

## **FACTSHEET**

**TITLE:** **CHANGE OF ZONE NO. 05078**, to amend Title 27 of the Lincoln Municipal Code relating to indoor movie theaters.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 01/18/06  
Administrative Action: 01/18/06

**STAFF RECOMMENDATION:** Denial.

**RECOMMENDATION:** Denial (6-2: Krieser, Taylor, Esseks, Carroll, Larson and Carlson voting 'yes'; Sunderman and Strand voting 'no'; Pearson absent).

### **FINDINGS OF FACT:**

1. The purpose of this proposed text amendment is to "sunset" the requirement for a special permit for theaters in the B-5 Planned Regional Business District in seven years on January 1, 2013.
2. The staff recommendation to deny this proposed amendment is based upon the "Analysis" as set forth on p.3-4, concluding that staff does not support this amendment for the same reasons the previous applications seeking to amend the Comprehensive Plan and Zoning Ordinance to allow an 18-screen movie theater complex at Prairie Lakes Shopping Center were opposed. The limitation upon the number of both theater complexes and movie screens as part of the special permit is a key component of the City's Theater Policy. This policy has been in place for 21 years and 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 policy has also resulted in a pattern of theaters in each of the larger shopping areas, providing close-by entertainment convenience for residents in all parts of the City.
3. Testimony in support by the proponent, Jon Camp, and his discussion with the Planning Commission members is found on p.6-8.
4. Testimony in opposition by Mark Hunzeker on behalf of Eiger Corporation is found on p.9. Hunzeker told the Commission that the time frame was much too long, and suggested that the Eiger Corporation will bring this issue to the Commission before the 7-year period regardless of whether the amendment is approved.
5. The record also consists of one letter in opposition by the Near South Neighborhood Association (p.13).
6. Testimony by Don Wesely on behalf of Douglas Theatre Company is found on p.9-10. Douglas Theatre Company did not take a position on the proposed text amendment but reminded the Commission of the Redevelopment Agreement between the City and Douglas Theatre Company which obligates the City until December 31, 2014 (See Minutes, p.9-10 and p.14).
7. The Planning Commission discussion with staff is found on p.10-11.
8. On January 18, 2006, the majority of the Planning Commission agreed with the staff recommendation and voted 6-2 to recommend denial (Sunderman and Strand dissenting; Pearson absent).

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

**DATE:** January 24, 2006

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

**DATE:** January 24, 2006

**REFERENCE NUMBER:** FS\CC\2006\CZ.05078

# LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

## for January 18, 2005 PLANNING COMMISSION MEETING

**PROJECT #:** Change of Zone #05078

**PROPOSAL:** Amend Lincoln Municipal Code (LMC) Chapter 27.37 B-5 Planned Regional Business District, and Section 27.63.630 Special Permit for Theaters in the B-5 zoning district.

**CONCLUSION:** This amendment establishes a sunset clause regarding special permits for movie theaters in the B-5 district. It provides that on January 1, 2013, movie theaters become a permitted use in the B-5 district and that all pre-existing movie theaters approved by special permit are automatically converted to permitted uses. Staff does not support this amendment for the same reasons the previous applications seeking to amend the Comprehensive Plan and Zoning Ordinance to allow an 18-screen movie theater complex were opposed. The limitation upon the number of both theater complexes and movie screens as part of the special permit is a key component of the City's Theater Policy. In place for 21 years, the policy 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 policy has also resulted in a pattern of theaters in each of the larger shopping areas, providing close-by entertainment convenience for residents in all parts of the city.

**RECOMMENDATION:**

Denial

### **GENERAL INFORMATION:**

### **ASSOCIATED HISTORY:**

**CPA#05014** - A request denied by City Council on September 26, 2005 to 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 movie theaters outside the downtown.

**CZ#05035** - A request denied by City Council on September 26, 2005 to amend Section 27.63.630©) of the Zoning Ordinance for theaters in the B-5 district to allow movie theater complexes consisting of 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.

