

**THE MINUTES OF THE REGULAR CITY COUNCIL MEETING HELD
MONDAY, OCTOBER 3, 2005 AT 1:30 P.M.**

The Meeting was called to order at 1:30 p.m. Present: Council Chair Svoboda; Council Members: Camp, Cook, Eschliman, Marvin, McRoy, Newman; City Clerk, Joan E. Ross.

Council Chair Svoboda asked all present to stand and recite the Pledge of Allegiance and observe a moment of silent meditation.

READING OF THE MINUTES

MCROY Having been appointed to read the minutes of the City Council proceedings of September 26, 2005, reported having done so, found same correct.

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

PUBLIC HEARING

APPLICATION OF ALLEY, INC. DBA THE ALLEY FOR A LIQUOR CATERING LICENSE FOR THEIR PRESENTLY LICENSED PREMISE AT 1031 M ST. - Josh Hallett, 1031 N Street, came forward to answer questions.

This matter was taken under advisement.

DECLARING THE NORTH SEVEN FEET OF LOT 1, BLOCK 3, ENGLSIDE ADD., AS SURPLUS PROPERTY, GENERALLY LOCATED AT 22ND & HOLDREGE STS. - J.D. Burt, Design Associates, 1609 N Street, representing T & A Investments LLC came forward to answer any questions.

This matter was taken under advisement.

CHANGE OF ZONE 05060 - APPLICATION OF THE PLANNING DIRECTOR FOR A CHANGE FROM P PUBLIC USE TO R-2 RESIDENTIAL DIST. ON PROPERTY GENERALLY LOCATED AT 33RD ST. & DOANE ST. - Ray Hill, Planning Dept., came forward to answer questions. Discussion followed.

This matter was taken under advisement.

CHANGE OF ZONE 05066 - AMENDING LINCOLN MUNICIPAL CODE §27.63.470 "PERMITTED SPECIAL USE: PLANNED SERVICE COMMERCIAL" TO ADD PUBLIC OR PRIVATE ELEMENTARY & HIGH SCHOOLS AS AN ALLOWED USE BY THE PLANNED SERVICE COMMERCIAL SPECIAL PERMIT IN THE H-4 GENERAL COMMERCIAL DIST. - Steve Henrichsen, Planning Dept. came forward to explain the text change. Discussion followed.

This matter was taken under advisement.

CHANGE OF ZONE 2531CC - APPLICATION OF JERRY & ANNETTE WEBER TO AMEND THE WILLIAMSBURG VILLAGE PLANNED UNIT DEVELOPMENT TO ADJUST THE REAR YARD SETBACK FROM 27.5' TO 20.5' TO ALLOW AN ADDITION TO THE EXISTING HOUSE ON PROPERTY LOCATED AT 3821 WILLIAMSBURG DR. - DaNay Kalkowski, Seacrest & Kalkowski, 1111 Lincoln Mall, Suite 350, came forward representing Jerry & Annette Weber to explain the request for a change of zone.

This matter was taken under advisement.

APPROVING THE 2005-2006 CITY TAX RATE OF 0.30091 PER \$100.00 OF ASSESSED VALUATION REPRESENTING A 2.0% INCREASE OVER THE 2004-2005 RATE - Jonathan Cook, Council Member, asked for clarification if this is due to the voter approved Storm Water Bonds.

Steve Hubka, Budget Officer, answered yes entirely.

This matter was taken under advisement.

APPLICATION OF UNION COLLEGE FOR THE USE OF PUBLIC RIGHT-OF-WAY UNDER PRESCOTT ST. BETWEEN S. 49TH & S. 50TH STS. FOR PLACEMENT OF A BURIED ELECTRICAL SERVICE LINE & BURIED DATA COMMUNICATIONS LINE - Dan Spiry, Architect with Bahr Vermeer Haecker, came forward representing Union College and College View Church to state the electrical services need to be upgraded and is part of the expansion.

This matter was taken under advisement.

HEARING ON ROBERT A. HOFFMAN'S NOTICE OF APPEAL APPEALING FROM THE DETERMINATION OF IMPACT FEES IMPOSED FOR THE SINGLE-FAMILY DWELLING LOCATED AT 3805 N. 44TH ST. & REQUESTING A WAIVER OR REDUCTION OF SAID FEES - Robert Hoffman, 4315 Colfax Ave., stated he didn't feel the impact fee was for this use but only for new construction.

Michaela Hansen, Public Works, explained this property never had water service so this is a new use on the water system. Discussion followed.

Mr. Hoffman came forward for rebuttal.

Karl Fredrickson, Director of Public Works, came forward to answer questions. Discussion followed.

Margaret Remmenga, Public Works Business Manager, came forward to explain the water billing process. Discussion followed.

This matter was taken under advisement.

ASSESSING NUISANCE ABATEMENT COSTS ASSOCIATED WITH THE CLEARING OF PUBLIC NUISANCES BY THE HEALTH DEPARTMENT TO THE FOLLOWING BENEFITTED PROPERTIES: 5050 PRINCE RD., 3436 N. 48TH, 820 C, 2718 Q, 1313 SUMNER, 3017 RANDOLPH, 2420 HOLDREGE, 1535 B, 2227 DUDLEY, 2420 HOLDREGE, 2420 HOLDREGE, 4118 A, 4626 MADISON, 2284 W, 820 C, 2040 S. 18TH - Scott Holmes, Health Dept., came forward to answer questions. Discussion followed.

Glen Cekal, 1420 "C" Street, came forward to state the government should lead by example.

This matter was taken under advisement.

SPECIAL PERMIT 1786A - APPLICATION OF QUIN-C INC. TO AMEND THE BLACK FOREST ESTATES COMMUNITY UNIT PLAN TO PERMIT 88 DWELLING UNITS, INCLUDING AN ADJUSTMENT TO A 5' FRONT YARD SETBACK, EXCEPT ALONG OLD CHENEY RD., WITH A MINIMUM 22' SETBACK FOR GARAGES, AN ADJUSTMENT TO A 5' REAR YARD ON LOT 7, BLOCK 7, AND TO WAIVE THE SIDEWALKS ON THE WEST SIDE OF BLACK FOREST DR. & BOTH SIDES OF BLACK FOREST CT., ON PROPERTY GENERALLY LOCATED AT 62ND ST. & OLD CHENEY RD. - Ray Hill, Planning Dept., came forward to state an error in the description of property waiving down to 5 feet should read Lot 7, Block 3 not Block 7.

Rob Ott, 201 N. 8th Street, came forward representing Quin-C and did not have an objection to the amendment. Discussion followed.

