks absent.

Staff recommendation: Denial of all five applications.

Ex Parte Communications: Carroll, Taylor, Larson, Pearson and Sunderman disclosed that they had conversations with Mark Hunzeker; Larson also had a conversation with Don Wesely. There was no additional information to be disclosed as a result of these contacts.

Brian Will submitted one letter in support and one letter in opposition.

Proponents

**1. Mark Hunzeker** presented the applications and gave a brief history on the Lincoln theater policy. At the time that the theater policy was adopted, there were only two theaters outside the downtown, both of which were single screen and both of which are now defunct. The result of that policy is that all theaters in Lincoln that run first run commercial movies are owned and operated by a single company. The initial policy allowed three theaters in the B-5 districts; Edgewood had proposed six screens; the City Council at that time cut that to three and the only operator willing to build and operate three screens was one of the incumbent downtown operators. Edgewood is now owned by the current operator, Douglas Theater Company. When SouthPointe was developed, an outside operator proposed twelve screens. The city insisted that there only be six screens and threatened to hold up or deny the shopping center if they were going to insist on twelve screens. Again, the only company willing to build six screens was the incumbent operator, Douglas Theater Co. At that point, when six screens became the norm, Edgewood and East Park were expanded from three to six screens. Hunzeker submitted that currently, no exhibitors, including the Douglas Theater Company, build six screen complexes anywhere except Lincoln. Virtually all of them are sixteen screens or greater, including the three different complexes built by Douglas Theater Company in Omaha.

Hunzeker then discussed the proposal to amend the Comprehensive Plan to delete references to the theater policy to make it neutral as to the number of screens in shopping centers; to amend the zoning ordinance to allow for more than six screens in the B-5 districts if located more than 6.5 miles outside the radius of 13<sup>th</sup> & O Streets; to rezone additional land to B-5 at the Prairie Lake shopping center in accordance with the Comprehensive Plan; a use permit and special permit to develop an 18-screen theater complex along with other uses at Prairie Lake.

Hunzeker explained that the reason for this request is that the developer of this site desires to have a state-of-the-art theater complex and entertainment center at Prairie Lake shopping center. This developer has been very meticulous about reviewing the architecture, materials and landscaping that go into that center. Likewise, with an entertainment complex, they are interested in having first-rate architecture, premium grade materials, expanded food offerings and first quality, state-of-the-art theater venues. The developer wants to be able to negotiate for a first class facility with more than one theater operator. In order to do that, there is a need for more screens to attract any interest whatsoever in the project from operators other than Douglas Theater.

Hunzeker then addressed the staff report and theater study done by the city. Hunzeker submitted that the study commissioned by the city staff was designed from the outset to justify the existing policy and to justify denial of these applications. The study starts on a fallacious assumption that there are 43 theater screens in Lincoln. That number includes the Star Ship 9 and the media arts center of the University, neither of which exhibit first run commercial movies. So, instead of one screen per 6,082 people, the number is really more like one screen for 873 people, which is almost exactly on the US average that is so frequently report in the staff report.

Hunzeker also suggested that it is interesting to note that even the report acknowledges that 70% of the current box office revenues are generated at East Park, Edgewood and SouthPointe. Thus, the current downtown theater policy is not creating a dominate theater market in the downtown.

Hunzeker then distributed information on other markets closer to Lincoln than the national average that he has investigated, including Des Moines; Omaha; Madison, Wisconsin; Wichita, Kansas; and Lincoln. Des Moines has one movie screen for every 5541 people within a 20 mile radius; Omaha has one per 6279; Madison, Wisconsin, has one per 7390; Wichita has one per 7068; and if you include a 20-mile radius population, the screen ratio in Lincoln is one per 8795. We are not over-screened in Lincoln. Therefore, the basic premise of the city's study is false. Moreover, none of the other cities that he reviewed had only one theater operator.

Hunzeker noted that the study concludes that the proposed theater complex will lose money and "finding a theater chain willing to move forward on the site will prove challenging, if not impossible". It is Hunzeker's opinion that that conclusion is reached using a highly inflated cost of construction of the new site (20 million dollars) versus the budgeted 13.5 million that was used for the Grand Theater complex downtown, including site acquisition, demolition, site prep and streetscape improvements. The city has subsidized the Grand Theater to the tune of 3.4 million dollars. In addition to that, it entered into an agreement which says, in part,

...that so long as any of the bonds issued with respect to the project area remain outstanding and unpaid, the city agrees a) to use its best efforts to maintain and duly enforce the current B-5 zoning restrictions that prohibit theater complexes of seven or more screens, and b) that if the city takes any affirmative action resulting in a theater complex of seven or more screens actually opening for business within the City of Lincoln, the city agrees that the valuation of the redeveloper improvements are subject to reduction for the actual loss of rental income and the city acknowledges that the valuation of the redeveloper improvements upon completion assumes the theater policy is in place and will remain so until the final maturity date. ...

In addition, the city has provided free parking to the Grand. Hunzeker does not believe it is a bad thing to subsidize projects in the downtown area to keep it vital, but we have spent millions doing that and

if the tax revenues to support the city services have to come from somewhere, and all of the tax revenue from new projects in the downtown are sequestered to pay off TIF bonds downtown, then there has to be some private projects permitted to go forward to put taxes into the city coffers as opposed to pay off TIF bonds.

Hunzeker further pointed out that the staff recommendation of denial is based upon protection of the Grand. Lincoln's ordinances don't protect any other land use in this manner – banks, hotels, office buildings, retail shops, restaurants – every other kind of use you find downtown that is permissible anywhere else in the city is not restricted in the same manner as theaters. The City is directly involved in the enterprise of operating a theater complex in downtown in the form of the Grand.

It is Hunzeker's opinion that the ordinance, in its current form, does not advance any of the purposes of zoning set forth in the state enabling legislation, a copy of which was submitted for the record. Those permissible purposes of zoning are to,

...be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan. ....

This area is clearly specifically designated in the Comprehensive Plan for a shopping center. Virtually every shopping center in the country is developing theater screens as a complementary use. Nothing has been said about this project which in any way implies that it is detrimental to any property surrounding it. Extensive traffic studies and expensive road improvements have been made in anticipation of development of a major shopping center at this location. All the applicant wants is the opportunity to build a use which is commonly included in shopping centers everywhere else in the country. Lincoln may very well be the only city in the country with a policy as restrictive and anti-competitive. Hunzeker urged that it is time to allow for some competition in this market.

Hunzeker then referred to the conditions of approval on Special Permit No. 05023 and requested that Condition #2.1.1.1 be deleted, which calls for a revised land use table that deletes the 20% pass-by reductions for both the office uses on Lots 4 and 5, Block 2; Lots 10 and 11, Block 3; and for the theaters. There is a very specific annexation agreement which calls for the manner in which trip caps are to be computed. The calculations have been done in accordance with that agreement and the developer does not agree to make any change in the way that agreement reads today.

Hunzeker also requested that Condition #2.1.1.6 be deleted, which refers to a 12-inch high pressure gas line across the site. This gas line does not exist. The nearest gas line is 1500 feet away at about 95<sup>th</sup> Street and there is one on the west side of 84<sup>th</sup> Street, but it does not go through this site.