**CZ#05036** - A request denied by City Council on September 26, 2005 from AG Agriculture to B-5 Planned Regional Business for 14.11 acres to accommodate an 18-screen movie theater complex at Prairie Lakes Shopping Center (South 84<sup>th</sup> and Highway 2).

**SP#05023** - A request denied by City Council on September 26, 2005 for a special permit to allow an 18-screen movie theater at Prairie Lakes Shopping Center.

**UP#140B** - A request denied by City Council on September 26, 2005 to amend the Appian Way (now known as Prairie Lakes) Shopping Center use permit to include the area of CZ#05036 and the 18-screen movie theater complex of SP#05023.

**OTHER ASSOCIATED HISTORY:**

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

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

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

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

**1996** - The special permit for movie theaters in the B-5 district was amended to raise the maximum number of screens in a movie 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 with CZ#2663 to make movie theaters in the B-5 a use approved by special permit, 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 movie theater complex per district with no more than 3 screens in the complex.

**1984** - The Zoning Ordinance was amended with CZ#2075 to remove movie theaters from the B-1, B-2, B-3, I-1, I-2, I-4 and H-2 districts, but was remained a permitted use in the B-4 (downtown) and B-5 districts.

**ANALYSIS:**

1. City Councilperson Jon Camp requested staff to draft an amendment to the Zoning Ordinance to “sunset” the requirement for a special permit for theaters in the B-5 district. The special permit provisions currently contain limitations on both the number of theater complexes and movie theater screens in the B-5 district. The draft amendment is attached to this report.
2. Movie theaters are allowed in only two zoning districts: as a permitted use in the B-4 (Lincoln Center Business); and as a special permitted use in the B-5 (Planned Regional Business).
3. The provisions of LMC 27.63.630 (special permit for theaters in B-5) are as follows:

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

©) Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than six movie screens.

4. The proposed amendment modifies LMC 27.63.630©) to read as follows:

Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than six movie screens. On or after January 1, 2012, pre-existing indoor movie theaters approved by special permit shall be automatically converted to indoor movie theaters as a permitted use in the B-5 district and thereafter there shall be no restriction on the maximum number of theater complexes in each B-5 district and no restriction on the maximum number of movie screens in each theater complex.

5. The proposed amendment also modifies the term 'theater' to 'indoor motion picture theater' throughout the Zoning Ordinance to clearly state the use intended for regulation. This distinguishes movie theaters from performing arts theaters which principally feature live dramatic and musical performances.
6. If this amendment is approved, a movie theater becomes a permitted use in the B-5 zoning district and all pre-existing movie screens in B-5 are converted to permitted uses beginning January 1, 2013, or seven years after approval. Eliminated along with the requirement for a special permit are the limitations regarding the number of complexes and movie screens in the B-5. The ordinance was drafted in 2005, and incorrectly indicates an effective date of 2012. It will be revised accordingly and distributed.
7. The theater policy is responsible for the recent investment in the 14-screen Grand Theater downtown, which reinforces the image of downtown as the heart of the community. The policy also has encouraged the pattern of existing theaters anchoring large shopping areas in the south, southeast, and east sectors of the city, with another theater planned for the north sector. The policy has been amended in the past, and can be amended in the future as new circumstances warrant. "Sunset" provisions in zoning ordinances are generally used to try out a new idea for a limited period and then evaluate if it has been effective and deserves to be enacted. The theater policy has served Lincoln well for over 20 years, and was evaluated and left in place by the Council just four months ago.

Prepared by:

Brian Will

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Planner

December 30, 2005

**APPLICANT:** Marvin S. Krout  
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## CHANGE OF ZONE NO. 05078

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 18, 2006

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

Staff recommendation: Denial

Ex Parte Communications: None.

Additional information submitted for the record: Brian Will of Planning staff submitted a letter in opposition from the Near South Neighborhood Association, and a corrected ordinance to adjust the effective dates and other corrections to make the ordinance language consistent, i.e., the definition of "theaters" has been changed to "indoor movie theaters".

