BOARD OF COUNTY COMMISSIONERS SARPY COUNTY, NEBRASKA

RESOLUTION ADOPTING AMENDED ZONING REGULATIONS

WHEREAS, the County Board of Commissioners has the authority to adopt a zoning resolution, which shall have the force and effect of law pursuant to Neb. Rev. Stat.§ 23-114 (2004 Cum. Supp); and

WHEREAS, the County Board of Commissioners established the Sarpy County Planning Commission pursuant to Neb. Rev. Stat.§ 23-114 (2004 Cum. Supp); and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-164 (Reissue 1997), "no such [zoning] regulation, ... shall become effective until after public hearings are held by both the county planning commission and county board in relation thereto, when its parties in interest and citizens shall have an opportunity to be heard."

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board makes the following findings of fact:

I. A public hearing regarding the adoption of certain proposed amendments and revisions to the Sarpy County Zoning Regulations was held on November 19, 2008 before the Sarpy County Planning Commission as required by Neb. Rev. Stat. §23-164 (Reissue 1997). The Planning Commission provided their recommendation(s) to the County Board.

II. A public hearing regarding the adoption of the proposed amendments and revisions to the Sarpy County Zoning Regulations, was held by this Board as required by Neb. Rev. Stat. §23-164 (Reissue 1997).

III. Notice of each of the public hearings described above was published at least once in the ten (10) day period immediately prior to each respective public hearing as required by Neb. Rev. Stat. §23-164 (Reissue 1997).

IV. Notice of the time and place of each hearing was also given in writing to the clerks of the local governments which have jurisdiction over land within three miles of the property affected by such action as required by Neb. Rev. Stat. §23-164 (Reissue 1997).

V. The proposed amendments to the Sarpy County Zoning Regulations are consistent with the Sarpy County Comprehensive Development Plan and are designed to promote the health, safety, and welfare of the present and future inhabitants of Sarpy County.

FURTHER BE IT RESOLVED THAT this Board, in light of the above-recited findings of fact, after due deliberation and consideration, adopts the amendments to the Sarpy County Zoning Regulations, and directs the Planning Department to amend the Sarpy County Zoning Regulations, which amended Zoning Regulations are attached hereto as Exhibit "A" and that the same have the full force and effect of law, the effective date of the aforementioned Zoning Regulations shall be the _____ day of _____ N/A _____, 2009.

BE IT RESOLVED, TOO, THAT pursuant to Neb. Rev. St. §23-114.03 (2004 Cum. Supp.), that the County Clerk is directed and instructed to, within fifteen (15) days of the date of this Resolution, publish these Regulations in book or pamphlet form or once in a legal newspaper published in and of general circulation in the county, and the County Clerk is further directed to spread these regulations in the minutes of the proceedings of the county board.

FINALLY, BE IT RESOLVED THAT the Regulations enacted by this Resolution are intended to be a complete revision of existing zoning regulations, and all previous Resolutions or parts of Resolutions of the Sarpy County Board of Commissioners on said subjects or in conflict with the provisions of this resolution are hereby repealed.

DATED this 27th day of January, 2009.

Moved by Rich Jansen, seconded by Rusty Hike, that

the above Resolution be DENIED. Carried.

YEAS:	NAYS:	ABSENT:
	none	none
		ABSTAIN:
		none

County Clerk

Approved as to form:

Deputy County Attorney

Memorandum

Date: January 23, 2009

To: Sarpy County Board of Commissioners

From: Rebecca Horner, Planning Director RH

RE: Highway Corridor Guidelines Update

In December the Board requested to table this request to January 27, 2009 so that Planning Department staff had an opportunity to work with stakeholders in the highway corridor. It was acknowledged that the process could take longer and that the January 27, 2009 meeting may serve as an update on the progress of the item.

The Sarpy County Planning Department believes strongly in the spirit of cooperative participation, and consensus building. On a daily basis the Planning Department recognizes the complicated dynamic of implementing the living documents of the Comprehensive Development Plan, Zoning and Subdivision Regulations coupled with meeting the needs of the diverse property owners in the Sarpy County zoning jurisdiction. The Planning Department is committed to a fair and transparent process. The process is planned as follows:

- Distribution of the working draft is planned in phases, including distribution to those with current contact information in the department, collection of contact information for and distribution to other primary stakeholders, mass mailing to corridor properties (excluding residential) and distribution to the public on the Planning Department website.