Pearson asked for an explanation of the "pass-by reductions". Hunzeker gave a brief explanation and stated that this was thoroughly negotiated at the time of the first use permit and annexation, and the calculations have been done in accordance with that annexation agreement.

Carroll noted that the economics of the existing theaters (East Park, Edgewood and SouthPointe) do not show a substantial increase saying that there is a need for more theaters in the City of Lincoln. How do you address that we need an 18-plex theater? Hunzeker pointed out that we do not go through

the retail sales data every time someone wants to put in a new retail use at this shopping center; we do not do that when someone wants to put up a new office building; nobody talks about the number of restaurants or how many people are eating at restaurants; nobody talks about the same thing for banks or hotel rooms. Hunzeker believes that it is inappropriate for a decision of this kind to be made based upon whether or not the Planning Commission or the Planning Department think we need additional theaters. This community is growing and over the next ten years we are probably going to add population here equivalent to a medium size city. Based on the other cities we have looked at, this community cannot only support it but wants it. Having been to SouthPointe and to Edgewood in the winter time, those places are crowded. We need more theaters where people can get to them without have to drive 10 miles to get there.

Carroll believes that the documentation provided by Hunzeker states that the other cities are showing that Lincoln is not under-served or over-served, yet the economics show us that we are not in a large need of more theaters per capita. On one hand you say we need more theaters because we should be the same as other cities, but the economics tell us that we're right on pace and we're growing but we're not in need of more theaters. Again, Hunzeker does not think that is the question you have to ask to make a decision. We have a site clearly designated and approved as a major shopping center site. There will be two million square feet of retail and service uses in this immediate vicinity as this property develops. Every shopping center of that magnitude that you can find anywhere in the country has theaters associated with it. It is a common use. This proposal is in a growing portion of our community and it seems that the land use issue, which is whether there should be theaters at this site, is one which is obvious—there should be, and all the developer is requesting is an opportunity to negotiate with more than one operator for the construction of those theaters.

Carroll pondered whether it would be better to have a scaled increase in theaters as population increases instead of asking for eighteen today. Hunzeker's response was, "according to what?" Nobody builds 6-screen complexes except in Lincoln. And the only operator who builds six screens in Lincoln is the operator that owns all of the screens. There is not a single place you can find where people are building six-screen theaters. The Douglas Theaters in Omaha are 16, 18 and 20 screens, and it is because they are competing with other operators that are doing the same. It is impossible to get another operator interested if all you can offer them is six screens. Hunzeker agreed that phasing might be a possibility, but no one is going to start with less than twelve screens.

**2. Larry Douglas** testified in support. Lincoln will continue to experience its greatest growth and infrastructure improvements in its southeast quadrant. Such catalysts as the defacto south interstate of Highway 2, recent annexation of Cheney, residential developments in Bennet, plans for construction of a new high voltage corridor for Nebraska City and a pre-south beltway verify this trend. If you want to strengthen downtown Lincoln and increase the spending resident population, don't inhibit suburbia for the sake of the Downtown Lincoln Association political maneuvers. Forcing an antiquated, hypocritic ordinance on Eiger Corporation and the growing community of citizens that the Prairie Lake shopping center serves can be seen only as a protection for the Douglas Theater monopoly and a socialist pro-downtown prohibition to free competition and market forces. It is competition we need to discuss, not cannibalization.

**3. Jerry Soucie**, who reside south of SouthPointe, testified in support. He totally disagrees with the feasibility study. It is "stuff" like this that gives Lincoln such a bad reputation for economic development. This study is to protect the Douglas Theater Corporation. It costs \$8.00 to go to a movie. The increase in revenues is from increased prices. The impact of this study is not to help the taxpayers and citizens

of Lincoln – it is to protect Douglas Theater. Why do you care? Why do you care what happens to the Edgewood Theater? If someone comes in with an economic development plan that improves the viewing options and causes a less efficient business to go under, so what? That is the nature of capitalism in America today. Soucie believes that the Commission needs to recognize that by having a monopoly we are not getting the movies that people get in other towns. Why can't I have the option of going to an 18-plex at Hwy 2 and 84<sup>th</sup> Street? It is about time that this city stops thinking it can protect certain businesses at the expense of others. We need to have competition. Perhaps if there was competition we wouldn't be paying \$8.00. He believes that we need to be generating more competition with Douglas Theater rather than less. Here you have a private developer willing to pay 15 million dollars for construction that goes into this city. If the developer can't make a go with the 18-plex, so be it.

**4. Ted Glaser** testified in support. He believes there is a need for a paradigm shift of the economic development attitude within this city. Glaser owns several apartment buildings in the Near South neighborhood and no one talks about cannibalizing his apartment buildings when others come to build new apartment complexes. When John Q. Hammons talks about building a hotel, we don't talk about cannibalizing existing hotels. Why is it that we suddenly have a protected monopoly saying we can't let anyone else but Douglas operate downtown? We're too afraid to grow. Nebraska City residents go to Bellevue to go to a movie. Here is your chance to compete with Omaha. The original plan calls for no more than six screens within 6.5 miles. The proposed location is 7.5 miles. There is a need to revisit our attitude towards economic growth within this city. Highway 2 is an opportunity to use a pipeline to bring economic activity to counter the "sucking sound" going down Interstate 80 towards Omaha.

#### Opposition

**1. Carol Brown**, 2201 Elba Circle, testified he opposition. North Lincoln has waited so very long for a movie theater. She is opposed because she is fearful of the impact of this proposed megaplex on the opportunity for a theater in North Lincoln.

**2. George Crandall**, Crandall-Arambula, Portland, Oregon, a consulting firm which specializes in revitalizing cities, testified in opposition. Theaters are a fundamental building block in bringing back downtowns. When his firm visited Lincoln, they found that Lincoln has already taken the first step in revitalization. Crandall-Arambula has been retained by the city to prepare a Downtown Master Plan; to prepare an implementation strategy for that master plan; and to prepare the design guidelines that will allow implementation to proceed. Many cities are looking for theaters in the downtown because they attract people into the downtown and attract the after-hours restaurants and shops. In Racine, Wisconsin, they do not have a cinema downtown and they are looking for one. Knoxville, Tennessee, is trying to attract a major cinema into the downtown. They know that without the cinema they cannot revitalize their retail. Oak Park, Illinois, is trying to expand a downtown cinema so that they can attract more people into the downtown. In developing the proposed revitalization strategy for Lincoln, Crandall-Arambula built it around the new cinema which is located in the right place on P Street in what he would call an anchor location at the end of the retail string. It is situated right; the front door is on the right street; and it has the potential to be a major factor in revitalizing retail over a period of time. The attendance in that theater is not what it should be. We like to see about one million plus visitors a year and he understands that Lincoln is around 600,000. There is a lot of potential that has not yet been realized. Lincoln will not realize the potential unless you see the full potential in that cinema. The timing is wrong to introduce

competition into the area which will suck investment out of the downtown. You don't want to be like every other place in the country with theaters in every shopping center. This is all about economic development and the Commission needs to vote "no" on changing the policy.