### Proponents

**1. Jon Camp**, member of the **Lincoln City Council**, appeared as the applicant. He stated that he comes with mixed feelings because last summer there was an issue before the Council in regard to the expansion of multi-plexes. Based upon the discussion at that time, he believes it is important to go through the process and come up with a definitive statement on what Lincoln wants in the future as far as the Downtown Theater Policy. He acknowledged that he is one of the largest proponents of Downtown.

In the past, the zoning ordinance has said that Downtown is the only place where there can be over six screens (multi-plexes). The purpose of this application is to review that measure and essentially end the existing Downtown theater policy seven years from now, on January 1, 2013. It should not be ended any sooner nor later. The reason he chose seven years is that it is fairly consistent with the commitments the city has made to the present multi-plex theater operator in the Downtown.

Camp explained that there are other overriding policies that have prompted him to bring this forward. One is giving the business community and the patrons a sense of certainty. We do have a number of six-plexes around the city and there is a desire to have one in the north part of Lincoln. How is the business owner going to make a multi-million dollar investment in the future not knowing whether the rules might change? Allowing a seven year time frame gives the business community an opportunity to make a wise decision on whether it chooses to invest. This time frame also allows a participant in the business community/movie industry to look into the future with a definitive point in time at which the limit on the number of screens would change. In that manner we, as a city, reaffirm our current policy for seven years to promote and assist Downtown Lincoln to help it continue to revitalize itself. At that time, he believes the existing policy should no longer be in effect. This would allow the present operator and others to plan ahead.

Camp posed the questions: Is it best to continue the policy as is? Or should we set this termination date?

Besides the sunset in seven years, Carroll wondered about the permitted use in B-5, which would allow multiple owners of different screens in the B-5 district, versus the special permit as it is now. Camp responded, stating that from the free market standpoint, if operators want to compete, he does not have difficulty with that. However, if we look at the broader horizon in the theater industry, it is not just theaters but the venue. There are many other venues with new technology. Part of the purpose of this amendment is to take out government intervention.

Carroll inquired again about the difference between permitted use and special permit. Camp indicated that he is open to either process. Marvin Krout, Director of Planning, explained that the ordinance is drafted with the intent to treat it as a permitted use like all other retail, entertainment, and restaurant-type uses that are permitted in the B-5 district. Having a special permit has been subjecting each theater request to an individual review. He thought the intent of what was being requested was to treat it like all other uses. That is the way the ordinance has been drafted.

Esseks suggested that the implications of Mr. Camp's testimony include that we should currently protect the Downtown for multi-screen complexes, but he assumes that at the end of the seven year period there will no longer be a need for that protection. Camp agreed that to be a piece of the picture. Many years ago, we decided to have a Downtown policy to help and encourage development Downtown. It is a certain form of government intervention. He is interested in seeing Lincoln send the message that we are going to defer to the private market place as much as possible.

Esseks pondered whether this might preclude some other investor from coming to the Downtown because they know that after seven years there will not be that privileged provision Downtown. Camp noted that in the present situation they have to apply for a permitted use. Last year, we witnessed a prior entity who tried and backed out. He is a strong enough believer in the market place -- there are so many competitive forces that businesses will evaluate on that basis.

As far as allowing potential developers to make their plans in advance, Larson asked Camp whether he was referring to the multi-plex or six-plex. Camp indicated he was talking about both. He would like to see a six-plex built in north Lincoln. If there is no definite policy, he believes the site in north Lincoln becomes subject to an annual challenge, and he believes that will tend to "chill" private investment in some six-plex complex.

If this is approved, Larson thinks it appears that someone who was planning a six-plex might back off because he knew there could be multi-plexes anywhere. Camp suggested that the result might be the opposite. A business entity could go ahead and might plan to have enough area for future expansion. Camp believes that, in the market place, we may have done ourselves a service by having the Downtown policy. It enhanced downtown, but, on the other hand, we are now in an evolution where theaters are not a main destination. There are a lot of other competing venues. What is going to happen to technology in another seven years? Maybe down the road Lincoln ends up with a multi-plex Downtown ringed by six-plexes. Larson suggested that with the changing technology it would seem that we should not plan a change seven years ahead. We could make that change five or six years from now. Camp agreed that to be a good observation; however, if we don't reaffirm what we have and take some action now, he thinks there will be an annual challenge to the theater policy by other developers and interests. We need to focus on whether to keep it or terminate it in seven years and send the message out to the business community. Larson believes that the denial of the previous challenge sent the message. Camp would rather see something really definitive.