Phase one of the distribution effort began on January 13, 2009. Phase two is still in progress. Phase three is partially completed and still in progress, and Phase four was completed on January 22, 2009. The phases are not able to occur concurrently. Staff is working diligently to complete the distribution as quickly as possible. Staff plans to receive comments and meet with interested parties, amending the working draft and redistribute the draft. The goal is to work toward general consensus prior to bringing the item back onto an agenda or to a committee for review. Staff believes this will take several weeks.

The Sarpy County Planning Department is dedicated to its mission and vision which include nurturing public trust and community involvement by conducting all planning efforts in an open, accessible manner.

Please contact with me with questions or concerns. Thank you.

Omaha Steaks International, Inc.

January 21, 2009

Rebecca Horner
Sarpy County Director of Planning
1210 Golden Gate Drive
Papillion, NE 68046

Re: January 13, 2009, Draft of Amendments to the Sarpy County Overlay District Regulation

11030 "O" Street
Omaha, Nebraska 68137
Phone: (402) 597-3000
FAX: (402) 597-8277

Dear Ms. Horner:

During the November 19, 2008, Planning Commission meeting, the Planning Commission passed a motion directing you to discuss any proposed amendments to the Overlay District regulations with the stakeholders who own property in the Overlay District. It was apparent that the Planning Commission believed that any future amendments to the Overlay District regulations should be derived from a cooperative process involving all the stakeholders who have an interest in the Overlay District. Through this process, we believed that the Planning Commission hoped to build consensus for any amendments before the same might be proposed, as had been done both when the Overlay District regulations were originally adopted in 2004, and when the same were amended in 2007.

Omaha Steaks recently received, from a third party (not from you or anyone on behalf of the County), a draft of proposed amendments to the Overlay District regulations which you apparently prepared. It appears that rather than consulting with the stakeholders as you were directed to do by the Planning Commission, you have decided to unilaterally draft onerous amendments, and then ask for comments from **some** of the stakeholders, specifically to the exclusion of Omaha Steaks. We do not believe that this is in the spirit of cooperation that the Planning Commission envisioned when it asked you to consult with the stakeholders. As a significant stakeholder, employer, real property taxpayer and business enterprise within the Overlay District, we are appalled at your lack of consideration to our interests and those of our employees and customers. Apparently you have no care or concern for the chilling effect which your unilateral and contradictory actions are having on all of us who have interests in the area or who might seek to expand jobs, increase the tax base or make significant new investments in Sarpy County.

Because you were not in the Planning Department at the time, we want to remind you of the background surrounding the adoption of the original Overlay District regulations in 2004, and their subsequent amendment in 2007. In 2004, the Planning Commission held numerous subcommittee meetings regarding the adoption of the Overlay District regulations. All of the stakeholders who would be affected were invited to participate cooperatively in the process of drafting the Overlay District regulations.

The stakeholders, working cooperatively with the Planning Department and the Planning Commission, reached a consensus to exempt property that had already been platted. The reason for this exemption was to ensure that property owners who had already invested significant amounts in platting and developing their property would not have the rules changed on them once they had already begun to invest significant amounts of time and money.

As background, in 2005, Omaha Steaks began looking for property on which to build a multi-million dollar distribution facility. After identifying a number of competing sites both within and outside Sarpy County, Omaha Steaks identified a property within the Commerce Business Center which was suitable for its new facility. Before Omaha Steaks spent millions of dollars to purchase the property, and millions of additional dollars to build its facility, it sought assurances from Ken Tex and Richard Houck of Sarpy County that the property it intended to purchase, and upon which it would build its facility, was grandfathered, and would not be subject to the Overlay District regulation. Sarpy County officials provided both oral and written assurances that Omaha Steaks' property was not subject to the Overlay District regulation and that Omaha Steaks could build its planned facility. In reliance on these assurances, Omaha Steaks purchased the property and invested millions of dollars to build and equip its facility. Today Omaha Steaks employs up to 550 full-time, part-time and seasonal employees at this world-class facility resulting in millions of dollars of payroll and hundreds of thousands of dollars of property taxes to the County annually. It may also interest you to know that nearly 20% of Omaha Steaks' full-time work-force resides in Sarpy County. The difficulties resulting from the issues associated with the Overlay District disputes are not lost on them, or their friends and families.