Pearson noted that during a briefing on the Downtown Master Plan, she asked whether one portion of the entertainment project could sustain a downtown, and Mr. Crandall had said no – that there have to be many facets to support the downtown. She suggested that to say that the downtown relies on one theater would be stretching it a bit. She does not see that the Grand is the center of the downtown. Knowing Nebraska winters, do we really expect people to drive over seven miles to come to downtown to go to a movie in the winter? Crandall stated that a theater is a fundamental piece. They need to be healthy and they need to thrive if the downtown retail is to come back, and part of Crandall-Arambula's strategy is a downtown retail revitalization strategy which attaches itself to the cinema. Without the cinema, the downtown retail revitalization will not stand a chance. It is fundamental and Lincoln is way ahead of the curve by making a substantial investment in that facility. You do not want to put that in jeopardy. The timing is just wrong. You are starting to create momentum in bringing the downtown back. There are other theaters in the region. People do have other options. You need to take care of the heart first. The heart of your community is the downtown. If your heart is weak, the extremities will be weak. You are starting the recovery process and the cinema is your first step. "Do not drive a stake through the heart before you get rolling. The timing is wrong. Do not let the policy go." Lincoln is unique because of this policy and you don't want to be like every other place. Every other place is trying to be like Lincoln.

**3. Russ Bayer**, 633 S. 112<sup>th</sup> Street, testified in opposition. He serves on the Downtown Lincoln Association board, but they did not ask him to represent them. He also serves on the LIBA board and they did not ask him to appear. These are thoughts for himself and his family. He owns property in downtown Lincoln in the Haymarket and outside the Haymarket area, but he also owns property in northwest, northeast and southeast Lincoln, and 60 acres 6.7 miles from 13<sup>th</sup> and O Street.

With that said, Bayer believes that the Downtown is the most important. We want the downtown to be the center for entertainment. It has taken courage of the citizens to invest their time, effort, talents and money in the downtown. It has taken courage of the elected and appointed officials who have recognized the importance of a downtown so that our community can grow in all directions and still have the downtown remain viable. It has taken the dedication of associations like DLA, Updowntowners and Downtown Lincoln Neighborhood Association, along with strong partnerships of UNL and local and state government. All of that has made the downtown what it is today. Bayer suggested that downtown is really in its infancy as far as its new role in our community. The balance that exists today appears to be a good balance. It is fragile. We are losing the wrestling tournament to Omaha. We need to protect that area if we believe so heartily in what it should be in the future. We have to convince people that there is parking. We have to convince the community that there is a lot to do downtown. If there is any deviation in the vision or in the policy, it would be very devastating to what we have going on in Lincoln.

Another issue is "trust". We have a theater company that has lived and worked under a policy that is in place. What business person in town would not support a policy that strengthened your business? Other businesses can create theaters in this community under that policy. Recently, Douglas Theater put money into Downtown Lincoln, and they did so trusting in a 20-year policy. What message does it send if we now change the policy? The message we want to send is that we can trust Lincoln.

Bayer also suggested that this is a self-serving policy – there is one potential B-5 that could have this megaplex. If you are going to change the policy, then get rid of it completely and make it available to everyone.

Bayer suggested that six theater screens in an “urban village” is the right answer. Be courageous and support our existing policy and send the message of trust.

**5. Cecil Steward**, 125 N. 11<sup>th</sup> Street, testified in opposition. He and his wife have been major downtown supporters and advocates for at least eleven years. The Comprehensive Plan is the first document in Lincoln that calls for “urban villages”. An urban village is where there is mixed used, where people can walk, bike, recreate, be entertained and they can do their shopping in a village-like atmosphere. The heart of Lincoln has had many of those components for many years and the heart of Lincoln is Lincoln’s urban village. This policy was created to help protect that characteristic. If we were promoting other urban villages instead of regional shopping centers, this topic would not be before the Commission because the six screens would adequately serve outlying urban villages.

Steward suggested that the point that has been made about no other use getting this kind of protection is incorrect. The Comprehensive Plan and zoning ordinance is all about protecting other uses. While there may not be the same kind of financial attachment to the other uses, the principle is and has been with us. It may be a violation of the health, safety and welfare uses of zoning. This is a welfare issue. It is the welfare of the community. Theaters in shopping centers are vital to the shopping center just as theaters in the downtown are vital to its well being and economic development, but we are looking at 50-year plans. The Downtown Master Plan is based upon a 50-year set of principles and we need to be creative about what those principles may be in the future. Theaters in shopping centers are auto oriented only. The choices that people will have of living, working and recreating in an urban village are very different and auto dependency is going to continue. Now is not the time. It is reasonable to expect that a regulatory principle like the theater policy should be investigated and there will be a day when it should be changed, but now is not the time. Steward implored the Commission to stick with what we have until the downtown can become more of an urban village.

**6. Mary Jane Steward**, 125 N. 11<sup>th</sup>, appeared on behalf of the Downtown Neighborhood Association, in support of maintaining the entertainment district in the downtown area. Allowing megaplexes outside will not encourage entertainment growth in the downtown area. The Downtown Neighborhood Association believes this proposal will discourage the viability of downtown living and entertainment. Even if she lived in the suburbs, she would still support the Comprehensive Plan.

**7. Ryan Osentowski** testified in opposition on behalf of the National Federation of The Blind of Nebraska, Lincoln Chapter, with two main concerns about the proposal involving accessibility. The proposed theater location is not accessible by public transportation, bus or otherwise. The area being proposed has no bus routes. It is a common misconception that the blind and visually impaired are not interested in participating in movies, but in order to participate you have to get there. Downtown is very accessible. The blind have been enjoying movies for years and years and will continue to do so, and Douglas Theaters has helped by adding a new dimension called Mopix – a system by which the blind and the deaf can view a movie using close caption and descriptive video service. One of the theaters in the Grand is equipped with a Mopix. The Grand is in an accessible, safe walking environment. He is not sure that is the case in the proposed area.

**8. Travis Green**, 4445 Hillside Street, chef/owner of The Dish restaurant located at 11<sup>th</sup> and O Streets, testified in opposition. He respects and supports businesses investing in our city, but the Grand Theater has had a very positive impact on his restaurant. His sales have been up since the

theater opened in November. Ultimately, as a citizen of Lincoln, he believes that it is important to have a strong downtown with government, hotels and a major entertainment district. As a community, we need to have the integrity to preserve our downtown. His investment was made with the knowledge of the theater policy, and he believes other business people downtown have made similar decisions.

**9. Maurice Baker**, 3259 Starr Street, testified on behalf of the Clinton Neighborhood Organization in opposition. If the Grand no longer existed, the closest first run movie house would be East Park, which is not particularly accessible by public transit. A change in this policy would be inconsistent with the Antelope Valley project, which was undertaken to maintain the viability of the downtown area. It is possible that if we lose even one of these entertainment sites, the attractiveness of living downtown becomes less attractive in the future. There are secondary impacts as we make investments. There are also secondary impacts as we make disinvestments. If Hwy 2 takes place at the cost of existing investments, there will be secondary impacts on other businesses. The Planning Commission needs to consider the well-being of the city as a whole and not necessarily one particular area.