Larson south confirmation as to whether Camp really cares whether this passes or not. Camp stated that from a free market standpoint, he would like to see it pass because it would send the message that Lincoln is open for business – the “can do” attitude. He thinks the market place will take care of itself, but he wants to live up to the commitment in the immediate seven years.

Taylor applauded the planning that has gone on thus far in terms of enhancing the Downtown. In consideration of the plans to build a theater complex on North 27<sup>th</sup> Street, he observed that it is not happening now, but it is still in the plan. When we look in terms of seven years and making an absolute change, how do you address the north theater in relation to the current plan design that is in place, as opposed to making a change that at this point is very speculative? Camp agreed that there is a plan on the drawing board to have a six-plex in north Lincoln. From the business owner’s standpoint, if they see the current policy reversed in a year, why would any business owner want to go in and commit the investment for a six-plex when a multi-plex could come in and fully defeat their investment? That is where the 7-year termination would allow an operator some breathing room to get established. It opens up the playing field.

Taylor inquired as to how that would help the Downtown. Camp suggested that we need to continually strive to build our niche. Let’s minimize what we do to interfere. He thinks this would further the development of the north Lincoln complex.

Strand believes that we would already have a six-plex in north Lincoln if the market was there. We made a promise to a theater company to build in Downtown Lincoln with financial backing. This proposal asks us to honor that time frame and allow open market. She agrees that the theater business is changing in many ways. At the same time, we are planning PUD’s and trying to plan sustainable neighborhoods where there is walkable shopping and bike paths, etc., without having to go across town to accomplish something. She enjoys going to the movies. She lives near South Pointe. If the movie she wants to see is showing Downtown, she won’t go. She’ll go to the theater closest to her home or rent the DVD because of the distance and difficulty of getting Downtown. Is there going to be a change in infrastructure dollars to allow easier access to Downtown, or are we going to continue to promote entertainment in the neighborhoods? Camp believes this leads to the niche marketing approach. He believes the six-plexes have served very well. But, down the road, in seven years, he wants to see things opened up. He suspects that maybe multi-plexes are a dinosaur. It may be that the six-plex is an “oyster holding a pearl” for us. There may be growth within some of the existing six-plexes.

Esseks agrees about minimizing the constraints on investment and he suggested that we should periodically assess the regulations and constraints. He also agrees that this particular investment by Douglas should be protected for a certain period of time, and seven years seems reasonable, but he is struggling with whether to postpone the decision to end the theater policy or make a decision on the sunset time right now. He strongly urged that the decision should hinge on whether we have evidence that the Downtown really benefits from the current policy. Do we have evidence that the limitation of a multi-plex beyond six screens makes a difference in the economic health of Downtown? Camp responded, stating that he is glad the Grand Theatre was constructed. But, in 2005, the national theater attendance was down; however, he acknowledged that Lincoln did much better than the national average. The Grand Theatre fits in well with a lot of other activities and the University. He is glad we have had the policy. Downtown is the heart of Lincoln. If that heart is to exist, we have to make sure it does so in a way that it keeps up with the times. That is where all of his investments are located. He urged that the decision be made now. Even if we terminate in seven years, another Council could



come in in two years and make a change. By setting or reaffirming the policy today, it will make it more difficult to make a change.