Jonathan Cook, Council Member, stated for the record this item is from 2001. This is something that just sat in your limbo file and you finally asked the applicant if they wanted to actually finish it up. That's why they're here. It isn't a delay because of City Staff or any City process.

Mr. Hill acknowledged this was correct.

This matter was taken under advisement.

SPECIAL PERMIT 05043 - APPLICATION OF SHADY CREEK, LLC TO OPERATE AN EARLY CHILDHOOD CARE FACILITY FOR UP TO 120 CHILDREN, AND A REQUESTED WAIVER OF THE REQUIREMENT TO SUBMIT BUILDING PLANS & ELEVATIONS AND TO WAIVE THE REQUIREMENT THAT THE FACILITY BE LOCATED ON & TAKE ACCESS TO AN ARTERIAL STREET, ON PROPERTY GENERALLY LOCATED AT 5521 SHADY CREEK CT. - Brian Carstens, 601 Old Cheney Road., Suite C, came forward representing Shady Creek LLC to answer questions. Discussion followed.

This matter was taken under advisement.

APPROVING THE SUBMITTAL OF A GRANT APPLICATION TO THE NEBRASKA GAME & PARKS COMMISSION FOR \$20,000 FROM THE LAND & WATER CONSERVATION FUND TO ASSIST WITH REPLACEMENT OF THE PLAYGROUND IN PIONEERS PARK - Councilman Cook requested a clarification of the wording of the resolution.

Lynn Johnson, Director of Parks & Recreation Dept., came forward to request an amendment of the dollar amount of \$85,000 should be \$80,000.

This matter was taken under advisement.

**** END OF PUBLIC HEARING ****

MISCELLANEOUS BUSINESS - NONE

COUNCIL ACTION

LIQUOR RESOLUTIONS

APPLICATION OF ALLEY, INC. DBA THE ALLEY FOR A LIQUOR CATERING LICENSE FOR THEIR PRESENTLY LICENSED PREMISE AT 1031 M ST. (9/26/05 - PUBLIC HEARING & ACTION DELAYED ONE WEEK TO 10/3/05) - CLERK read the following resolution, introduced by Jon Camp, who moved its adoption for approval: A-83562 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, and the pertinent City ordinance, the City Council recommends that the application of Alley, Inc. dba The Alley for the issuance of a Catering Permit to the existing liquor license, located at 1031 M Street, Lincoln, Nebraska, be approved with the condition that the premise complies in every respect with all city and state regulations.

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted by the City Clerk to the Nebraska Liquor Control Commission.

Introduced by Jon Camp

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

ORDINANCES - 2ND READING & RESOLUTIONS

DECLARING THE NORTH SEVEN FEET OF LOT 1, BLOCK 3, ENGLSIDE ADD., AS SURPLUS PROPERTY, GENERALLY LOCATED AT 22ND & HOLDREGE STS. - CLERK read an ordinance, introduced by Dan Marvin, declaring the City-owned property generally located at the southwest corner of 22nd and Holdrege Streets as surplus and authorizing the sale thereof, the second time.

CHANGE OF ZONE 05060 - APPLICATION OF THE PLANNING DIRECTOR FOR A CHANGE FROM P PUBLIC USE TO R-2 RESIDENTIAL DIST. ON PROPERTY GENERALLY LOCATED AT 33RD ST. & DOANE ST. - CLERK read an ordinance, introduced by Dan Marvin, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the second time.

CHANGE OF ZONE 05066 - AMENDING LINCOLN MUNICIPAL CODE §27.63.470 "PERMITTED SPECIAL USE: PLANNED SERVICE COMMERCIAL" TO ADD PUBLIC OR PRIVATE ELEMENTARY & HIGH SCHOOLS AS AN ALLOWED USE BY THE PLANNED SERVICE COMMERCIAL SPECIAL PERMIT IN THE H-4 GENERAL COMMERCIAL DIST. - CLERK read an ordinance, introduced by Dan Marvin, amending Section 27.63.470 of the Lincoln Municipal Code relating to Permitted Special Use; Planned Service Commercial to add public or private elementary and high schools as an allowed use by the planned service commercial development special permit in the H-4 General Commercial District; and repealing Section 27.63.470 of the Lincoln Municipal Code as hitherto existing, the second time.

CHANGE OF ZONE 2531CC - APPLICATION OF JERRY & ANNETTE WEBER TO AMEND THE WILLIAMSBURG VILLAGE PLANNED UNIT DEVELOPMENT TO ADJUST THE REAR YARD SETBACK FROM 27.5' TO 20.5' TO ALLOW AN ADDITION TO THE EXISTING HOUSE ON PROPERTY LOCATED AT 3821 WILLIAMSBURG DR. - CLERK read an ordinance, introduced by Dan Marvin, amending the approved Development Plan for Williamsburg Village Planned Unit Development as appended to Change of Zone 2531BB to adjust the rear yard setback from 27.5' to 20.5' to allow an addition to the existing house, on property located at 3821 Williamsburg Drive, the second time.

APPROVING A LICENSE AGREEMENT BETWEEN THE CITY & VERIZON WIRELESS LLC FOR THE USE OF PROPERTY IN ANTELOPE PARK FOR CO-LOCATING TELECOMMUNICATIONS FACILITIES - CLERK read an ordinance, introduced by Dan Marvin, accepting and approving the License Agreements between the City of Lincoln, Nebraska, a municipal corporation, and Verizon Wireless (VAW) LLC dba Verizon Wireless for the placement of telecommunications facilities upon City property located in Antelope Park and authorizing the Mayor to sign such License Agreement on behalf of the City, the second time.

SPECIAL PUBLIC HEARING RESOLUTION

APPROVING THE 2005-2006 CITY TAX RATE OF 0.30091 PER \$100.00 OF ASSESSED VALUATION REPRESENTING A 2.0% INCREASE OVER THE 2004-2005 RATE - CLERK read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83563 A RESOLUTION establishing a final property tax levy for the City's 2005-2006 fiscal year and adjusting the City tax rate to that adopted in the City budget resolution.

RECITALS

I.

Pursuant to Neb. Rev. Stat. § 77-1601.02, the City Council of the City of Lincoln is authorized to pass, by a majority vote, a resolution setting the final tax rate.

II.

Pursuant to Neb. Rev. Stat. § 77-1601.02, notice was published in a newspaper of general circulation on September 26, 2005, which date was at least five days prior to October 3, 2005 being the date upon which the City Council held a special public hearing called for the purpose of considering and acting upon this resolution.

III.