After Omaha Steaks obtained its building permits and had begun construction, Duane Dowd challenged Omaha Steaks' building permits claiming that the Overlay District regulations applied to Omaha Steaks' property. While Mr. Dowd's lawsuit was pending, the Planning Commission instituted another cooperative process involving all of the stakeholders to discuss whether the Overlay District regulations should be amended to clarify that property platted before the enactment of the Overlay District regulations was exempt. As a result of that cooperative process, the Planning Commission recommended, and in 2007 the County Board unanimously approved, amendments to the Overlay District. The 2007 amendments reaffirmed the County Board's original intent that property located within the Overlay District, but which was platted prior to March 9, 2004, was grandfathered in and exempt from the Overlay District regulations. The County Board reiterated its original intent that "replats, lot line adjustments, and lot consolidations of such platted properties shall **remain** excepted." (Section 32.3).

Your proposed amendments, apparently drafted without consulting the stakeholders, would undo the language that the overwhelming majority of stakeholders approved through this cooperative process, and which the County Board unanimously adopted, less than two years ago. Nothing has changed since the County Board approved the language in the 2007 amendment that warrants the deletion of the exceptions. It is frustrating, and disruptive to our business, to have to continually revisit this issue, which the stakeholders believed was resolved once and for all.

As detailed above, it has always been the County Board's intent to exempt property that was platted prior to March 9, 2004, from the Overlay District regulations. Your proposed

regulation is directly contrary to the stated intent of the County Board, as reflected in the existing Overlay District regulation, and is contrary to the consensus reached as a result of the cooperative process involving the stakeholders who were involved in drafting the Overlay District regulation.

Not only does your proposal remove the exceptions agreed to by the stakeholders, in section 32.2.3 you seek to greatly expand the scope of the Overlay District regulation, adding any property within a quarter mile of the I-80 right-of-way anywhere in the County. To propose expanding this District without consulting with the property owners whom it would affect is not a good faith compliance with the Planning Commission's direction that you consult with stakeholders.

Since the County has easy access to the names and addresses of all affected property owners, I wonder if you have done each and every property owner the courtesy of sending them a letter informing them that proposals that present possible monumental impact to their property values and property rights are being considered by their elected officials – *or have you elected to hide behind the minimal statutory notice requirements in an effort to exclude these property owners from having a voice in this process?*

We believe that the regulatory and legislative environment of 2009 demands complete transparency. The citizens and stakeholders of Sarpy County deserve to know exactly what your process, intentions and rationale are. They need to know who you have consulted with in creating your proposals and who you will include, and exclude, from the cooperative effort to reach consensus.

Your proposed Section 32.6.5 also adds new requirements that truck parking areas shall use screening to soften the view from the corridor street. We are disappointed that you did not consult with us before drafting this proposal which clearly impacts our operation. This is a new regulation that was not imposed upon Omaha Steaks when the County assured it that the Overlay District regulation would not apply. We oppose this amendment as well.

Omaha Steaks is concerned that certain Sarpy County officials continue to attempt to change the rules in the middle of the game. Omaha Steaks is a good corporate citizen which employs hundreds of people in Sarpy County, significantly adding to the County's tax base. Your decision to ignore the consensus that resulted in the 2007 amendments, and your unilateral attempt to change and expand settled regulations will have a chilling effect on development in Sarpy County. Like any business, Omaha Steaks needs a stable regulatory environment in order to plan for its future business needs. At the vigorous urging, and with the strong support of Sarpy County and its relevant officials, Omaha Steaks chose to construct and operate its main national distribution facility in Sarpy County. Substantially all of our orders are shipped through this one critical facility. Your actions in unilaterally attempting to undo settled law that was first derived, then later reaffirmed and clarified, causes serious doubt as to whether Omaha Steaks should expand, or perhaps even continue, its operations in Sarpy County. All

along, it has been the goal of Omaha Steaks, along with the Sarpy County leadership, to create hundreds of jobs, expand the tax base and help drive economic prosperity in the area. I would think that in today's economic environment that goal is more important than ever.