**10. Polly McMullen** testified in opposition on behalf of the **Downtown Lincoln Association**, which has been the leadership and advocacy organization for downtown since 1967. Downtown is a center for employment, tourism, government, education, residential living and entertainment. Designation of downtown as Lincoln's destination entertainment district has been a centerpiece of city planning, investment and public policy since the late 70's. As downtown has gotten stronger in recent years, some in our community may believe that it is "fixed" and that it is time to abandon some of the policies and commitments. But the reality is that downtown is not "fixed". Downtown is still fragile and it is just beginning to stabilize after a long difficult period. Great cities generally share one common denominator – a vibrant and successful downtown. The theater policy, along with the location of business and finance, local, federal and state government and the University, is a key building block to our past success and our continued progress. She urged the Commission to continue the long tradition of support for this key entertainment building block.

**11. Don Wesely** testified on behalf of The Douglas Theater Company. Wesely suggested that the theater policy has evolved over time into a neighborhood theater policy. By limiting to six screens, the result has been theaters easily accessible in different neighborhoods. This won't continue to happen if you break apart the policy. The 18-plex will hurt the downtown as well as all of the other theaters. Mayor Seng has taken a strong position, as well as the Planning Department, the DLA, and the Lincoln Journal Star, in support of the current theater policy. The city worked very hard to get a downtown theater. A national developer was brought in to look at the project and it was found that the chains are not interested in being downtown. Our locally owned Douglas Theater stepped up and made the investment of 11 million dollars. Part of the agreement included a recognition that the theater policy was a central piece of the decision that made this possible. This is absolutely the wrong time to make a change in the policy. We need to honor the investment and commitment that has been made.

Wesely believes that Douglas Theater has been a good corporate citizen in this city. They have complied with the policy; it has lead to neighborhood theaters throughout the city and we need to maintain the policy.

Sunderman inquired why the national theaters were not interested in being downtown. Wesely stated that the number of screens was not an issue. It was just that they don't feel downtown theaters have been successful – they are a high risk. Even with the policy, the national theaters believed it to be too



great of a risk to come in and make the investment. The city leaders came to the conclusion that the only way to get a downtown theater was to maintain the policy and work with our local company, Douglas Theaters.

**12. Deb Johnson, Executive Director of Updowntowners** and resident at 84<sup>th</sup> and Hwy 2, testified in opposition. The existing policy has worked to strengthen downtown and the community of Lincoln as a whole. The Updowntowners strive to improve the quality of the downtown through events that enlighten our community around the clock. Entertainment is a key component of a vital downtown. Downtown is everybody's neighborhood. A change in the theater policy will harm the entertainment focus for downtown. The existing policy has been successful in helping downtown in its transformation to a mixed use center.

**13. Marvin Krout, Director of Planning**, indicated that the city's consultant from Knoxville, Tennessee, would like to comment on some of the of the testimony. Krout also stated that he is proud to live in Lincoln because it has been fortunate enough to live with economic development and retain its values. It is wrong to pick one over the other. He wanted to comment about the testimony suggesting some kind of "movement of wind" from Lincoln to Omaha. This needs to be considered more carefully. When you compare employment growth in the last five years, Lincoln-Lancaster County (being 40% the size of Douglas and Sarpy County) has created just about as many new jobs as Douglas and Sarpy County. He does not hear that "sucking sound." The Planning Department is pro-development. What makes this community unique is that it lives on its values and not just on economic development, and downtown is one of those values.

Krout suggested that there are new theater complexes being built with less than 12 screens. There are limiting factors that make the site at 84<sup>th</sup> and Hwy 2 a less than ideal site for the location of any size number of screens.

**14. Keith Thompson**, Knoxville, Tennessee, stated that he has fed his children for the past 15 years by participating in the motion picture exhibition industry. Until recently, he was the head of real estate for what became the largest movie chain in the world. He then started a consulting business which led to his ownership of a movie chain which he has sold and is now head of real estate for a large movie chain; he continues his consulting business, which specifically looks at theater uses in shopping centers and mixed use developments nation-wide. He first came to Lincoln about three years ago to research putting the Grand downtown. If you look at the status of the movie theaters in Lincoln today versus three years ago, the six screen theaters that exist are nice, well-maintained movie theaters. You do not have a monopoly, but a theater chain. Now you have a beautiful facility downtown as a result of the theater policy.

Thompson was asked to assess the proposed site. His assessment has nothing to do with the theater policy. The overriding factor to justify building new movie theaters is rooftops. There is no one that lives southeast of the site. 4,000 people will not even support one movie screen. The next criteria is whether there are other movie theaters nearby. In this case, there is Edgewood Six. They won't be able to show the same films that are being shown at Edgewood. Regardless of the policy, there are no rooftops to the southeast so the market has to come from where there are other theaters. You cannot build a megaplex in a competitive film zone and expect it to be economically successful. The economic viability has nothing to do with the theater policy.

Thompson also suggested that when you build any theater in the market, you transfer business. When the Grand opened, it transferred business from Edgewood, East Park, and SouthPointe. If the policy is changed, Thompson predicts that there will soon be a plan amendment for SouthPointe to expand. It is a better location than the Prairie Lake site. It takes over a million dollars per screen today. This market is not big enough to sustain a top line revenue base in an 18-screen theater at this location to make it economically justifiable.

Pearson previously heard that the city relies on the health of the core; the core is relying on the health of the Grand theater; no one wanted to invest except for Douglas Theater; yet Thompson is saying that he would not recommend that someone build a theater downtown. If we only had one theater company willing to build in downtown, why are we resting the health of our downtown on a theater that probably is not going to sustain the downtown? Thompson explained that he was summarizing in general that movie theater chains do not look to make investments in downtown.

Carlson asked the consultant to speak to the theory that opening this competing facility will drop the attendance downtown. Thompson clarified that he has no relationship to the Douglas Theater chain. When he first looked at Lincoln's market four or five years ago, he thought it was a vital market without any megaplexes. He came to the conclusion that, while it is a strange policy, it is a policy that works. There are a lot of developers all across the United States that have this "irrational exuberance" when it comes to movie theaters. The real sad fact is that back in the late 1990's, the development community grasped this concept and an incredible number of theaters were built, and 15 movie theater chains went bankrupt in the process by overbuilding and over-expanding. Irregardless of the theater policy, there are about 6,012 movie theaters in the US today. Of those, only 523 are megaplexes, about 9%. 2,337 of those 6,012 theaters are theaters that range from two to seven screens. It is false that there are no six-plexes being built. The reason most large chains are not pursuing six screens is because they are pursuing development opportunity in larger markets. It has more to do with the size of the market you are trying to serve.

#### Response by The Applicant

As far as now not being the time to change the policy, Hunzeker pointed out that this policy has been in place for 21 years. The two theaters that were outside the downtown at the time the policy was instituted are gone. All of the screens in Lincoln have been consolidated under one ownership. It took 20 of those 21 years for us to get a megaplex downtown. Everybody understands that this policy is running against the market. There is no standard suggested by anybody as to the market place standard by which we can measure the "right time." The right time is when someone is willing to put their "real" money of their own on the line in a location to build something outside the downtown. Mr. Thompson may be right – maybe he has correctly analyzed this site, but there ought to be a level playing field for a developer of a shopping center in this community to be able to negotiate with more than one player. If his client is guilty of "irrational exuberance", that is his problem, not the Commission's. He is not going to waste money if he doesn't think it is feasible. All this developer is requesting is an opportunity to do business in Lincoln in a way that enables this developer to be able to survey the market and to invite proposals from more than one operator.