## Opposition

**1. Mark Hunzeker** appeared on behalf of **Eiger Corporation**. The thought of repealing this policy is a good one, but the problem is that the timing is much too long. The repealing of this policy should be immediate, not seven years hence. The theater policy was a bad idea when it was adopted in the first place. It is still a bad idea and it should be repealed now. The result of this policy has been the consolidation of ownership of all theaters and construction of an insurmountable barrier of entry into that business. Regardless of what happens with this ordinance, Hunzeker advised that this issue will not go away and will have to be dealt with in a time frame shorter than seven years. He stated that the annual payment of \$250,000 in real estate taxes on the property where his client proposes to place a multi-plex theater at Prairie Lake shopping center will dictate bringing this issue before the Commission again prior to the expiration of seven years. The demand is there and the need is there. He had to stand outdoors in mid-January just last week to see a movie that has been out for two months, waiting in line to get a ticket and got the last two seats in the auditorium. He does not think that experience would have taken place downtown. Hunzeker believes that the time frame in this proposal is much too long and he requested that the Commission amend the proposal to eliminate this restriction as of January 1, 2007, as opposed to 2013.

**2. Don Wesely** appeared on behalf of **Douglas Theatre Company** and read their statement into the record, which states, in part, that:

...The Douglas Theatre Company is not taking a position on this proposal at this time. However, we wish to take this opportunity to remind the Planning Commission that the City of Lincoln and the Douglas Theatre Company entered into a Redevelopment Agreement in 2003 that has a direct bearing on this proposal. The Redevelopment Agreement was the key to the decision to build The Grand Theatre downtown.

The Redevelopment Agreement states (that) 'Douglas Theatre Company has been induced to enter into this agreement in part based on the increased incremental valuation of the Project Area attributable to the City's Current Theater Policy. 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 competing 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. 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 Bond Maturity Date.' The Final Bond Maturity Date is December 31, 2014. This is two years later than the proposal before you to sunset the Theater Policy on January 1, 2013.

We bring this to your attention to make it clear there is an existing legal obligation that the City of Lincoln has entered into that calls for the Theater Policy to continue through the year 2014. This legal obligation resulted in the private investment by the Douglas Theatre Company, and the public investment, through Tax Increment Financing on behalf of the City of Lincoln, which

resulted in the Grand Theatre being built. The Douglas Theatre Company worked very cooperatively with the City of Lincoln on this important project. We value our cooperative relationship with the City of Lincoln. That is why we are taking no position on this proposal today. However, we would appreciate further information regarding this proposal's impact on the existing Redevelopment Agreement we have with the City of Lincoln.

Esseks inquired as to the likely financial implications for the City if this amendment is approved. Wesely suggested that if, because of a competing multi-plex, we are not getting the attendance Downtown, the value of the project reduces. Then the value of the property is reduced and the city has to accept the obligation to pay off those bonds to cover that difference.

**Dallas McGee of Urban Development** advised that the Redevelopment Agreement was approved in order to get the Grand Theatre built. The tax increment financing goes through the end of 2014, two years after the seven years would be in effect. From a practical standpoint, if a theater of more than six screens was built in 2013, there would be a few steps that would need to be followed in order to follow through on the provisions in the Redevelopment Agreement. There would need to be documentation that there is an impact on the Grand Theatre in terms of attendance. The theater consultant indicated that there would be an impact on the Grand as well as others, including South Pointe and Edgewood. The consultant indicated that the pie would not get larger – it would just be divided differently. The impact in terms of loss of income would be given to the County Assessor to evaluate the value of the Grand Theatre. If the County Assessor determines that the Grand Theatre is not valued as high as it has been, they would then lower the value and there would be less taxes generated by the Grand. From a practical standpoint, that process in documenting the loss of income, etc., would very likely take the two years, but the agreement that was approved when the Grand was built says that the city will do everything it can to keep that agreement in place through the duration, which is December 2014.

Wesely added that there are other legal recourse that would be available to Douglas Theatre in addition to the valuation issue.

#### Staff questions

Esseks inquired whether the consultant or anyone else tried to measure the contribution that the Grand Theatre makes to the welfare of the Downtown. Marvin Krout stated, “no, Keith Thompson did not look at the secondary benefits.” There was an earlier study when the theater policy was first enacted that tried to assess the secondary impacts on the food and drinking industry by bringing people into the Downtown area. That study was done 20 years ago, but there was an estimate of who would stop before and after for food and drink. The impact was something less a million dollars a year.