As it has in the past, Omaha Steaks stands ready to participate in a truly consultative process with the other stakeholders to see if a consensus can be reached regarding whether the Overlay District regulations should be amended. Consensus is built from the bottom up; not imposed from the top down. It is counterproductive to revisit settled issues, including the 2007 exemptions. **Omaha Steaks strenuously objects to any attempt to remove the exemptions and requests that you withdraw this ill-conceived proposal.**

Cordially,

OMAHA STEAKS INTERNATIONAL, INC.

Bruce A. Simon
President

BAS/ks

cc: Sarpy County Commissioners:
Rusty Hike
Tom Richards
Joni Jones
Pat Thomas
Rich Jansen

Sarpy County Planning Commission:
Susan Bliss
Donald Fenster
Stacen Gross
Bill Krebs
Jerry Torczon
Alan Wear
Thomas Wees
Doug Whitfield
Courtney Dunbar
Greg Gonzalez
Bernie Marquardt

Mark Wayne, Sarpy County Administrator

TIMELINE RELATING TO THE SARPY COUNTY HIGHWAY CORRIDOR OVERLAY DISTRICT REGULATIONS AND OMAHA STEAKS

Date	Event
October 2001	Commerce Business Centre is platted. The developer spends approximately $3 million for improvements to the property.
2003-2004	Stakeholders are invited to participate in a cooperative process to adopt, for the first time, Highway Corridor Overlay District Regulations
March 9, 2004	At the conclusion of the cooperative process, the County Board adopts the Highway Corridor Overlay District Regulations. In order to be fair to property owners within the proposed Overlay District who have already platted their property and invested significant sums on development, the County Board makes the Regulations applicable only to "New Development Proposals" thereby exempting platted property
2005	From among a number of competing sites both in and outside Sarpy County, Omaha Steaks identifies property within the Commerce Business Centre on which it would like to construct a new multi-million distribution facility which would employ hundreds of workers. For months Omaha Steaks works with Sarpy County officials regarding its proposed development. A key issue in the due diligence was whether the new Overlay District Regulations applied to the property Omaha Steaks would purchase. Sarpy County officials assured Omaha Steaks the property Omaha Steaks intended to purchase was exempt from the Overlay District Regulations.
August 17, 2005	Ken Tex, Sarpy County's Building Inspector, signs a letter assuring Omaha Steak's that its proposed distribution facility complies with all applicable zoning requirements
August 31, 2005	In reliance on the County's assurances that the Overlay District Regulations do not apply to the property Omaha Steaks proposed to purchase, Omaha Steaks purchases the property in Commerce Business Centre for approximately $2.7 million.
October 20, 2005	Sarpy County issues building permits to Omaha Steaks for its new distribution facility and Omaha Steaks immediately begins construction on the facility which is estimated to cost $5.5 million to build. **Construction begins on October 24, 2005.**
November 21, 2005	Nearly a month after construction began, Duane Dowd appeals the issuance of Omaha Steaks' building permits to the Sarpy County Board of Adjustment
December 23, 2005	While Dowd's appeal was pending before the Board of Adjustment, Dowd files a lawsuit claiming that Omaha Steaks' proposed distribution facility would be a nuisance and asks that Omaha Steaks' building be abated (torn down)
January 23, 2006	The Sarpy County Board of Adjustment affirms the issuance of Omaha Steaks' building permits holding that the Overlay District Regulations do not apply to Omaha Steak's property
February 6, 2006	Dowd Appeals the decision of the Board of Adjustment to the District Court of Sarpy County
March 15, 2006	The District Court of Sarpy County affirms the issuance of Omaha Steaks' building permits holding that the Overlay District Regulations do not apply to Omaha Steaks' property
June 20, 2006	Dowd appeals the District Court's decision to the Nebraska Court of Appeals
2007	While Dowd's appeal is pending before the Court of Appeals, the stakeholders and county officials again work cooperatively in a series of subcommittee meetings to amend the Overlay District Regulations to clarify its original intent that property platted before the Overlay District Regulations were originally enacted (March 9, 2004) is exempt.