Hunzeker believes it is a great location. It has the potential to be a great shopping center. It would be in much closer proximity to much more population as time goes on as we develop the Stevens Creek Watershed and other parts of southeast Lincoln that are about to get additional sewer through the Beal Slough sewer system. Hunzeker believes that now is the time.

Pearson wondered whether there would be potential to limit this to a 12-screen theater. Hunzeker believes it is possible that someone might be willing to phase it in, but it would not be likely that they would phase it in starting with less than 12.

**COMPREHENSIVE PLAN AMENDMENT NO. 05014**

**ACTION BY PLANNING COMMISSION:**

June 8, 2005

Taylor moved denial, seconded by Larson.

Taylor believes the basic concern is the viability of our downtown community. He believes that Douglas Theater has done a very good job in making a commitment to our city. You don't want to back out of an agreement. It is important to do everything possible to continue along with the process and progress that we have done so far. He wants to stay the course and not change in the middle of the stream.

Larson commented that he has been around downtown for many years and he observed the negotiations that went on on that block to build a megaplex. We were unsuccessful in attracting any national developer or national chain. He acknowledged that Douglas was subsidized, but there was a high element of risk on the part of Douglas to invest that kind of money and it was done out of the sense of community improvement as much as it was potential profit. He believes we should stick to the agreement.

Pearson stated that she lives very close and works very close to downtown and goes to movies downtown. But, she does not think that you can rest the security of the downtown on one theater. That is false hope. You have to rest it on the Grand, the Lied, the Haymarket, the bars, the restaurants, etc. It can't rest on one thing. She believes it is an overstatement to say that the Grand will fail, and it is an overstatement to say downtown will fail if the Grand fails. Does she want to see a megaplex on 90<sup>th</sup> and Hwy 2 today? No. So she is trying to think of a reasonable compromise and she thinks a 12-plex outside the 6.5 mile radius is a reasonable compromise that she would propose.

Carroll commented that there are other cities trying to do what Lincoln is doing downtown and he does not think we need to stop now. The core is very important. It needs to grow and expand and get better for everybody. Putting a megaplex on the fringes just does not help. It is important to stay with your core. We need to protect that.

Carlson commented that he is encouraged that people will come out and get engaged in a discussion like this and encouraged that the proponents and champions for downtown will show up. With due respect to Pearson, he does not hear people saying the downtown will fail if the Grand fails. We're talking in terms of dynamic. The current policy is guiding us in the right direction. We need to stay on the path that is taking us in the positive direction. There are multiple opportunities downtown. It is a tool in the tool box. We have heard a lot of talk about a lot of different concepts. The question is, what is going to take precedence here? People talk about investment. Investment is good. Competition is good. Economic development is important. One of our duties is to protect what's valuable in the community. Carlson also takes seriously his duty as a Planning Commissioner and it is his job to protect what the community says is valuable. And the Comprehensive Plan indicates that downtown is what is important to this community. It is the heart of our community. We own downtown. We own the investments. Making this change threatens that future; it threatens downtown; it harms downtown; and threatens the downtown neighborhoods. It is our job to protect what is valuable. In this situation, it is the downtown and a policy that encourages and strengthens downtown.

Motion to deny carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is a recommendation to the City Council and Lancaster County Board.

**CHANGE OF ZONE NO. 05035**

**ACTION BY PLANNING COMMISSION:**

June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 05036**

**ACTION BY PLANNING COMMISSION:**

June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 05023**

**ACTION BY PLANNING COMMISSION:**

June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is final action, unless appealed to the City Council within 14 days.

**USE PERMIT NO. 140B**

**ACTION BY PLANNING COMMISSION:**

June 8, 2005

Taylor moved denial, seconded by Larson and carried 5-2.

Taylor stated that he is definitely not opposed to competition. He thinks it is extremely important, but he believes the way we started this ball rolling with the commitment that was made by Douglas Theater was a decision that was very well made at that time and he believes it makes good sense to stay on the same course until it comes to conclusion. He does not want to do anything to jeopardize the viability of our downtown area at this time.

Motion to deny carried 5-2: Larson, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson and Krieser voting 'no'; Bills-Strand and Esseks absent. This is final action, unless appealed to the City Council within 14 days.

**Pierson|Fitchett**  
LAW FIRM

1045 Lincoln Mall  
Suite 200  
P.O. Box 95109  
Lincoln, NE 68509  
(402) 476-7621  
fax (402) 476-7465  
[www.pierson-law.com](http://www.pierson-law.com)

Thomas J. Fitchett  
Mark A. Hunzeker  
William G. Blake  
Peter W. Katt  
William C. Nelson  
David P. Thompson  
Patrick D. Timmer  
Randy R. Ewing  
Shanna L. Cole  
Jason L. Scott

April 27, 2005

Gary L. Aksamit  
of Counsel

**VIA HAND DELIVERY**

Marvin Krout  
Director of Planning Department  
City of Lincoln  
555 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

Re: Comprehensive Plan Amendment

Dear Mr. Krout:

On behalf of Eiger Corp., the owner and developer of the regional shopping center at 84<sup>th</sup> and Highway 2, we request a comprehensive plan amendment to modify the City's existing policy regarding the location of movie theaters. As you know, the existing zoning ordinance is extremely restrictive as it relates to movie theaters, except in the B-4 Downtown Business District. As you and I have discussed in the past, no other business permitted in a regional shopping center district is regulated in the manner theaters are regulated. For example, the zoning ordinance does not limit the number of restaurants, book stores, jewelry stores, banks, or even "places of public assembly, entertainment, or recreation, except theaters." The distribution and exhibition of motion pictures has changed considerably in the years since Lincoln's zoning ordinance was amended to include the current restrictions to no more than six theater screens per B-5 district. We think that the result has been that Lincoln's market is underserved by motion picture exhibitors. We think that a modern entertainment complex, including multiple theater screens, would be welcomed by the people of Lincoln, and would enhance the mix of uses available at the shopping center.

Therefore, we propose that the comprehensive plan be amended to adopt a neutral position with respect to the location and number of movie theater screens. Specifically, we would propose that on page F-44, near the top of the page, the following sentences be deleted:

- "A key element to this role has been the longstanding and successful 'theater policy.' This policy has allowed downtown to retain an appreciable share of the area's movie theaters. It is intended that this policy would continue as part of the present Plan."

Marvin Krout  
April 27, 2005  
Page 2

We would also propose that the following parenthetical sentence near the end of the section entitled "Location Criteria" on the same page be deleted:

- "(Market impact studies will still be required for movie theaters.)"

We also propose the following sentences be deleted on page F-48 under the heading "Principles for Downtown":

- Lincoln's successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the downtown."

Finally, we would ask that any other language which you may feel has a bearing on this issue be appropriately modified to adopt a neutral position on the location of theaters in Lincoln.

