

**DIRECTORS' MEETING
MONDAY, OCTOBER 9, 2006
COUNTY-CITY BUILDING
ROOM 113, 11:00 A.M.**

I. MAYOR

1. NEWS RELEASE. Public Invited to Dedication of Downtown Park, Friday, October 6, 2006 at 5:00 p.m. to 6:30 p.m. at Northwest Corner of 10th and "O" Streets.
2. Washington Report, October 2, 2006.

II. DIRECTORS

COMMUNITY HEALTH ENDOWMENT

1. Media Release. Community Health Endowment Announces Funding Priorities for Fiscal Year 2006 - 2007.

HEALTH

1. Last Household Hazardous Waste Collection for the Year is Scheduled for October 14, 2006.

PLANNING COMMISSION FINAL ACTION

1. Special Permit No. 06050. Resolution No. PC-01018. Increase area of on-sale alcohol at Coyote Willy's Bar, 2137 Cornhusker Highway.
2. Special Permit No. 05015A, Amendment to the Hartland's Garden Valley Community Unit Plan. North 14th Street and Fletcher Avenue. Resolution No. PC-01019.

PUBLIC WORKS & UTILITIES

1. Cooperative Services of the Department of Public Works and the County Engineer's Office met to discuss snow and ice control and unpaved roadway maintenance for the year 2007.

III. CITY CLERK

IV. COUNCIL REQUESTS/CORRESPONDENCE

V. MISCELLANEOUS

In Favor of the Proposed Drag Strip

1. Email from local drag racer.
2. Response to local drag racer from Planning Department.

3. Email from Mitch Misek.
4. Email from John Schlumberger.
5. Email from Todd Moore.
6. Email from Rick Featherstone.

Opposition to Proposal to Change Current City Policy on Group Homes

1. Email from Dan Schlitt (Email delivered to Council on 10/02/06)
2. Email from Margaret Washburn. (Email delivered to Council on 10/02/06)
3. Email from Josh Sovereign. (Email delivered to Council on 10/02/06)
4. Email from William J. Wood. (Email delivered to Council on 10/02/06)
5. Email from Ginny Wright. (Email delivered to Council on 10/02/06)
6. Email from Mary Kay Kreikemeier.
7. Email from Nancy Carlson.

Other Miscellaneous Correspondence Received

1. Email from Bruce Bostelman re: Recycling of aluminum cans. (Email delivered to Council on 10/02/06)
2. Email from Ginny Wright re: Support proposed zoning changes in the Witherbee, 40th and "A" neighborhood. (Email delivered to Council on 10/02/06)
3. Email from Faith A. White re: No Keno funds for pflag.
4. Letter from Downtown Lincoln Association re: LB 464 changing time offenders held for detox to 72 hours. (Copy of letter delivered to Council on 10/04/06)
5. Email with attachment from Wendy L. O'Connor re: Keno dollars not be provided to PFLAG.
6. Email from Jodi Delozier re: Support smoking ban in Lincoln.

VI. ADJOURNMENT

da100906/mm

**DIRECTORS' MEETING
MINUTES
MONDAY, OCTOBER 9, 2006
COUNTY/CITY BUILDING
CONFERENCE ROOM 113**

Council Members Present: Patte Newman, Chair; Dan Marvin, Vice-Chair; Ken Svoboda, Robin Eschliman, Jon Camp, Annette McRoy, Jonathan Cook

Others Present: Mayor Coleen Seng, Mark Bowen, Ann Harrell, Lin Quenzer, Darl Naumann, Rick Hoppe, Mayor's Office; City Clerk Joan Ross; Dana Roper, City Attorney; Directors and Department Heads; Tammy Grammer, City Council Staff; Deena Winter, Lincoln Journal Star Representative; and Coby Mach, LIBA

I. MAYOR

Mayor Coleen Seng stated we had so many events going on in the City this weekend and some Council members attended some of the events. I think three Council members attended the Government Square dedication on Friday (Oct. 6th), the fountain portion of Government Square was given by the Ackley daughters as a gift to the Ackley's. This is a replica of historic because in that area, so if you have not been over there please try to get over there and take a look. Ms. McRoy noted the area is wireless.

On Saturday, the "Heats On" project the Steamfitters union have been doing for the last 8 years here in the City and longer in Omaha. The program consists of servicing heating and air conditioning equipment for underprivileged and elderly residents who reside in the Lincoln area. This is a voluntary effort and their companies provide the trucks, it's a very nice event each year and has progressed a great deal. Some Council members attended this event.