When the budget was adopted on August 22, 2005 the tax rate was anticipated to be .30091 per \$100 of assessed valuation. Final certified valuations from the County Assessor's office have not changed the tax rate necessary to fund the adopted budget.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after notice and public hearing as required by law, the City Council does hereby set the following final levy for the City of Lincoln 2005-2006 fiscal year for a property tax request of \$40,873,356.00: \$.30091 per \$100 of assessed valuation which total rate is comprised of the following:

Bond Interest & Redemption	.02079
General	.19548
Library	.04879
Social Security	.01396
Police and Fire Pension	<u>.02189</u>
Total	.30091

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

RESOLUTIONS

APPLICATION OF UNION COLLEGE FOR THE USE OF PUBLIC RIGHT-OF-WAY UNDER PRESCOTT ST. BETWEEN S. 49TH & S. 50TH STS. FOR PLACEMENT OF A BURIED ELECTRICAL SERVICE LINE & BURIED DATA COMMUNICATIONS LINE - CLERK read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83564 WHEREAS, Union College has submitted an application for a permit to use the public right-of-way in Prescott Street between S. 49th and S. 50th Streets for the purpose of installing electrical service lines and fiber optic communication lines for service to the church expansion at the southeast corner of S. 48th Street and Prescott Street; and

WHEREAS, said applicant has submitted a letter of application and a site plan which are attached hereto, marked as Exhibit "A" and Exhibit "B" respectively, and made a part of this resolution by reference, to use the public right-of-way as above described; and

WHEREAS, said applicant has complied with all of the provisions of Chapter 14.54 of the Lincoln Municipal Code pertaining to such use.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the aforesaid application of Union College, hereinafter referred to as Permittee, to use the public right-of-way in Prescott Street between S. 49th and S. 50th Streets as shown on Exhibit "B", for the purpose of installing electrical and fiber optic communication line from the Union College Campus to the College View Seventh-day Adventist Church building located at the southeast corner of S. 48th Street and Prescott Street be granted as a privilege only by virtue of and subject to strict compliance with the site plan, the letter of application, and the following terms and conditions, to wit:

1. That the permission herein granted is granted as a privilege only, and is subject to all the terms and conditions of Chapter 14.54 of the Lincoln Municipal Code including those provisions relating to the posting of a continuing bond in the amount of \$5,000, and the filing of

a certificate of insurance with a minimum combined single limit of \$500,000 aggregate for any one occurrence.

2. That said use shall conform to the application, the site plan filed therewith, and with all applicable City ordinances and regulations.

3. The Permittee, its successors or assigns shall save and keep the City free and harmless from any and all loss or damages or claims for damages arising from or out of the use of the public way requested herein.

4. That all work done under the authority of this resolution shall be subject to the inspection and approval of the Director of Public Works of the City of Lincoln.

5. The Permittee shall pay to the City the amount of \$2,000.00 for the past uses of the space beneath said public street. The Permittee shall also pay to the City an annual rental for the use and occupancy of the space beneath said public street occupied by such use which rental is currently for five (5) four-inch conduits and one (1) two-inch conduit, all of which are 100 feet in length. The annual rental for the aforementioned space occupied underneath the public street, alley, sidewalk, or other public ground shall be in the amount of \$550.00 per year.

All payments shall be made to the City Treasurer and shall be due and payable on the 1st day of October of each year; provided, however, the amount of the initial annual payment shall be prorated from the date of approval of this permit to the 1st day of October, 2005 and payment shall be due and payable on October 1st thereafter.

Any such rent shall become delinquent on the 1st day of December of each year and such delinquent rent shall bear interest at the rate of 1% per month until paid and if such rent is not paid for six months or more after such delinquent date, a penalty of 5% shall be added thereto in addition to said interest.

6. The use of the public way herein granted and the terms and conditions of this resolution shall be binding and obligatory upon the above-named Permittee, its successors and assigns.

7. That within 30 days from the adoption of this resolution, and before commencing any construction under the provisions hereof, the above-named Permittee shall file an unqualified written acceptance of all the terms and conditions of this resolution with the City Clerk. Failure to do so will be considered a rejection hereof and all privileges and authorities hereunder granted shall thereupon terminate.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

HEARING ON ROBERT A. HOFFMAN'S NOTICE OF APPEAL APPEALING FROM THE DETERMINATION OF IMPACT FEES IMPOSED FOR THE SINGLE-FAMILY DWELLING LOCATED AT 3805 N. 44TH ST. & REQUESTING A WAIVER OR REDUCTION OF SAID FEES - CLERK read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83565 WHEREAS, Robert A. Hoffman, hereinafter Appellant, has filed Impact Fee Application 1FW05039 to install water service utilizing a 3/4 inch water meter on property located at 3805 North 44th Street; and

WHEREAS, 3805 North 44th Street has had sewer service since 1960 but never has had City water as the property had its own water well; and

WHEREAS, the Impact Fee Administrator calculated the Impact Fees for the new water service utilizing a 3/4 inch water meter using the Impact Fee Schedules beginning January 1, 2005; and

WHEREAS, the Impact Fee Determination was dated September 6, 2005; and

WHEREAS, the Appellant filed his Notice of Appeal on September 6, 2005, appealing the Impact Fee Determination requesting that the Impact Fee be waived or reduced as property taxes have been paid by the property owners of 3805 North 44th Street since the building was constructed on the property in 1960, and that strict application of the Impact Fee Ordinance's calculations under these circumstances work an unjust and undue burden on the Appellant; and

WHEREAS, the City Council finds that property taxes are not used to fund Water Distribution and Water System Impact Fee Facility Improvements; and

WHEREAS, the City Council finds that the Impact Fee was correctly calculated and that there are no unusual circumstances for the development which demonstrate that the application of the fee to the development would be unfair or unjust as the requested waiver reduction based upon the prior payment of property taxes since construction of the

building in 1960 does not meet any of the stipulations or conditions required for reduction and/or exemption from Water Distribution and Water Supply Impact Fees.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the Impact Fee Appeal filed by Robert A. Hoffman on September 6, 2005 is hereby denied for the following reason:

1. The requested exemption does not meet any of the stipulations or conditions required for reduction or exemption from Water Distribution or Water Supply Impact Fees.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

ASSESSING NUISANCE ABATEMENT COSTS ASSOCIATED WITH THE CLEARING OF PUBLIC NUISANCES BY THE HEALTH DEPARTMENT TO THE FOLLOWING BENEFITTED PROPERTIES: 5050 PRINCE RD., 3436 N. 48TH, 820 C, 2718 Q, 1313 SUMNER, 3017 RANDOLPH, 2420 HOLDREGE, 1535 B, 2227 DUDLEY, 2420 HOLDREGE, 2420 HOLDREGE, 4118 A, 4626 MADISON, 2284 W, 820 C, 2040 S. 18TH. - CLERK read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83566 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska that:

Pursuant to Section 8.26.040 of the Lincoln Municipal Code, the premise clearance costs as shown on the list which is attached hereto, marked Exhibit "A" and made a part hereof by reference, are hereby assessed against the property set opposite each amount as shown thereon. Said assessments shall be delinquent from and after December 1, 2005 and draw interest as provided for in Neb. Rev. Stat. § 45-104.1 for assessments.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

SPECIAL PERMIT 1786A - APPLICATION OF QUIN-C INC. TO AMEND THE BLACK FOREST ESTATES COMMUNITY UNIT PLAN TO PERMIT 88 DWELLING UNITS, INCLUDING AN ADJUSTMENT TO A 5' FRONT YARD SETBACK, EXCEPT ALONG OLD CHENEY RD., WITH A MINIMUM 22' SETBACK FOR GARAGES, AN ADJUSTMENT TO A 5' REAR YARD ON LOT 7, BLOCK 7, AND TO WAIVE THE SIDEWALKS ON THE WEST SIDE OF BLACK FOREST DR. & BOTH SIDES OF BLACK FOREST CT., ON PROPERTY GENERALLY LOCATED AT 62ND ST. & OLD CHENEY RD. - PRIOR to reading:

MARVIN Moved to amend Bill No. 05R-234 on page 1, lines 4 and 24, and on page 2 on line 10 delete "Block 7" and insert in lieu thereof Block 3.

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

CLERK Read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83567 WHEREAS, Quin-C, Inc. has submitted an application designated as Special Permit No. 1786A for authority to amend Black Forest Estates Community Unit Plan to allow 88 dwelling units, to reduce the front yard setback to 5 feet, except along Old Cheney Road, with a minimum 22 feet setback for garages, to reduce the rear yard setback on Lot 7, ~~Block 7~~ Block 3, to 5 feet, and to waive the sidewalks on the west side of Black Forest Drive and on both sides of Black Forest Court, on property located at 62nd Street and Old Cheney Road, and legally described to wit: Lots 1, 2, 3, and 4, Block 1, Black Forest Estates Addition, Lots 1, 2, 3, 4 and 5, Block 2, Black Forest Estates Addition, Lots 1, 2, and 3, Block 3, Black Forest Estates Addition, Outlots "A", "B", "C", and "D", Black Forest Estates Addition, Lots 1 and 2, Block 2, Black Forest Estates 1st Addition, Lots 1 and 2, Black Forest Estates 2nd Addition, and Outlots "A", "B", and "C", Black Forest Estates 2nd Addition, all located in the South Half of Section 9, Township 9 North, Range 7 East of the 6th P.M., City of Lincoln, Lancaster County, Nebraska;

WHEREAS, the real property adjacent to the area included within the site plan for this amended community unit plan will not be adversely affected; and

WHEREAS, said site plan together with the terms and conditions hereinafter set forth are consistent with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the application of Quin-C, Inc., hereinafter referred to as "Permittee", to amend Black Forest Estates Community Unit Plan to allow 88 dwelling units, to reduce the front yard setback to 5 feet, except

along Old Cheney Road, with a minimum 22' setback for garages, to reduce the rear yard setback on Lot 7, ~~Block 7~~ Block 3, to 5 feet, and to waive the sidewalks on the west side of Black Forest Drive and on both sides of Black Forest Court, on the property legally described above, be and the same is hereby granted under the provisions of Section 27.63. of the Lincoln Municipal Code upon condition that construction and operation of said be in strict compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

1. This approval permits:
 - a. 88 dwelling units.
 - b. A 5 foot front yard setback except along Old Cheney Road with a minimum 22 foot setback for garages.
 - c. A 5 foot rear yard setback on Lot 7, ~~Block 7~~ Block 3.
 - d. Accessory dwelling units described as a single living unit having less than 1,000 square feet of floor space and that would generally consist of an apartment on top of a garage, connected to a garage or main home, or existing in the basement that would be typically used by an older family member, college student or renter as affordable housing often referred to as a "granny flat". One accessory dwelling unit may be permitted on each of the lots in Blocks 4-6.
 - e. A waiver of sidewalks on the west side of Black Forest Drive and on both sides of Black Forest Court.
2. Before receiving building permits:
 - a. The Permittee must submit a revised and reproducible final plan and 5 copies to the Planning Department.
 - b. The construction plans shall comply with the approved plans.
 - c. Final Plats shall be approved by the City.
3. Before occupying the dwelling units all development and construction shall have been completed in compliance with the approved plans.
4. All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
5. The site plan approved by this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
6. This resolution's terms, conditions, and requirements bind and obligate the Permittee, its successors and assigns.
7. The City Clerk shall file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee shall pay the recording fee in advance.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Svoboda; NAYS: None; ABSTAINED: Newman.

SPECIAL PERMIT 05043 - APPLICATION OF SHADY CREEK, LLC TO OPERATE AN EARLY CHILDHOOD CARE FACILITY FOR UP TO 120 CHILDREN, AND A REQUESTED WAIVER OF THE REQUIREMENT TO SUBMIT BUILDING PLANS & ELEVATIONS AND TO WAIVE THE REQUIREMENT THAT THE FACILITY BE LOCATED ON & TAKE ACCESS TO AN ARTERIAL STREET, ON PROPERTY GENERALLY LOCATED AT 5521 SHADY CREEK CT. - CLERK read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83568 WHEREAS, Shady Creek, LLC, has submitted an application designated as Special Permit No. 05043 for authority to operate an early childhood care facility for up to 120 children, together with a requested waiver of the requirement to submit building plans and elevations and that the early childhood care facility be located on an arterial street, on property located at 5521 Shady Creek Court, and legally described to wit:

Lot 1, Quail Valley 2nd Addition, Lincoln, Lancaster County, Nebraska;

WHEREAS, the community as a whole, the surrounding neighborhood, and the real property adjacent to the area included within the site plan for this early childhood care facility will not be adversely affected by granting such a permit; and

WHEREAS, said site plan together with the terms and conditions hereinafter set forth are consistent with the comprehensive plan of the City of Lincoln and with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the application of Shady Creek, LLC, hereinafter referred to as "Permittee", to operate an early childhood care facility for 120

children be and the same is hereby granted under the provisions of Section 27.63.070 of the Lincoln Municipal Code upon condition that construction of said early childhood care facility be in strict compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

1. This approval permits an early childhood care facility for up to 120 children and 19 staff members on the largest shift, along with waivers of the requirements that building plans and elevations be provided, and that access be taken from a local street.
2. Before receiving building permits:
 - a. The Permittee shall submit 5 copies of the approved plans to the Planning Department.
 - b. The construction plans shall comply with the approved plans.
 - c. The operation and the premises are to meet appropriate local and state licensing requirements, including compliance with health codes.
3. Before occupying this early childhood care facility, all development and construction is to comply with the approved plans.
4. The site plan approved by this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
5. This resolution's terms, conditions, and requirements bind and obligate the Permittee, its successors and assigns.
6. The Permittee shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

APPROVING THE SUBMITTAL OF A GRANT APPLICATION TO THE NEBRASKA GAME & PARKS COMMISSION FOR \$20,000 FROM THE LAND & WATER CONSERVATION FUND TO ASSIST WITH REPLACEMENT OF THE PLAYGROUND IN PIONEERS PARK - PRIOR to reading:

COOK Moved to amend Bill No. 05R-236 on page 1, line 12 by deleting the amount of \$85,000 and inserting in lieu thereof the amount of \$80,000.