We have presented this idea to the Downtown Lincoln Association Board of Directors. As far as we know, the Board has not taken a position on the issue yet.

As I have discussed with you previously, also enclosed is a proposed amendment to the text of the zoning ordinance to implement these changes, together with a Change of Zone, Use Permit, and Special Permit for the location of an 18-screen theater and entertainment complex in the shopping center. Please give me a call if you wish to discuss this matter further.

Thank you for your consideration of this matter.

Sincerely,



Mark A. Hunzeker  
For the Firm

MAH:la  
cc: Greg Sutton  
Kelvin Korver

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**27.63.630 Permitted Special Use: Theaters.**

Theaters may be allowed in the B-5 District by special permit under the following conditions:

(a) A use permit for 400,000 square feet or more of commercial floor area has been issued;

(b) A Certificate of Occupancy has been issued for 300,000 square feet or more of commercial floor area; provided, however, that the City Council may decrease or waive this requirement upon a finding that the proposed theaters will have no significant adverse impact upon the property values and existing uses in the B-4 Lincoln Center Business District, with particular emphasis upon the effect of such proposed theaters on the entertainment and cultural uses in the B-4 Lincoln Center Business District; and

(c) Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than six movie screens; **however, if the proposed theater complex is located outside a 6.5-mile radius from the center of the intersection of 13<sup>th</sup> and "O" Streets, it may have more than six screens.**

## Theater Proposal

### 1. Application:

- a. Comp Plan Amendment to delete references to the current "theater policy" as a centerpiece of the City's effort to maintain a strong downtown.
- b. Zoning text amendment to allow more than six-screen theater complexes in B-t Districts if the special permit area is more than 6.5 miles from 13<sup>th</sup> & O
- c. Change of zone to B-5, Use Permit and Special Permit requesting approval for an 18-screen theater complex near 91<sup>st</sup> Street and Pine Lake Road

### 2. Explanation:

Our reasons for proposing the changes are twofold: First, we want to have a first quality entertainment complex at Prairie Lake Shopping Center. In addition to theaters, we expect other entertainment type tenants and restaurants. We think Lincoln deserves this kind of facility and that Lincoln citizens will support it.

Second, we want to have the ability to negotiate with more than one theater operator. We have very high expectations that this will be a state of the art complex – not just in terms of projectors and sound equipment, but also in terms of architecture, premium grade construction materials, expanded food offerings and ancillary entertainment. In short – a step up even from the Grand. IN order to be able to negotiate for that kind of facility, we need to be able to "shop" it to more than one operator.

Our client, Eiger Corp., is the developer of the Prairie Lakes Shopping Center at 84<sup>th</sup> and Highway 2. One of the owners was also the developer of South Point.

While developing South Pointe, an attempt was made to include a larger theater complex, because theater developers said they were not interested in building only three screens (the maximum allowed at that time). Other issues made compromise necessary, resulting in a change in the zoning ordinance to allow up to six screens by special permit.

The outside theater developers walked away, leaving Douglas Theater Co. as the only company willing to build a six-screen theater. Douglas has since expanded its three-screen facilities at Edgewood and Eastpark to six screens as well.

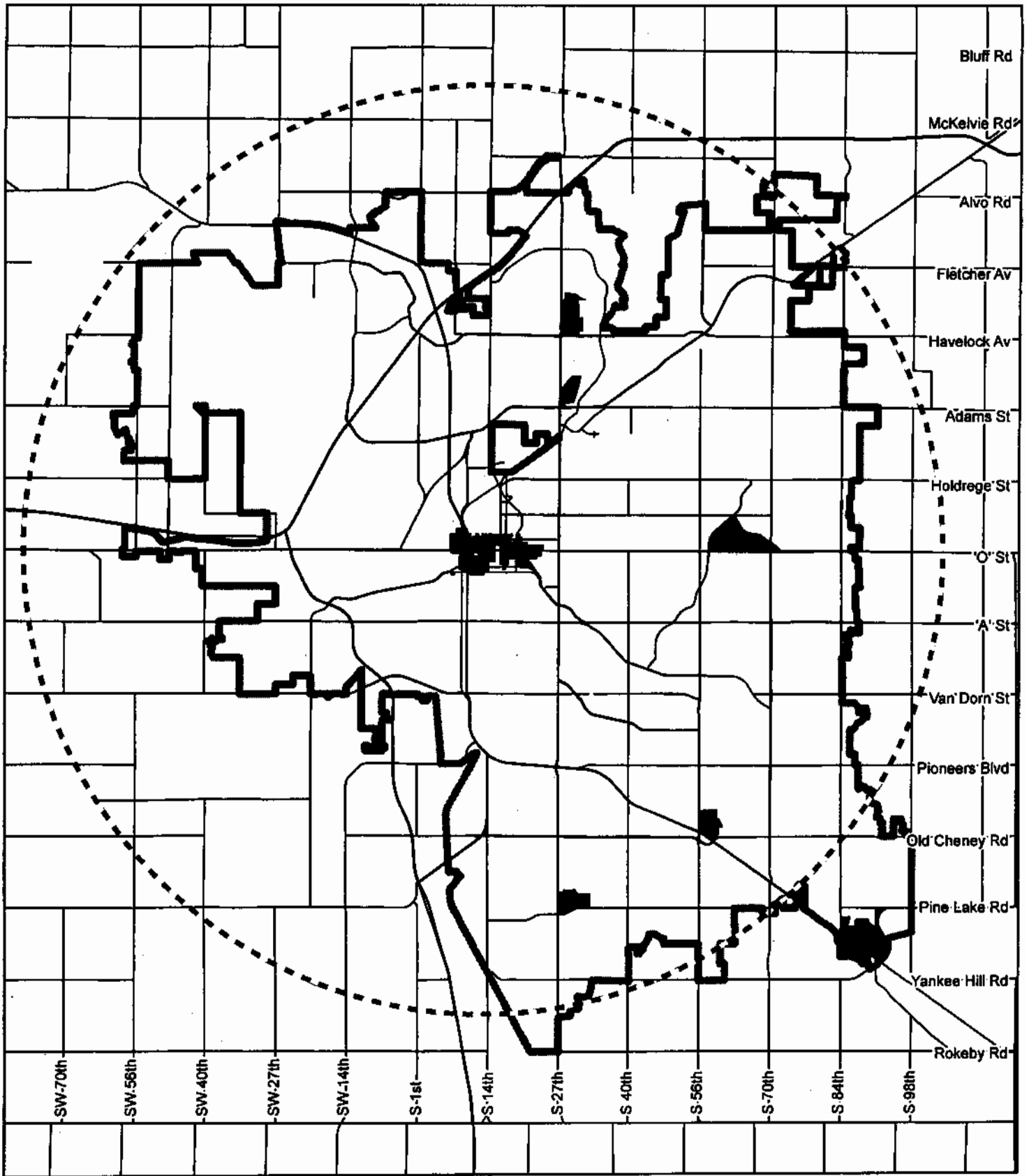
The City's restriction on the number of screens allowed outside the downtown area has resulted in all screens in Lincoln being owned by a single company – Douglas Theater Co. That is not to say Douglas Theater Co. is a bad company – in many ways it has been a victim of the City's restrictive policy as well as a beneficiary. If you asked Douglas Theater Co., they would likely say that they would like to have built more screens at South Pointe, or Edgewood, but could not.