May 8, 2007	The County Board unanimously adopts amendments to the Overlay District Regulations making it clear that it does not apply to property platted "prior to March 9, 2004" and that "replats, lot line adjustments, and lot consolidations of such platted properties shall ***remain*** excepted."
June 24, 2008	The Court of Appeals holds that Omaha Steaks' building permits were a "new development proposal" under the original Overlay District Regulations. The Court does not address the May 8, 2007 amendments to the Overlay District Regulations which clarified that property platted before March 9, 2004 was exempt.
October 9, 2008	Dowd files an application to amend the Overlay District Regulations to delete the exemptions to the Overlay District Regulations unanimously adopted by the County Board on May 8, 2007
November 19, 2008	The Sarpy County Planning Commission votes to recommend that the County Board deny Dowd's Amendment. The Planning Commission passes a motion directing Planning Director Rebecca Horner to consult with the stakeholders regarding any future amendments to the Overlay District Regulations.
December 9, 2008	The County Board votes to table Dowd's proposed amendment until the January 27, 2009 meeting
January 13, 2009	Rebecca Horner circulates a draft of the proposed Overlay District Regulations that would eliminate the exemptions adopted by the County Board in 2007. Horner does not provide Omaha Steaks with a copy of the proposal. Horner has never attempted to consult with Omaha Steaks regarding any proposed amendments to the Overlay District Regulations.

W500112

Formatted: Left: 1", Right: 1"

SECTION 32 – HC HIGHWAY CORRIDOR OVERLAY DISTRICT

32.1 Purpose

The HC Highway Corridor Overlay District provides basic guidelines that promote quality design along the most visible and heavily traveled road corridors in the Sarpy County zoning jurisdiction: Highway 370, Highway 50, Interstate 80, Platteview Road, Highway 31, and Highway 75. The HC Highway Corridor Overlay District is intended to: Encourage development design that strengthens the physical character and image of Sarpy County; Support the value of property and quality of development and major highway corridors; set basic requirements for good site design and development, building design, landscaping, and signage without discouraging creativity and flexibility in design; permit safe and convenient transportation access and circulation for motorized and non-motorized vehicles, and for pedestrians; manage the impact of commercial and industrial development on adjacent residential neighborhoods.

The uses permitted in the HC (Highway Corridor Overlay District) shall be the same as those permitted by the underlying base zoning district except as provided by this section. The following uses shall be prohibited within the HC (Highway Corridor Overlay District):

1) Self-service car wash operations that constitute the primary use;
2) Hazardous waste storage, as primary use;
3) Heavy industrial uses as defined by Sections 29 and 30, except by a special permit,
4) Mobile home, modular home, and manufactured home sales, but not including the sales of recreational vehicles, except by special permit,
5) Mobile home parks;
6) Pawn shops;
7) Salvage or junk yard operations and transfer stations, as a primary use;
8) Tow lots, as a primary use;

32.2 HC Highway Corridor Overlay District Boundaries

The HC Highway Corridor Overlay District applies to the following areas:

32.2.1 Land within one-quarter (1/4) mile of the centerline of Highway 370 within the planning jurisdiction of Sarpy County;

32.2.2 Land within one-quarter (1/4) mile of the centerline of Highway 50 from the northern extra-territorial planning jurisdiction boundary of the City of Springfield north to one-quarter (1/4) mile north of Highway 370;

32.2.3 Land within one-quarter (1/4) mile of the right-of-way lines of Interstate 80;

Deleted: from the Platte River boundary line of Sarpy county to one-half (1/2) mile north of Highway 370

32.2.4 Land within one-quarter (1/4) mile of the center line of Platteview Road within the planning jurisdiction of Sarpy County;

32.2.5 Land within one-quarter (1/4) mile of the center line of Highway 31 within the planning jurisdiction of Sarpy County;

32.2.6 Land within one-quarter (1/4) mile of the center line Highway 75 within the planning jurisdiction of Sarpy County.

32.3 Project Application and Exceptions

The HC Highway Corridor Overlay District, its development guidelines, and other provisions, apply to the following:

Any new development requiring a building permit built on land within the boundaries of the HC Highway Corridor Overlay District after the effective date of this Regulation.