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

CLERK Read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83569 WHEREAS, the City of Lincoln through its Parks & Recreation Department proposes to apply to the Nebraska Game and Parks Commission for financial assistance from the Land and Water Conservation funds for the purpose of development of a playground in Pioneers Park.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

1. The City of Lincoln hereby expresses its support for the application being made by its Parks & Recreation Department to the Nebraska Game and Parks Commission for financial assistance from the Land and Water Conservation Grant Fund for the purpose of constructing a playground in Pioneers Park.
2. The City of Lincoln has available and will apply its share of the project cost (~~\$85,000~~ \$80,000) and has the financial capability to maintain and will maintain the completed improvements in a safe and attractive manner for public use.
3. The City of Lincoln will not discriminate against any person on the basis of race, color, age, religion, handicap, sex, or national origin in the use of the proposed project acquired or developed pursuant to the application for financial assistance. The City of Lincoln certifies that it has the financial capabilities to operate and maintain the completed facility in a safe and attractive manner for public use and further certifies that it will comply, where applicable, with the Americans with Disabilities Act by making the facilities accessible to the handicapped.
4. The City of Lincoln will, within 30 days of federal approval, or as soon thereafter as legally possible, obtain any required consultant for this project.
5. The Mayor is hereby authorized to sign all documents necessary

and required to make application to acquire said grant funds.

6. No property developed under this project will, without the approval of the Nebraska Game and Parks Commission and the Secretary of the Interior, be converted to non-public outdoor recreation purposes. The City of Lincoln will replace any converted land in accordance with Section 6(f)(3) of the Land and Water Act of 1965, as amended to date.

7. The City Clerk is directed to transmit a certified copy of this resolution to the Parks & Recreation Department for transmittal to the Nebraska Game and Parks Commission.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

ACCEPTING THE REPORT OF NEW & PENDING CLAIMS AGAINST THE CITY AND APPROVING DISPOSITION OF CLAIMS SET FORTH FOR THE PERIOD OF SEPTEMBER 1 - 15, 2005 - CLERK read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83570 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the claims listed in the attached report, marked as Exhibit "A", dated September 16, 2005, of various new and pending tort claims filed against the City of Lincoln with the Office of the City Attorney or the Office of the City Clerk, as well as claims which have been disposed of, are hereby received as required by Neb. Rev. Stat. § 13-905 (Reissue 1997). The dispositions of claims by the Office of the City Attorney, as shown by the attached report, are hereby approved:

<u>DENIED</u>		<u>ALLOWED OR SETTLED</u>
Nicholas Starr Becker	\$100,000.00	
Sheryl Theriault (personal injury claim closed)		None
Progressive Insurance (Claim No. 055204283)	NAS*	
Cincinnati Insurance (Hampton Development Services, Inc., Insured)	92,997.51	
Donna Frye	NAS*	
Andrew & JoAnn Russell	4,506.17	
Glenda Masek	NAS*	

* No Amount Specified

The City Attorney is hereby directed to mail to the various claimants listed herein a copy of this resolution which shows the final disposition of their claim.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

SETTING THE HEARING DATE OF OCTOBER 17, 2005 AT 1:30 P.M. FOR APP. OF DOWNTOWN BRAKES & OIL DBA 16TH STREET LIQUOR FOR A CLASS D LIQUOR LICENSE LOCATED AT 1601 N STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-83571 BE IT RESOLVED by the City Council, of the City of Lincoln, that a hearing date is hereby set for Mon., October 17, 2005 at 1:30 p.m. or as soon thereafter as possible in the City Council Chambers, County-City Building, 555 S. 10th St., Lincoln, NE, for Application of Downtown Brakes & Oil dba 16th Street Liquor for a Class D liquor license located at 1601 N Street.

Introduced by Annette McRoy

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

SETTING THE HEARING DATE ON MONDAY, OCTOBER 17, 2005 AT 1:30 P.M. FOR THE APP. OF PLAYMAKERS, INC. DBA PLAYMAKERS FOR A CLASS "C" LIQUOR LICENSE AT 640 W. PROSPECTOR COURT, #300 - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-83572 BE IT RESOLVED by the City Council, of the City of Lincoln, that a hearing date is hereby set for Mon., October 17, 2005 at 1:30 p.m. or as soon thereafter as possible in the City Council Chambers, County-City Building, 555 S. 10th St., Lincoln, NE, or Application of Playmakers, Inc. dba Playmakers for a Class C liquor license at 640 W. Prospector Court, #300.

If the Police Dept. is unable to complete the investigation by said time, a new hearing date will be set.

Introduced by Annette McRoy

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

PETITIONS & COMMUNICATIONS

THE FOLLOWING HAVE BEEN REFERRED TO THE PLANNING DEPT.:

- Change of Zone 05067 - App. of Whitehead Oil Company for a change from R-6 to B-4 on property at 2100 K Street.
- Change of Zone 05068 - App. of R.C. Krueger Development & Carl & Vicki Schmidt for a change from AG to R-3 P.U.D. on property at S. 70th Street and Yankee Hill Road.
- Change of Zone 05072 - App. of a change to LMC 27.71.270 to allow for the inclusion of existing I.T.'s to be included within the limits of a C.U.P. & not affect the overall density.
- Special Permit 1558B - App. of Pickfair Entertainment Corp. to expand the premises authorized for the sale of alcohol for consumption both on and off the premises, on property located at SW 9th Street and West O Street.
- Special Permit 1883A - App. of Gerry & Dianne Krieser to amend the Stevens Creek Pointe Community Unit Plan to expand boundaries adding 2 lots for a total of 9 lots with requests to waive the preliminary plat process, sidewalks, street trees, street lighting, landscape screening & block length on property at N. 134th Street and Adams Street.
- Special Permit 05048 - App. of Ron Harvey for reconstruction of a nonconforming use on property at 305 and 345 F Street.