The Stories Of Home the Lincoln Arts Council has been working on for this last year has progressed into another phase and they're working on to keep that going to gather more stories.

They did a very fine opening at the Hispanic Center and the Asian Center on Friday evening. There was a very huge Hispanic festival on Saturday at Antelope Park and the Auld Recreation Center was completely filled with educational material on each of the countries that center represents. I will be interested to know when they get finished up how many thousands of people attended.

Good Year is on strike, and the folks are out at the gates doing 24 hours two hours every time and they have eight people out at a time.

This afternoon the groundbreaking will be for the Holocaust Memorial at Wyuka. It has been quite a long effort that they have been raising money for this particular memorial.

On Friday, I'm going to be in Hastings because they have asked for us to come share some information on the cool cities and the League of Women Voters are doing their arrangements out there. But, Hastings, Kearney, Grand Island, and North Platte I believe will all be involved.

She just wondered if Council had made some decisions about next Monday regarding the Realtors luncheon at 11:30 a.m. which is listed on their "Noon" Agenda under 'Meetings/Invitations'. Are you going to try to be finished, so you can attend the luncheon. Mr. Marvin commented I didn't see how we can make it out there. Mr. Camp stated I was going to bring it up at our "Noon Meeting" today. Mayor Seng stated okay.

Mayor Seng called on Directors. Nicole Fleck-Tooze (Public Works & Utilities) stated just wanted to share with Council, if you remember when we brought forward the updated floodprone area maps earlier this year there was some direction on your part that we do an education program with the Realtors Association. We visited with Doug Rotthaus and the Association and their guidance was that the best most effective education would be if we could provide continuing education credits and certified and do a class that way and that we get the best attendance shortly before that recertification was due. So, we do have a class coming up on Wednesday, October 25th sponsored by us and the Realtors Association at Southeast Community College and the title is Understanding Floodplain and Floodprone Areas in Lincoln, Nebraska.

Karl Fredrickson (Public Works & Utilities Director) stated in case you see or get a call on it, there is some guard rail along Capitol Parkway on the south side between the right-of-way and Antelope Creek and our judgement does not serve a purpose for any road side design standards. It's in disrepair and so we are going to be removing that guard rail but we're not putting anything back up again.

Mr. Fredrickson stated as an FYI regarding Pioneers Blvd-70th to 84th Street in case you get calls about a change. We looked at the bids, the contractor has proposed a different way to get the drainage and the bike trail crossing underneath a bridge over there that can reduce the cost. They're going from a bridge to a box culvert and based upon what they're willing to do would reduce our cost about \$150,000.

[Mayor Seng handed out a Veto Message to Council-RE: Bill No. 06R-190, A Consent Decree between Developmental Services of Nebraska and the City of Lincoln to resolve a lawsuit in the U.S. District Court in connection with the operation of housing.] Mayor Seng stated since Councils action last Monday on the proposed DSN settlement, I spent the week reviewing your discussions and then I met with City Law Department. I've come to the conclusion that I agree with the comments from the Council members who said that we need to do the right thing and those comments were made both by those who support it as well as those who opposed the Resolution. So, I believe the right thing is to stand by our ordinances in spacing requirements, the City of Lincoln has consistently enforced the spacing ordinances requirements. She read her veto message.
[See Attachment 'A']

Ms. Newman commented to Mayor Seng how was your trip to Kansas City with CLC. Mayor Seng replied very good and you know how great you are back here when you go some where. I spent quite a bit of time in a middle school and I have a lot of appreciation for what Lincoln Public Schools does with their buildings after seeing that. We went through very heavy detector system as we went in the building, almost everyone had to take their shoes off and so we are really pleased with ourselves after we went down there. I think there were 48 people on the bus and noted you will be hearing more about this a long the way.

1. NEWS RELEASE - RE: Public Invited to Dedication of Downtown Park, Friday, October 6, 2006 at 5:00 p.m. to 6:30 p.m. at Northwest Corner of 10th and "O" Streets. — NO COMMENTS
2. Washington Report, October 2, 2006. — NO COMMENTS

II. DIRECTORS

COMMUNITY HEALTH ENDOWMENT

1. Media Release - RE: Community Health Endowment Announces Funding Priorities for Fiscal Year 2006 - 2007. — NO COMMENTS

HEALTH

1. Last Household Hazardous Waste Collection for the Year is Scheduled for October 14, 2006. — NO COMMENTS

PLANNING COMMISSION FINAL ACTION

1. Special Permit #06050 - Resolution No. PC-01018 - Increase area of on-sale alcohol at Coyote Willy's Bar, 2137 Cornhusker Highway. — NO COMMENTS
2. Special Permit #05015A, Amendment to the Hartland's Garden Valley Community Unit Plan. North 14th Street & Fletcher Avenue. Resolution No. PC-01019. — NO COMMENTS

PUBLIC WORKS & UTILITIES

1. Cooperative Services of the Department of Public Works and the County Engineer's Office met to discuss snow and ice control and unpaved roadway maintenance for the year 2007. — NO COMMENTS

III. CITY CLERK

City Clerk Joan Ross stated on their Agenda today, the first thing is the Mayor's Award of Excellence.