32.4 **Design Guidelines for Commercial and Office Uses**

32.4.1 Site Design Guidelines

(A) BUILDING LOCATION AND ORIENTATION

1. Facades with principal entrances shall be oriented to the project's primary street or to an active pedestrian or public zone within the site. For multi-tenant buildings, at least 50% of the entrances shall be oriented to the primary street or pedestrian or public zone. Facades with principal customer entrances may be turned perpendicular to the primary street if they provide a direct pedestrian connection from a public sidewalk to the major customer entrance without interruption by vehicular traffic. The primary street for a development is Highway 370, Highway 50, Interstate 80, Platteview Road, Highway 31, or Highway 75 or a collector street that fronts the development. When the development has two primary streets, the site plan shall determine orientation.

2. Developments at intersections shall identify or emphasize their corners with landscaping or similar public feature.

3. A clearly delineated pathway or route should connect all principal building or business entrances to any sidewalks or trails adjacent to the project.

(B) PEDESTRIAN ACCESS

1. Developments shall provide a continuous walkway connection at least 5 feet in width from the public sidewalk to the customer entrances of all principal buildings on the site. Developments adjacent to multi-use trails shall provide a direct connection from the trail to the development's internal pedestrian circulation system. For trails that are proposed in the county's comprehensive plan, trail master plan, or other adopted county document but are not yet constructed, the development plan shall make provisions for a connection to the trail, and shall be responsible for constructing the connection when the trail becomes available.

2. Multi-building developments shall provide clear and safe walkways at least 5 feet in width that connect all buildings on the site. Buildings not intended for routine customer access or intended solely for drive-up services are excluded from this requirement.

3. Where the required walkways specified in this section cross drives, parking aisles, or other vehicular ways, the crosswalks shall be distinguished from driving surfaces by the use of durable, low-maintenance surface materials such as concrete or brick pavers; scored, colored concrete; or painted concrete.

4. Pedestrian connections to adjacent developments should be provided.

Deleted: , except any land that was platted prior to March 9, 2004; provided however, that land within the boundaries of the HC Highway Corridor Overlay District that was zoned other than agricultural prior to March 9, 2004, that was part of a Phased Development shall also be excepted.¶
Replats, lot line adjustments, and lot consolidations of such platted properties shall remain excepted.¶
Phased Developments shall mean property that was, at a minimum, preliminary platted and at least a part of the property within the preliminary plat was final platted. ¶
The requirements of the HC Highway Corridor Overlay District do not apply to any rehabilitation, repair, addition(s) or enlargement(s) of a building in place or under construction on a site as of the effective date of this Regulation, provided that the cumulative gross floor area of any addition(s) does not exceed 50% of the gross floor area of the pre-existing building(s).¶
The requirements of the HC Overlay District do not apply to replacement of building in place or under construction on a site as of the effective date of this regulation necessitated by casualty loss.¶

Deleted: significant

Deleted: on streets

(C) VEHICULAR ACCESS

1. Developments should make maximum use of internal cross-easements and shared access points when possible.

2. Main driveways and drive aisles shall provide a continuous system that connects to the main site entrance.

3. Commercial developments are encouraged to provide means of access to residential areas that avoid requiring residents to use arterial streets for short-distance trips. Such connections must be designed to avoid channeling commercial traffic onto residential streets outside of comprehensively planned, mixed use projects.

4. When possible, shared service and delivery access should be provided between adjacent parcels and buildings.

(D) PARKING

1. Parking shall be grouped into parking blocks that are divided by pedestrian paths, landscaping, or buildings.

2. A maximum of 400 parking stalls may be located in any one parking block.

(E) SIGNS

1. Attached signs shall be located above the building entrance, storefront opening, or at other locations that are compatible with the architectural features of the building.

2. All lots abutting the designated highways shall use monument or ground signs, except that commercial uses within 660 feet of the Interstate 80 right-of-way shall be permitted one detached sign per premises. These detached signs where permitted shall have a maximum height of 80 feet. Lots not abutting the designated highway are allowed detached signs as regulated by Section 40 of the Sarpy County Zoning Regulations.