REPORTS OF CITY OFFICERS

- CLERK'S LETTER AND MAYOR'S APPROVAL OF ORDINANCES & RESOLUTIONS PASSED BY COUNCIL ON SEPTEMBER 19, 2005 - CLERK presented said report which was placed on file in the Office of the City Clerk.
- REPORT FROM CITY TREASURER OF CITY CASH ON HAND AT THE CLOSE OF BUSINESS AUGUST 31, 2005 - CLERK presented said report which was placed on file in the Office of the City Clerk.
- APPROVING THE DISTRIBUTION OF FUNDS REPRESENTING INTEREST EARNINGS ON SHORT-TERM INVESTMENTS OF IDLE FUNDS DURING THE MONTH ENDED AUGUST 31, 2005 - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:
- A-83573 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:
- That during the month ended August 31, 2005, \$674,646.99 was earned from the investments of "IDLE FUNDS". The same is hereby distributed to the various funds on a pro-rata basis using the balance of each fund and allocating a portion of the interest on the ratio that such balance bears to the total of all fund balances.
- Introduced by Annette McRoy
- Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

ORDINANCES - 1ST READING & RESOLUTIONS

- AMENDING LINCOLN MUNICIPAL CODE CHAPTER 24.38, ONSITE WASTEWATER TREATMENT SYSTEMS TO ASSURE CONSISTENCY WITH STATE REGULATIONS, NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY TITLE 124 RULES AND REGULATIONS FOR THE DESIGN, OPERATION AND MAINTENANCE OF ON-SITE WASTEWATER TREATMENT SYSTEMS AND COUNTY RESOLUTION 02-30 ONSITE WASTEWATER TREATMENT SYSTEMS. (RELATED ITEMS: 05-145, 05R-238) - CLERK read an ordinance, introduced by Annette McRoy, amending Chapter 24.39 of the Lincoln Municipal Code, Onsite Wastewater Treatment Systems to assure consistency with State regulations, Nebraska Department of Environmental Quality Title 124 Rules and Regulations for the Design, Operation and Maintenance of On-site Wastewater Treatment systems and County Resolution 02-30 Onsite Wastewater Treatment Systems, the first time.
- AMENDING THE DESIGN STANDARDS CHAPTER 4.10 OPERATION AND MAINTENANCE OF ON-SITE WASTEWATER TREATMENT SYSTEMS TO ASSURE CONSISTENCY WITH NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY TITLE 124 RULES AND REGULATIONS FOR THE DESIGN, OPERATION AND MAINTENANCE OF ON-SITE WASTEWATER TREATMENT SYSTEMS. (RELATED ITEMS: 05-145, 05R-238).

APPROVING AN AGREEMENT BETWEEN THE CITY'S LINCOLN AREA AGENCY ON AGING AND THE FIRST UNITED METHODIST CHURCH FOR THE LEASE OF SPACE FOR THE FIRST UNITED ACTIVAGE CENTER AT 14410 FOLKESTONE ST., WAVERLY, NEBRASKA - CLERK read an ordinance, introduced by Annette McRoy, accepting and approving a Lease Agreement between the City of Lincoln and First United Methodist Church for the lease of space by the Lincoln Area Agency of Aging for its ActivAge Center at 14410 Folkestone Street, Waverly, Nebraska for the period of September 1, 2005 through August 31, 2006, the first time.

CHANGE OF ZONE 05040 - APPLICATION OF RIDGE DEVELOPMENT CO. FOR A CHANGE FROM O-3 OFFICE PARK DIST. TO B-2 PLANNED NEIGHBORHOOD BUSINESS DIST. ON PROPERTY GENERALLY LOCATED AT S. 14TH ST. AND YANKEE HILL RD. (RELATED ITEMS: 05-147, 05R-243) - CLERK read an ordinance, introduced by Annette McRoy, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the first time.

USE PERMIT 05004 - APPLICATION OF RIDGE DEVELOPMENT CO. TO DEVELOP WILDERNESS WOODS COMMERCIAL CENTER FOR 31, 500 SQ. FT. OF FLOOR AREA FOR A DRIVE-THRU RESTAURANT, RETAIL AND OFFICE SPACE, WITH A REQUEST TO ADJUST THE YARD SETBACKS FOR INDIVIDUAL LOTS, ON PROPERTY GENERALLY LOCATED AT S. 14TH ST. AND YANKEE HILL RD. (RELATED ITEMS: 05-147, 05R-243)

ORDINANCES - 3RD READING & RESOLUTIONS

AMENDING ORDINANCE NO. 17381 TO ALLOW PREPARATION OF DETAILED PLANS AND SPECIFICATIONS FOR A MEDIAN ALONG SOUTH 56TH STREET BETWEEN MADALYN ROAD AND OLD CHENEY ROAD AS WELL AS TO ALLOW PREPARATION OF DETAILED PLANS AND SPECIFICATIONS AND CONSTRUCTION OF A WEST LEG TO THE SOUTH 56TH AND SHADOW PINES DRIVE INTERSECTION WHICH WILL CONNECT SOUTH 56TH STREET TO STEPHANIE LANE (Related Items: 05-129, 05R-178) - PRIOR to reading:

CAMP Moved to accept substitute ordinance #2.

Seconded by Eschliman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Svoboda; NAYS: Newman.

CLERK Read an ordinance, introduced by Patte Newman, amending Ordinance No. 17381 which authorized and directed the Department of Public Works and Utilities to proceed with the preparation of detailed plans and specifications for the widening, reconstruction, and improvement of South 14th Street from Old Cheney to 1/4 mile south of Pine Lake Road; South 40th Street from Pine Lake Road south to a point approximately 500 feet south of San Mateo Lane; South 56th Street from Old Cheney Road to 1/4 mile south of Pine Lake Road; South 70th Street from Highway 2 to 1/4 mile south of Pine Lake Road; and Pine Lake Road from South 14th Street to Highway 2 (excluding 19th to 32nd Streets); and to acquire necessary rights-of-way and easements relating thereto and to proceed with construction thereof in conformance with the Capital Improvement Program, the third time.

NEWMAN Moved to pass the Substitute Ordinance as read.

Seconded by McRoy & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

The ordinance, being numbered **#18621**, is recorded in Ordinance Book #25, Page

APPROVING THE REMOVAL OF THE EXISTING BARRICADE IN CUMBERLAND DRIVE AT THE COMMON LINE OF COLONIAL ACRES 2ND ADDITION AND JERROLD HEIGHTS 2ND ADDITION (Related Items: 05-129, 05R-178)- PRIOR to reading:

CAMP Moved to amend Bill No. 05R-178 by taking the barricades down thru the construction of 56th Street and at that point they would go back up until the acreages are converted to higher density.
No second.