Under 'Public Hearing-Liquor Resolutions' Items 3 & 4 will be called together. [*#3, Application of Lead Dog Entertainment Inc. dba Coyote Willy's for a Class C liquor license at 2137 Cornhusker Highway, Suite A.; and #4, Manager application of David B. Miller for Lead Dog Entertainment, Inc. dba Coyote Willy's at 2137 Cornhusker Highway, Suite A.*]

For Item 7, you received in your packet a Motion-To-Amend #1. [*#7, 06R-194, Approving appropriations in the amount of \$41,650.00 from the operation of Keno lottery funds for various human services.*]

On Item 9, there was a notation added requesting to continue public hearing and action to October 16, 2006. [*#9, 06-137, Amending Title 5 of the Lincoln Municipal Code relating to Licenses and Regulations by amending or repealing sections within Chapter 5.41, Salvaging, Recycling and Composting Operations, to delete provisions relating to salvaging operations and to make Chapter 5.41 apply only to recycling and composting operations; adding a new Chapter 5.43 entitled Salvage Dealers and Salvage Collectors to establish and relocate provisions dealing with salvaging operations previously found in Chapter 5.41.*]

Mr. Cook commented on the Salvage Ordinance, I just want to make sure that we can post a draft in the next couple days. Rick Hoppe stated I spoke with Margaret Blatchford the attorney drafting the ordinance this morning, I received a copy late Thursday with some changes that were worked out on Friday. She hoped to have a copy to me by days end or first thing in the morning. Mr. Cook replied okay, given that I think the one week delay may work. Following discussion, City Clerk Joan Ross stated when we get a copy of it, we will link it to the action agenda. Mr. Hoppe stated I will also email to the folks that have been at the table. Ms. Newman asked if anybody will be there to make an announcement? Mr. Hoppe commented I'm happy to do that if you wish. Ms. Newman replied that would be great.

IV. COUNCIL REQUESTS/CORRESPONDENCE

JON CAMP -

Mr. Camp stated Dana (Roper) last week you told us about the Supreme Court decision on the liability, I noticed in the Journal Star on Saturday there was an article that North Platte has closed down its skate park. This brings up a new issue and I'm very concerned about the City's potential liability because we have the skate board park and so forth. Have we thought about what we are going to do. Lynn Johnson (Parks & Recreation Director) stated we are planning to get together a meeting between all of our maintenance staff, we're going to invite law and Risk Management. We're going to assess where we are at and I think we do have to ask the question about skate parks because one of the reasons we entered into it because there was recreational liability immunity when we did that. We have lots of potential liability situations out there and so I think we have to take a real serious look at it of which ones we are going to be able to allow to continue and

ones we are willing to take some risk on. Mr. Camp commented I think we need to address this fairly rapidly because every day has a potential situation. Mr. Camp commented to Lynn Johnson I appreciate it if you keep us posted.

Mr. Camp commented just a question for Karl Fredrickson, I can't remember the time frame but we had been talking at one time about looking at a parking authority working with the University and others. I have not heard anything about it, anything happening on it yet. Karl Fredrickson replied no we have been working on it, if we can get everybody in the same room. The biggest problem is people in attendance that need to be there essentially have no substitutes and we have postponed it now I think twice, it takes approximately a month to a month and a half to find open calendar. I have three people that can sit in for me but the other parties to it that wish to be there do not. We got passed an initial meeting and I visited with the Mayor since and ready to go back to the next meeting and discuss further an interlocal agreement with the University to create that authority. Mr. Camp commented would it be helpful to maybe at some point give us an update on the structure and everything that you're looking at. Mr. Fredrickson commented most definitely, and Annette (McRoy) is invited to those meetings. Ms. McRoy mentioned she just received an invitation last week. Mr. Camp commented okay, I hadn't heard anything for along time and so that's why I brought it up. Ms. McRoy commented I think there is a meeting set in October. Mr. Fredrickson responded I think there was but that has been moved.