The problem with the City's policy is that films are distributed in a way that gives preference to companies operating a certain number of screens within a certain geographic area. A new company coming to Lincoln would never be in a position to get the best movies, because with only six screens, it would never gain the market position to get first choice.

Current City policy virtually prohibits entry into the Lincoln market by new theater operators. No other business is restricted in this way. No other use enjoys such insulation from new competition.

Having said all that, we are not hostile to Douglas Theater . . . If they make the best proposal for Prairie lake, they will be the operator. We have no qualms about that. However, we want to have the ability to build enough screens to attract competitive proposals. We think that is only fair.

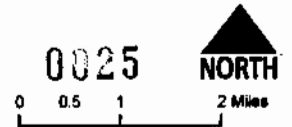




# Land Affected by Proposed Amendment to Theater Policy

## Comprehensive Plan Amendment 05014

- 6.5 Mile Radius From 13th & O
- B-4 Zoning District
- B-5 Zoning District
- ▭ Lincoln City Limits



SUBMITTED AT PUBLIC HEARING  
BEFORE PLANNING COMMISSION  
BY MARK HUNZEKER: 6/08/05

COMP PLAN AMENDMENT NO. 05014  
CHANGE OF ZONE NO. 05035  
CHANGE OF ZONE NO. 05036  
SPECIAL PERMIT NO. 05023  
USE PERMIT NO. 140B

<b>City</b>	<b>20-mile pop.=</b>	<b>Address</b>	<b>Phone</b>	<b># of screens</b>	<b>Exhibitor</b>
<b>Des Moines, IA</b>	<b>459,909</b>				
<b>Theatre</b>					
Carmike Southridge 12		6720 SE 14th Ave		12	Carmike
Fridley- Copper Creek Cinemas		1325 Copper Creek Dr, Pleasant Hill	515-266-2	9	Fridley
Merle Hay Mall Cinemas		3800 Merle Hay Road	515-252-0	1	Independent
Carmike Cobblestone 9		8501 Hickman Road, Urbandale	515-276-2	9	Carmike
Fleur Cinema		4545 Fleur Road	515-287-4	4	Independent
Fridley Sierra 3 Theatres		1618 22nd Street, West Des Moines	515-225-1	3	Fridley
Century 20 Jordan Creek		101 Jordan Creek Pkwy, West Des Moines	515-267-9	20	Century
Carmike Wynnsong 16		5233 NW 84th Ave, Johnston	515-331-3	16	Carmike
Fridley- Springwood 9		2829 South Ankeny Blvd, Ankeny	515-964-5	9	Fridley
<b>Omaha, NE</b>	<b>715,859</b>				
Dundee Theatre		4952 Dodge Street	402-551-3	1	Independent
Cinema Center		2828 S 82nd Ave	402-827-3	8	Douglas
AMC Oakview Plaza 24		3555 S 140th Plaza	402-333-0	24	AMC
Twin Creek Cinema		3909 Raynor Pkwy, Bellevue	402-827-3	16	Douglas
Q Cinema 9		3505 S 120th Street	402-827-3	9	Douglas
20 Grand		144th & West Maple Road	402-827-3	20	Douglas
Village Pointe Cinema		304 N 174th Street	402-827-3	16	Douglas
Omni 4 Theatres		300 W Broadway, Council Bluffs	712-325-6	4	Independent
Star Cinema-Council Bluffs		3220 S 23rd Avenue, Council Bluffs	712-256-7	16	Star
<b>Madison</b>	<b>458,189</b>				
Marcus South Towne Cinemas		2305 West Broadway, Monona	608-223-3	5	Marcus
Hilldale Theatre		702 N Midvale Blvd	608-238-0	2	Star
Marcus Eastgate Cinemas		5202 High Crossing Blvd	608-242-2	16	Marcus
Marcus Westgate Art Cinemas		340 Westgate Mall	608-271-4	4	Marcus
Marcus Point Ultrascreen Cinemas		7825 Big Sky Drive	608-833-3	16	Marcus
Star Cinema- Fitchburg		Hwy 18 & PD, Fitchburg	608-270-1	14	Star
Cinema Café 5		124 West Main Street, Stroughton	608-873-7	5	Independent
<b>Wichita</b>	<b>494,800</b>				
Warren Old Towne Theatre & Grill		353 North Mead	316-262-7	5	Warren
Movie Machine		4600 West Kellogg	316-945-0	5	Warren
Premiere Palace		11010 East Kellogg	316-891-9	10	Palace (Warren)
13th Avenue Warren		11611 East 13th Street	316-682-3	12	Warren
West 21st Warren		9150 West 21st	316-721-9	17	Warren
Dickinson Northrock 14		3151 Penstemon	316-636-5	14	Dickinson
Derby Plaza Theatres		1300 North Nelson Drive, Nelson	316-789-0	7	Independent
<b>Lincoln</b>	<b>281,455</b>				
Lincoln Grand		12th & P	402-441-0	14	Douglas
East Park 6		East Park Plaza Mall	402-441-0	6	Douglas
Edgewood 3		5200 South 56th Street	402-441-0	6	Douglas
SouthPointe Cinemas		2920 Pine Lake Road	402-441-0	6	Douglas

City	2011 pop.	# Theatres	# Screens	2011 pop./Theatre	2011 pop./Screen	# Exhibitors
Des Moines	459,909	9	83	51,101	5,541	5
Omaha	715,859	9	114	79,539	6,279	5
Madison	458,189	7	62	65,456	7,390	3
Wichita	494,800	7	70	70,686	7,068	3
Lincoln	281,455	4	32	70,364	8,795	1

§ 15-901

CITIES OF THE PRIMARY CLASS USE PERMIT NO. 140B

acres in area. A city of the primary class shall have authority within the area to prescribe standards for laying out subdivisions in harmony with the comprehensive plan; to require the installation of improvements by the owner, by the creation of public improvement districts, or by requiring a good and sufficient bond guaranteeing installation of such improvements; and to require the dedication of land for public purposes.

For purposes of this section, subdivision shall mean the division of a lot, tract, or parcel of land into two or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of ownership or building development, except that the division of land shall not be considered to be subdivision when the smallest parcel created is more than ten acres in area.

Subdivision plats shall be approved by the city planning commission on recommendation by the city planning director and public works and utilities department. The city planning commission may withhold approval of a plat until the public works and utilities department has certified that the improvements required by the regulations have been satisfactorily installed, until a sufficient bond guaranteeing installation of the improvements has been posted, or until public improvement districts are created. The city council may provide procedures in land subdivision regulations for appeal by any person aggrieved by any action of the city planning commission or city planning director on any plat.

Source: Laws 1929, c. 49, § 1, p. 204; C.S.1929, § 15-1001; R.S.1943, § 15-901; Laws 1959, c. 40, § 2, p. 219; Laws 1963, c. 57, § 1, p. 238; Laws 1980, LB 61, § 2; Laws 1993, LB 39, § 3.

This section does not authorize cities to use subdivision control as a device to evade constitutional prohibitions of taking of property without compensation. *Briar West, Inc. v. City of Lincoln*, 206 Neb. 172, 291 N.W.2d 730.