CLERK Read the following resolution, introduced by Jonathan Cook, who moved its adoption:

A-83574 WHEREAS, a barricade exists in Cumberland Drive at the common line of Colonial Acres 2nd Addition and Jerrold Heights 2nd Addition which currently obstructs access between these two subdivisions; and
WHEREAS, the Lancaster County Board has previously assured the residents of Colonial Acres that the existing barricade would not be removed without a public hearing; and

WHEREAS, a request for authorization to remove said existing

barricade to allow continuous access between the subdivisions has been made; and

WHEREAS, the removal would facilitate vehicular traffic as well as police, fire, and ambulance protection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the Department of Public Works and Utilities is hereby authorized and directed to remove the existing barricade in Cumberland Drive located at the common line of Colonial Acres 2nd Addition and Jerrold Heights 2nd Addition.

Introduced by Jonathan Cook

Seconded by Marvin & carried by the following vote: AYES: Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: Camp.

TOOK BREAK 2:55 P.M.

RECONVENED 3:05 P.M.

CHANGE OF ZONE 05036 - APPLICATION OF EIGER CORPORATION FOR A CHANGE OF ZONE FROM AG AGRICULTURAL DISTRICT TO B-5 PLANNED REGIONAL BUSINESS DISTRICT ON PROPERTY GENERALLY LOCATED AT SOUTH 91ST STREET AND PINE LAKE ROAD. (IN CONNECTION W/05R-134, 05-85, 05-86, 05R-135, 05R-136) (6/20/05 - PLACED ON PENDING TO 7/25/05 WITH P.H.) (7/11/05 - PENDING TO 8/29/05 W/P.H.) (8/15/05 - PUBLIC HEARING CON'T . TO 9/12/05) (8/22/05 - PLACED ON PENDING TO 9/19/05 W/PUBLIC HEARING) - CLERK read an ordinance, introduced by Dan Marvin, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the third time.

MARVIN Moved to pass the ordinance as read.

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

The ordinance, being numbered **#18622**, is recorded in Ordinance Book #25, Page

APPEAL OF EIGER CORPORATION FROM THE PLANNING COMMISSION DENIAL OF SPECIAL PERMIT 05023 TO CONSTRUCT AN 80,000 SQ. FT. THEATER COMPLEX WITH 18 SCREENS IN THE B-5 ZONING DISTRICT, ON PROPERTY GENERALLY LOCATED AT S. 91ST STREET AND PINE LAKE ROAD. (IN CONNECTION W/05R-134, 05-85, 05-86, 05R-136) (ACTION DATE: 7/11/05) (6/20/05 - PLACED ON PENDING TO 7/25/05 WITH P.H.) (7/11/05 - PENDING TO 8/29/05 W/P.H.) (8/15/05 - PUBLIC HEARING CON'T . TO 9/12/05) (8/22/05 - PLACED ON PENDING TO 9/19/05 W/PUBLIC HEARING)- PRIOR to reading:

COOK Moved to amend the Resolution (substitute resolution) with conditions as provided by the Planning Department in their memo dated 9/29/05 from 18 to 6 screens.

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman; NAYS: Svoboda.

CLERK Read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83575

WHEREAS, Eiger Corporation has submitted an application designated as Special Permit No. 05023 for authority to construct an 80,000 sq. ft. theater complex with 18 screens in the B-5 zoning district on property located at South 91st Street and Pine Lake Road, and legally described to wit:

A tract of land composed of a portion of Outlot O, Appian Way Addition and a portion of the remaining portion of Lot 92 I.T.; located in Section 23, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, City of Lincoln, Nebraska, and more particularly described on the attached legal description;

WHEREAS, the Lincoln City-Lancaster County Planning Commission held a public hearing on June 8, 2005 and denied Special Permit No. 05023; and

WHEREAS, Eiger Corporation has appealed the action of the Lincoln City - Lancaster County Planning Commission and is requesting that Special Permit No. 05023 be approved; and

WHEREAS, the community as a whole, the surrounding neighborhood, and the real property adjacent to the area included within the site plan for this theater complex will not be adversely affected by granting such permit provided it is limited to six screens; and

WHEREAS, the final action of the Lincoln City - Lancaster County Planning Commission should be reversed in part; and

WHEREAS, said site plan together with the terms and conditions

hereinafter set forth are consistent with the comprehensive plan of the City of Lincoln and with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

1. That the final action of the Lincoln City-Lancaster County Planning Commission denying Special Permit No. 05023 be and the same is hereby reversed in part.

2. That the application of Eiger Corporation, hereinafter referred to as "Permittee", to construct a multi-screen theater in the B-5 district be and the same is hereby granted under the provisions of Section 27.63.630 the Lincoln Municipal Code upon condition that construction of said theater be in strict compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

- a. This approval permits a six-screen theater complex.
- b. Before receiving building permits:
 - i. The Permittee shall complete a revised site plan showing the following revisions and submit the documents and plans to the Planning Department for review and approval.
 - (1) A six-screen theater complex on Lot 1, Block 4.
 - (2) A revised Land Use Table showing a six-screen theater and associated floor area and trip generation rates.
 - (3) All theater screens identified as "with matinee."
 - (4) The required 50' setback along South 91st Street.
 - (5) Note #34 revised as follows: LOT LAYOUT FOR LOT 1, BLOCK 4 SHOWN WITHIN THE BOUNDARY OF THIS SPECIAL PERMIT/USE PERMIT IS CONCEPTUAL. THE SPECIFIC SITE LAYOUT, INCLUDING GRADING AND DRAINAGE, STREET PROFILE, AND UTILITY PLANS MUST BE APPROVED BY ADMINISTRATIVE AMENDMENT PRIOR TO ISSUANCE OF BUILDING PERMITS.
 - (6) Delete waiver request #4 under "WAIVERS" relating to waiver of the preliminary plat.
 - (7) Show revisions to the satisfaction of Public Works and Utilities.
 - ii. The construction plans comply with the approved plans.
 - iii. Final plat(s) are approved by the City.
- c. Before occupying the buildings all development and construction is to comply with the approved plans.
- d. All privately-owned improvements, including landscaping and recreational facilities, are to be permanently maintained by the owner or an appropriately established owners association approved by the City.
- e. The site plan approved by this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
- f. This resolution's terms, conditions, and requirements bind and obligate the Permittee, its successors and assigns.
- g. The Permittee shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

APPEAL OF EIGER CORPORATION FROM THE PLANNING COMMISSION DENIAL OF USE PERMIT 140B TO ALLOW 950,983 SQ. FT. OF COMMERCIAL AND OFFICE FLOOR AREA, ON PROPERTY GENERALLY LOCATED AT S. 91ST STREET AND PINE LAKE ROAD. (IN CONNECTION W/05R-134, 05R-135, 05-85, 05-86) (ACTION DATE: 7/11/05) (6/20/05 - PLACED ON PENDING TO 7/25/05 WITH P.H.) (7/11/05 - PENDING TO 8/29/05 W/P.H.) 8/15/05 - PUBLIC HEARING CON'T. TO 9/12/05)

(8/22/05 - PLACED ON PENDING TO 9/19/05 W/PUBLIC HEARING)- PRIOR to reading:

COOK Moved to amend Bill No. 05R-136 by replacing the conditions of said resolution with conditions in the 9/29/05 memo recommended by Planning Staff.