JONATHAN COOK - NO COMMENTS

ROBIN ESCHLIMAN -

Ms. Eschliman stated on September 28th there was a letter that came to the City Council about a condemnation and Antelope Valley which was copies of correspondences between JAVA and Barbara Morley. Does a response letter need to be sent on behalf of the Council and is there any action required of the City Council or can somebody else handle it. Karl Fredrickson stated JAVA is handling it.

Question for Bruce Dart (Health Director), I received your email and I'm going to have your answers distributed to everyone about the updates on Animal Control. You mentioned that you have been successful in getting the pickups reduced and good job there. But, when you return the pets back directly to the homes do they get a ticket or anything. Bruce Dart answered no, we assess a cost to them for picking the pets up and then bringing them home. If they are strays at

large we will cite them for that but generally we rather just pick them up, get them home and hopefully not have a repeat problem. So, we assess a fee for delivering them home and they can pay cash at the door, if not, we bill them, and generally we have to bill them because no one has cash at the door. We had a request from the Capital Humane Society to decrease the number of animals that we bring in. So we thought if they are licensed or micro chipped we can pick them up and take them home. To relieve the burden of CHS and actually develop a little revenue source for Animal Control at the same time. Mr. Camp asked what is the fee? Mr. Dart replied \$20.00.

DAN MARVIN -

Mr. Marvin stated he would like to speak with Karl Fredrickson (Public Works & Utilities Director) after the Directors' Meeting today.

ANNETTE McROY - NO COMMENTS

PATTE NEWMAN - NO COMMENTS

KEN SVOBODA - NO COMMENTS

V. MISCELLANEOUS

In Favor of the Proposed Drag Strip

1. Email from local drag racer - NO COMMENTS
2. Response to local drag racer from Planning Department - NO COMMENTS
3. Email from Mitch Misek - NO COMMENTS
4. Email from John Schlumberger - NO COMMENTS
5. Email from Todd Moore - NO COMMENTS
6. Email from Rick Featherstone - NO COMMENTS

Opposition to Proposal to Change Current City Policy on Group Homes

1. Email from Dan Schlitt (Email delivered to Council on 10/02/06) - NO COMMENTS
2. Email from Margaret Washburn (Email delivered to Council on 10/02/06) - NO COMMENTS
3. Email from Josh Sovereign (Email delivered to Council on 10/02/06) - NO COMMENTS

4. Email from William J. Wood (Email delivered to Council on 10/02/06) - NO COMMENTS
5. Email from Ginny Wright (Email delivered to Council on 10/02/06) - NO COMMENTS
6. Email from Mary Kay Kreikemeier - NO COMMENTS
7. Email from Nancy Carlson - NO COMMENTS

Other Miscellaneous Correspondence Received

1. Email from Bruce Bostelman - RE: Recycling of aluminum cans (Email delivered to Council on 10/02/06) - NO COMMENTS
2. Email from Ginny Wright - RE: Support proposed zoning changes in the Witherbee, 40th and “A” neighborhood (Email delivered to Council on 10/02/06) - NO COMMENTS
3. Email from Faith A. White - RE: No Keno funds for pflag — NO COMMENTS
4. Letter from Downtown Lincoln Association - RE: LB 464 changing time offenders held for detox to 72 hours (Copy of letter delivered to Council on 10/04/06) - NO COMMENTS
5. Email with attachment from Wendy L. O’Connor - RE: Keno dollars not be provided to PFLAG - NO COMMENTS
6. Email from Jodi Delozier - RE: Support smoking ban in Lincoln - NO COMMENTS

AD D E N D U M - (For October 9th)

I. MAYOR -

1. NEWS ADVISORY - RE: Mayor Seng’s Public Schedule Week of October 7 through October 13, 2006 - Schedule subject to change. - NO COMMENTS

2. NEWS ADVISORY - RE: Mayor Seng will announce a major federal grant awarded to a community food program at a news conference at 1:00 p.m., on Friday, October 6th at the "F" Street Recreation Center. - NO COMMENTS
3. NEWS RELEASE - RE: FEDERAL Grant To Fund Community Food Project. - NO COMMENTS
4. NEWS RELEASE - RE: New Downtown Park Features Wireless Internet Access. - NO COMMENTS

II. CITY CLERK - NONE

III. CORRESPONDENCE

A. COUNCIL REQUESTS/CORRESPONDENCE - NONE

B. DIRECTORS AND DEPARTMENT HEADS - NONE

C. MISCELLANEOUS - NONE

[End of Addendum]

VI. MEETING ADJOURNED - Approximately at 11:26 a.m.

dm100906/tjg



CITY OF LINCOLN
NEBRASKA

MAYOR COLEEN J. SENG
lincoln.ne.gov

Office of the Mayor
555 South 10th Street
Suite 208
Lincoln, Nebraska 68508
402-441-7511
fax: 402-441-7120
mayor@lincoln.ne.gov

October 9, 2006

VETO MESSAGE -Bill No. 06R-190. A Consent Decree between Developmental Services of Nebraska and the City of Lincoln to resolve a lawsuit in the U.S. District Court in connection with the operation of housing.