Carroll asked staff to review permitted use versus special permit use in B-5. Krout reminded the Commission that this was not the staff's application. The staff was trying to interpret the intent, and he believes the intent was to open it up and treat it like other uses. There would be no restrictions and it would not be subjected to a case-by-case evaluation. The theater use could be considered in the decision on the zone change to B-5. There is potential for B-5 zoning to be examined in a closer way looking at the impact on retail spending in the community. A compromise could be to adopt the sunset that eliminates the screen limitation, but allow the theater complex by special permit.

Krout further stated that the theater policy is still valid. The staff is reluctant to create circumstances where we start sunseting ordinances. You've heard testimony that creating a 7-year sunset is not going to prevent Eiger Corporation from coming back sooner than 7 years. There is nothing the Planning Commission or the City Council can do this month or next month that is going to guarantee what the story is going to be seven years from now. There is no certainty that a sunset is going to remain in effect and that everyone is going to respect it for seven years. Generally, the staff would only recommend sunsets where we are trying something new and then be forced to re-evaluate it. The special permitted use would allow a case-by-case evaluation in the B-5 districts. Krout stated that the staff is perfectly happy with the policy as it stands now and is perfectly willing to re-evaluate it on a case-by-case basis.

Strand asked Krout whether the staff would recommend denial of every special permit because it is not in conformance with the Comprehensive Plan. Krout responded, stating that the staff would evaluate the impact on Downtown and the existing theaters. A growing market would be one of the deciding factors. He stated that the staff would not automatically recommend denial just because it was contrary to the theater policy.

Sunderman recalled that the City Council vote on the Eiger application back last summer was 4-3, so it wasn't strong one way or the other.

#### Response by the Applicant

Camp expressed appreciation for the excellent comments. He would like to come up with a stronger position one way or the other. The certainty is important for Lincoln, whether it be to stay with the existing policy or terminate it in seven years. If we don't do something with a degree of certainty, he does not expect the north complex to proceed.

Taylor asked for clarification of the Redevelopment Agreement with Douglas Theatre Company. Camp reiterated that it is a TIF agreement between the city and Douglas which states when the TIF would be paid off through the taxpayments assessed to the Grand Theatre. Future tax assessment on the Grand Theatre would then go to the variety of taxing authorities. That schedule has nothing to do with the Downtown theater policy; however, the language read into the record also ratifies the fact that the city would do everything in its power to uphold the Downtown policy to protect the ability of Douglas Theatre to pay that off, or there could be a lower valuation with a concurrent lowering of the actual taxes paid, and the city would have to make up that difference in TIF. Under Camp's proposal, there would be a two-year gap. In reality, however, toward the end of that time period, the amount left to be paid on the TIF would be smaller than the original 2.5 million dollars. Taylor wondered about using December, 2014 as the sunset date. Camp believes that a phase-in time of seven years makes some sense. He wants to stick with the seven years. No more, no less. He will only support his proposal in its form for seven years; otherwise, he would recommend continuing the existing policy.

#### **ACTION BY PLANNING COMMISSION**

January 18, 2006

Taylor moved denial, seconded by Carroll.

Taylor believes that terminating the existing policy would fail to honor and respect the agreement that Douglas made with the city. He thinks it is important to honor that commitment. He also believes that we should always be open for review and testing, whether it is a split vote or whatever. It is very

important that we go through this process in order to reconfirm the path that we want to take as a city. Since Camp will not compromise on the time frame, he will vote to deny.

Larson stated that he will also vote to deny. He believes this motion today is meaningless because this would not be any more definitive than the existing policy. It was challenged last year and that challenge failed. Whether we pass this or not, there will be other challenges that come along. There is no need to muddy the waters. We know that these challenges are going to come as Mr. Hunzeker said. Any new regional shopping center is going to want to put in a multi-plex. He does not want to encumber our future Planning Commission with this kind of a change.