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

CLERK Read the following resolution, introduced by Dan Marvin, who moved its adoption:

A-83576 WHEREAS, Eiger Corporation has submitted an application in accordance with Section 27.31.100 of the Lincoln Municipal Code designated as Use Permit No. 140B to develop 874,441 square feet of the approved 950,983 square feet of commercial and office floor area on property generally located at S. 91st Street and Pine Lake Road, legally described to wit:

A tract of land composed of Lots 1, 2, and 3, Block 1, Appian Way Addition, Outlots A, D, E, H, I, and M, Appian Way Addition, a portion of Outlot N, Appian Way Addition, a portion of Outlot O, Appian Way Addition, Lot 1, Appian Way 1st Addition, Lot 1, Appian Way 2nd Addition, Lot 1, Appian Way 3rd Addition, Lots 1, 2, and 3, Appian Way 4th Addition, Lots 1, 2, and 3, Appian Way 5th Addition, Outlot A, Appian Way 5th Addition, Lots 1 and 2, Appian Way 6th Addition, Outlot A, Appian Way 6th Addition, a portion of the remaining portion of Lot 92 I.T., and a portion of the remaining portion of Lot 56 I.T., all located in Section 23, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, and more particularly described on the attached legal description;

WHEREAS, the Lincoln City-Lancaster County Planning Commission held a public hearing on June 8, 2005 and denied Use Permit No. 140B; and

WHEREAS, Eiger Corporation has appealed the action of the Lincoln City - Lancaster County Planning Commission and is requesting that Use Permit No. 140B be approved; and

WHEREAS, the community as a whole, the surrounding neighborhood, and the real property adjacent to the area included within the site plan for this theater complex will not be adversely affected by granting such a permit; and

WHEREAS, the final action of the Lincoln City - Lancaster County Planning Commission should be reversed; and

WHEREAS, said site plan together with the terms and conditions hereinafter set forth are consistent with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the final action of the Lincoln City-Lancaster County Planning Commission denying Use Permit No. 140B be and the same is hereby reversed.

That the application of Eiger Corporation, hereinafter referred to as "Permittee", to develop 950,983 square feet of commercial and office floor area be and the same is hereby granted under the provisions of Section 27.27.100 of the Lincoln Municipal Code upon condition that construction and operation of said commercial and office space be in strict compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

1. This approval amends the site plan for Use Permit #140A ~~to presently permit a total of 874,441 square feet of the approved to include the area and six-theater complex of Special Permit #05023 to permit a total of 950,983 square feet of commercial and office floor area as shown on the approved plan.~~

2. Before receiving building permits:

a. The Permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.

b. A revised site plan showing the following revisions:

Amended to add Planning Staff memo dated 9/29/05 conditions 2.1.1.1 and 2.1.1.2.

2.1.1.1 Show a six-screen theater complex on Lot 1, Block 4.

2.1.1.2 A revised Land Use Table showing a six-screen theater

and associated floor area and trip generation rates.

- i. A revised land use table that deletes the 20% pass-by reductions for the both the office uses on Lots 4 & 5, Block 2 and Lots 10 & 11, Block 3, and for the theaters.
 - ii. All theater screens identified as "with matinee."
 - iii. The required 50' setback along South 91st Street.
 - iv. Note #34 revised as follows: LOT LAYOUT FOR LOT 1, BLOCK 4 SHOWN WITHIN THE BOUNDARY OF THIS SPECIAL PERMIT/USE PERMIT IS CONCEPTUAL. THE SPECIFIC SITE LAYOUT, INCLUDING GRADING AND DRAINAGE, STREET PROFILE, AND UTILITY PLANS MUST BE APPROVED BY ADMINISTRATIVE AMENDMENT PRIOR TO ISSUANCE OF BUILDING PERMITS.
 - v. Delete waiver request #4 under "WAIVERS" relating to waiver of the preliminary plat.
 - ~~vi. Show the 12" high-pressure gas line across the site, and add General Note #35 which states: THERE IS A 12" HIGH-PRESSURE GAS LINE IN THIS AREA. IT IS RECOMMENDED THAT NO OCCUPIED STRUCTURES BE LOCATED WITHIN 220' OF IT. THE PERMITTEE MUST ADVISE THE OWNERS AND LESSEES OF THE PROJECT HAZARD AREA.~~
 - ~~vii.~~ vi. Show revisions to the satisfaction of Public Works and Utilities.
 - ~~c. A land use/trip generation table for the remaining approximately 82 acres of commercially designated land that includes the 38 acres west of this project site and the 44 acres northeast of the intersection of Highway 2 and South 91st Street.~~
 - ~~d.~~ c. The construction plans comply with the approved plans.
 - ~~e.~~ d. Final plat(s) are approved by the City.
3. Before occupying the buildings all development and construction is to comply with the approved plans.
 4. All privately-owned improvements, including landscaping and recreational facilities, are to be permanently maintained by the owner or an appropriately established owners association approved by the City.
 5. The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 6. This resolution's terms, conditions, and requirements bind and obligate the Permittee, its successors and assigns.
 7. The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.
 8. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Introduced by Dan Marvin

Seconded by Newman & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

MISCELLANEOUS BUSINESS

PENDING -

CAMP Moved to extend the Pending List to October 10, 2005.
Seconded by unintelligible & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

UPCOMING RESOLUTIONS -

CAMP Moved to approve the resolutions to have Public Hearing on

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October 10, 2005.

Seconded by unintelligible & carried by the following vote: AYES:
Camp,
Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

ADJOURNMENT **3:14 P.M.**

CAMP

Moved to adjourn the City Council meeting of October 3, 2005.
Seconded by unintelligible & carried by the following vote: AYES:
Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.
So ordered.

Joan E. Ross, City Clerk

Judy Roscoe, Senior Office Assistant