Dear Chair Newman and Members of the City Council:

By this letter I have vetoed the Resolution approving the Consent Decree between Developmental Services of Nebraska and the City of Lincoln to resolve a lawsuit in the United States District Court in connection with the operation of housing for developmentally disabled persons as set out in Bill No. 06R-190 (Resolution No. A-84063 adopted for approval by the City Council on October 2, 2006).

I have vetoed the Resolution for the following reasons:

Rick Peo, Chief Assistant City Attorney, stated at the public hearing before you on October 2, 2006, that the Law Department was recommending that the settlement decree be approved in order to limit financial risk to the City, to preserve as much of the existing ordinance provisions regarding group homes as possible, and at the same time to serve the public good of the community. I am vetoing the resolution because I disagree that the Consent Decree accomplishes those purposes.

The legislative history behind the adoption of the 1979 Zoning Code, in particular the legislative history with respect to the definition of family, the definition of group home, and the separation requirement between group homes, shows that the underlying intent was to allow group homes in all residential districts within the City subject to conditions including a separation requirement between group homes. The actual conditions adopted were based upon the recommendations made by an Ad Hoc Committee composed of a group of provider and consumer representatives, as well as concerned neighborhood organization representatives. In support of its recommendations concerning the regulation of group homes, the Ad Hoc Committee stated:

One of the purposes of modifying current zoning regulations in regard to group homes is to facilitate the dispersal of such group homes throughout the community. Another purpose is to relieve the current concentration of group homes in specific neighborhoods of the City. The third purpose is to foster normalization of the experience of persons residing in group homes through avoiding undue concentration and unnecessary labeling.

This rationale has served the test of time. The City's definition of family treats three unrelated disabled persons and three unrelated non-disabled persons the same as it allows both to reside in a single family dwelling anywhere in the City. The Consent Decree fundamentally alters the zoning code by allowing four or five disabled persons to live together by right in any residential neighborhood, a right which is not allowed for four or five unrelated non-disabled persons. This fundamental alteration is not warranted.

The provisions in the zoning ordinance regarding group homes are in themselves a reasonable accommodation to allow disabled persons an equal opportunity to reside in the housing of their choice. In other words, if disabled persons need to reside together in a congregate setting in excess of three unrelated disabled persons they may do so provided they meet the separation requirement from another group home. The City further provides additional relief to disabled persons in the event a group home cannot meet that separation requirement. The City has adopted a reasonable accommodation ordinance which allows the City Council to grant a waiver of that separation requirement provided that the

October 9, 2006

Veto Message-Bill No. 06R-190.

Page 2

accommodation is necessary for financial or therapeutic reasons. The purpose of a reasonable accommodation process is to address individual needs and respond to individual circumstances. This system does work. DSN has received a reasonable accommodation under this process for 4000 Lindkey Circle. However, this Consent Decree abandons an individualized fact specific case-by-case determination in favor of a by-right accommodation for four or five individuals to reside together without any showing of financial necessity or therapeutic necessity. While some minimum size may be essential to the success of a group home, no evidence has been provided that the minimum size must exceed three persons at all times.

This Consent Decree does not eliminate the City's exposure to future claims of discrimination for failure to grant a reasonable accommodation. How to measure financial necessity or therapeutic necessity is unresolved by this Consent Decree. The potential for this issue to reoccur is quite likely. Therefore, I think it is in the best interest of the City to resolve this issue now rather than abandoning or delaying its resolution to a later date under another lawsuit.

Finally, this Consent Decree imposes a permanent injunction upon the City which mandates that, for all time henceforth, the City must allow DSN to operate its homes with four or five persons as a matter of right. As I stated previously, this amounts to a fundamental alteration of the City's zoning ordinance. Moreover, this injunction unduly restricts the right of the City Council and Mayor to legislate regarding the operation of group homes. On the other hand, DSN is only prohibited from seeking to increase its occupancy above the proposed four or five person limitations for a period of five years.

For the above and foregoing reasons, I hereby veto Resolution No. A-84063.

Respectfully,


Coleen J. Seng
Mayor of Lincoln