Carroll agreed. The important issue is that the City Council agreed to the contract and it is our responsibility to keep those terms intact. There is no need at this time to change any of the policy. It is an agreement the City Council made and we should stand behind it.

Strand stated that she will vote against the motion. She thinks it is a good idea to have a sunset clause to give awareness that we are going to honor the agreement we made and send a signal to the future City Council and Planning Commission that we should honor the agreement, but that at some point we will go to the free market system to allow the competition. She would like to have changed the date to 2014.

Esseks is pleased that Camp brought this issue to the Planning Commission. Whenever a business or a particular interest has a privileged position, the benefits to the community should be evaluated. But he feels he has to vote to deny because the evidence is not before the Planning Commission that this privileged position should be terminated. He hopes the Planning Department will come forward with the necessary information to make a definitive decision about sunset.

Sunderman agreed with Strand. At some point in time this policy will be overturned.

Carlson stated that he will support the motion because it is the job of the Planning Commission to consider what comes forward. We have heard that challenges will arise. He does not believe the Planning Commission can predict seven years out. The reason the Downtown theater policy is so important is that we do have existing free market decisions that were made based on those policies. We have taxpayer dollars invested in the Downtown.

Motion to deny carried 6-2: Krieser, Taylor, Esseks, Carroll, Larson and Carlson voting 'yes'; Sunderman and Strand voting 'no'; Pearson absent. This is a recommendation to the City Council.



"williamc"  
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m>  
01/17/2006 04:53 PM

To <plan@lincoln.ne.gov>  
cc  
bcc  
Subject Do not support Change of Zone No 05078

Dear Planning Commission,

I am writing on behalf of the Near South Neighborhood Association Board. Please do not support Change of Zone No 05078. The current Theater Policy makes a lot of sense and has served Lincoln well in the past and will continue to do so in the future.

Six-screen theaters give newer neighborhoods a great entertainment choice close to home. Keeping Multi-plexes downtown ensures that downtown remains the central entertainment location.

The current policy provides ample entertainment opportunities for new neighborhoods while protecting the health and vibrancy of downtown and our historic neighborhoods.

Please do not support this unnecessary Change of Zone No 05078.

William Carver  
President NSNA  
2202 Washington St  
Lincoln NE 68502

To: Lincoln-Lancaster County Planning Commission  
From: The Douglas Theatre Company  
Date: January 18, 2006  
Re: Proposal to terminate Lincoln's Theatre Policy

The issue before the Planning Commission today is a proposal by Lincoln City Council Member Jon Camp to terminate the City of Lincoln's Theatre Policy on January 1, 2013. The Douglas Theatre Company is not taking a position on this proposal at this time. However, we wish to take this opportunity to remind the Planning Commission that the City of Lincoln and the Douglas Theatre Company entered into a Redevelopment Agreement in 2003 that has a direct bearing on this proposal. The Redevelopment Agreement was the key to the decision to build The Grand Theatre downtown. The Grand is a fourteen screen state-of-the-art movie theatre which cost approximately \$14 million to construct.

The Redevelopment Agreement states "Center (The Douglas Theatre Company) has been induced to enter into this agreement in part based on the increased incremental valuation of the Project Area attributable to the City's Current Theater Policy. 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 competing 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. 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 Bond Maturity Date." The Final Bond Maturity Date is December 31, 2014. This is two years later than the proposal before you to sunset the Theatre Policy on January 1, 2013.

We bring this to your attention to make it clear there is an existing legal obligation that the City of Lincoln has entered into that calls for the Theatre Policy to continue through the year 2014. This legal obligation resulted in the private investment, by the Douglas Theatre Company, and the public investment, through Tax Increment Financing on behalf of the City of Lincoln, which resulted in the Grand Theatre being built. The Douglas Theatre Company worked very cooperatively with the City of Lincoln on this important project. We value our cooperative relationship with the City of Lincoln. That is why we are taking no position on this proposal today. However, we would appreciate further information regarding this proposal's impact on the existing Redevelopment Agreement we have with the City of Lincoln.