This section does not authorize a city to require a developer to pay the cost of widening a street, while, at the same time, prohibit the de-

veloper's subdivision from having direct access to that street. *Briar West, Inc. v. City of Lincoln*, 206 Neb. 172, 291 N.W.2d 730.

Approval of plat by municipal authorities is not required where there is no subdivision of land, no dedication of roadways, and no sale of lots to others. *Reller v. City of Lincoln*, 174 Neb. 638, 119 N.W.2d 59.

**15-902. Building regulations; zoning; powers; comprehensive plan; manufactured homes.** (1) Every city of the primary class shall have power in the area which is within the city or within three miles of the corporate limits of the city and outside of any organized city or village to regulate and restrict: (a) The location, height, bulk, and size of buildings and other structures; (b) the percentage of a lot that may be occupied; (c) the size of yards, courts, and other open spaces; (d) the density of population; and (e) the locations and uses of buildings, structures, and land for trade, industry, business, residences, and other purposes. Such city shall have power to divide the area zoned into districts of such number, shape, and area as may be best suited to carry out the purposes of this section and to regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of buildings, structures, or land within the total area zoned or within districts. All such regulations shall be uniform for each class or kind of buildings throughout each district, but regulations applicable to one district may differ from those applicable to other districts. Such zoning regulations shall

be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan. Such zoning regulations may include reasonable provisions regarding nonconforming uses and their gradual elimination.

(2)(a) The city shall not adopt or enforce any zoning ordinance or regulation which prohibits the use of land for a proposed residential structure for the sole reason that the proposed structure is a manufactured home if such manufactured home bears an appropriate seal which indicates that it was constructed in accordance with the standards of the Department of Health and Human Services Regulation and Licensure or the United States Department of Housing and Urban Development. The city may require that a manufactured home be located and installed according to the same standards for foundation system, permanent utility connections, setback, and minimum square footage which would apply to a site-built, single-family dwelling on the same lot. The city may also require that manufactured homes meet the following standards:

- (i) The home shall have no less than nine hundred square feet of floor area;
  - (ii) The home shall have no less than an eighteen-foot exterior width;
  - (iii) The roof shall be pitched with a minimum vertical rise of two and one-half inches for each twelve inches of horizontal run;
  - (iv) The exterior material shall be of a color, material, and scale comparable with those existing in residential site-built, single-family construction;
  - (v) The home shall have a nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; and
  - (vi) The home shall have wheels, axles, transporting lights, and removable towing apparatus removed.
- (b) The city may not require additional standards unless such standards are uniformly applied to all single-family dwellings in the zoning district.
- (c) Nothing in this subsection shall be deemed to supersede any valid restrictive covenants of record.

(3) For purposes of this section, manufactured home shall mean (a) a factory-built structure which is to be used as a place for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or (b) a modular housing unit as defined in section 71-1557 bearing the seal of the Department of Health and Human Services Regulation and Licensure.

Source: Laws 1929, c. 49, § 2, p. 204; C.S.1929, § 15-1002; R.S.1943, § 15-902; Laws 1959, c. 40, § 3, p. 220; Laws 1963, c. 57, § 2,



Michael Roselius  
<mike\_roselius@mac.com>  
06/06/2005 04:31 PM

To plan@lincoln.ne.gov (p.177 - Public Hearing - 06/08/05)  
cc  
bcc

Subject Public Hearing on 18 screen theater

Unfortunately, I am unable to attend the public hearing on the 8th in person, but appreciate the opportunity to voice my feelings about the proposal.

First - as a resident of 6133 South 81st - a community very close to the proposed site, I have no concerns about traffic etc. for that area. That is an identified business district with significant development in place or planned, and these issues are expected and to-date appear to be well controlled.

My biggest concern has to do with the study which the committee and Mayor Seng are citing as basis for their denial.

According to an article in the Lincoln Journal Star on 05/27/05 - the study suggests that 79 percent of forecasted attendance to this theater would come from existing theaters.

I have 2 responses to that:

1. That would indicate to me that 4 in 5 current movie-goers are seeing movies at theaters they would prefer not to be at. This should support the idea of expansion.
2. This figure of 79% should not be a shock to any of us, and would apply to nearly any business that might build out there. Let me explain: On a basic level, there are 3 groups of people in the population that are affected by this proposal:
  1. Those that would never see a movie regardless of the location of the theater.
  2. Those that don't attend movies but would if the theater were closer or more convenient
  3. Those that attend movies regardless of where they are shown.

Of those 3 groups - the largest segment are those in group #3 - and those are the 79% that this study identifies.

Let's apply the logic to a different business. Assume you are voting on the zoning for a Mexican restaurant at that location. It would not be surprising to discover that 4 in 5 diners at that restaurant were previously regularly dining at other Mexican restaurants.

In short, building a new theater, regardless of the location or number of screens, should not, in and of itself, create a new population of customers where one did not previously exist. Yet, this study and supporters of it, appear to suggest that unless that occurs, theater expansion should not occur. I don't agree.

If you have an identified developer, willing to risk significant dollars, to support the business expansion in an area of our city that is growing fast, I would request that we support and encourage their endeavor. While it is nice to envision a downtown Lincoln, bustling with activity and the center for movies and other entertainment, if the market is looking at another location

(and it appears to be) we should not stand in it's way.

I appreciate the opportunity to be heard in support of this waiver.

Respectfully,

Michael Roselius  
6133 South 81st  
Lincoln, NE 68516  
402-304-1535

LINCOLN HAYMARKET DEVELOPMENT CORPORATION.

June 7, 2005

LHDC is a non-profit organization, committed to the economic revitalization of Lincoln's Historic Haymarket District. Through a continuing comprehensive process LHDC protects, enhances and promotes the District's architectural and cultural heritage.

The Lincoln Haymarket Development Corporation has decided to take a position *against* the proposed amendment to the Downtown Lincoln Theater Policy. LHDC has a significant interest in maintaining our current Theater Policy because of the negative effect such a change would have on our Downtown business core

Some of the issues we considered in our discussion were:

- 1) The current policy was developed at a time when there was competition in the Lincoln theater business and was done with the cooperation of the theater operators at that time.
- 2) The City currently doesn't have a competitive market for the theater business, however, according to the Douglas Theater operators their charges for admission and concessions for the Lincoln operation are consistent with the Omaha market that does have competition.
- 3) The Grand Theater (14 screens) opened by Douglas Theaters in downtown Lincoln was selected as the site because of the theater policy in place.
- 4) The Planning Department has conducted a study and it indicates that the City of Lincoln has an above average number of screens for a City of our size. That the introduction of a large multi screen (18 screens) at Prairie Lake site at 84<sup>th</sup> and Highway 2 will result in the dilution of the market and potentially the financial failure of some of our current theaters. (ie: The Grand and Edgewood)
- 5) The Douglas Theaters has never objected to a competitor coming to the Lincoln market.

The LHDC Executive Board believes that good business practices would require that the current policy of 6 screens in outlying areas be kept in tact and that it be open to all theater companies to develop.

Sincerely

Douglas E. Lienemann  
President