Deleted: pole

Deleted: pole

Deleted: pole

3. A landscaped base area shall be provided for monument or ground signs appropriate to the mass and height of the sign. All areas within 5 feet of the base of any sign shall be landscaped. The landscaped area may include trees, shrubs, flowering perennials, ornamental tall grass, or turf grass, loose stone, decorative stonework, sculpture, planters, fountains, water features, and decorative paving

Deleted: fountains, water features, decorative stonework, planters, sculpture, decorative paving,

(F) SCREENING

1. Developments shall provide year-round screening of outdoor storage, utility meters, HVAC equipment, trash collection and processing. Utility meters, HVAC, and Trash collection and processing shall be screened to its full vertical height. Outdoor storage shall provide 75% of the vertical plane of this feature up to a height of 8 feet. Trash enclosure gates shall furnish a steel frame with decorative steel or wood covering, or another design

acceptable to the Planning Director. Chain-link fencing with inlaid slats shall not be considered acceptable. Screening shall be integrated into the overall design of buildings and may include landscaping or building materials similar to the main building in order to fully contain the visual impact of these service functions from adjacent public streets and neighboring properties.

Deleted: wood or metal

Deleted: and

(G) LIGHTING

1. All lighting used to illuminate an off-street parking area, sign or other structure shall be arranged so as to deflect light away from any adjoining residential property through fixture type and location. When lighting is mounted to the underside of canopies, these lights shall be recessed so that the visible light source is no lower than the plane of the underside of the canopy.

2. The maximum height of parking lot light poles shall be 45 feet, however, the pole height may be increased when the applicant demonstrates that there will be no light spillage across the property line, the fixtures are hooded to include sharp cut-off shields, are not intrusive to adjacent properties and are contextually appropriate.

Deleted: ing standards

Deleted: unless the County grants a specific exception as part of the application approval process.

3. Exterior lighting of buildings shall be limited to low-level spotlights, floodlights, and similar illuminating devices hooded in such a manner that the direct beam of any light sources will not glare upon adjacent property or public streets. The County may approve exceptions to these requirements for sports and athletic field lighting, flagpole lighting, public street lighting, temporary lighting for seasonal/holiday or special events, and lighting used for public safety.

Deleted: incandescent

32.5. Architectural Guidelines

32.5.1 Site Design Guidelines

(A) MASS AND SCALE FOR BUILDINGS OVER 40,000 SQUARE FEET

1. Variations in the vertical plane of the building shall be incorporated into the mass of the building at significant entrances or along walls that front plazas or other significant pedestrian features. Methods of variation may include towers, pediments, or façade articulations or variations; changes in the horizontal plane; or enhancements in color and materials, consistent with the overall design of the building.

2. Primary building facades shall meet one of the following guidelines:

   a. Facades greater than 100 feet shall incorporate projections or recesses in the wall plane.

   b. Facades greater than 100 feet shall display a pattern of color change, texture change, material change, or expression of structural bays with an offset of at least 12 inches from the ruling plane of the facade.

3. The Sarpy County Board of Commissioners may waive these guidelines if the applicant demonstrates an alternative building design that, in the Board's opinion, provides visual interest and scale to the building. An Architectural Review Committee shall review and provide recommendations concerning application to waive these guidelines. The Architectural Review Committee shall consist of the Planning Director, a Planning Commission Member, an architect/engineer, and a commercial real estate developer along with an alternative for each position all to be selected by the Planning Director and appointed by the County Board of Commissioners.

(B) ARCHITECTURAL ELEMENTS

1. Front facades facing a primary street shall have visible, clearly defined customer entrances that include at least three of the following elements: canopies or porticos, overhangs, recesses or projections, arcades, raised cornice parapets over the entrance door, distinctive roof forms, arches, outdoor patios or plazas, display windows, or integral landscaping planters.

2. Front facades shall utilize variations in color, horizontal planes, materials, patterns, height, or other techniques to provide visual interest and scale to buildings.

3. All rear and side facades abutting an arterial or collector shall use a simplified expression of the materials and design used on the front facade.

(C) BUILDING MATERIALS

1. Permitted exterior building materials shall be high quality, durable materials that include, but are not limited to, brick; native or manufactured stone (Renaissance stone or similar masonry materials); integrally colored, burnished, split faced, rock faced, textured, or glazed concrete masonry units; pre-finished architectural metal panel systems; quality metals such as copper; high quality pre-stressed concrete systems; and drainable (water managed) Exterior Insulated Form System (EIFS).

2. Materials on all sides of the building shall be compatible with materials on the front façade.

3. These guidelines are not intended to inhibit creativity and innovation in building design. The Architectural Review Committee may permit the use of other materials, if the applicant demonstrates that the use of such materials will result in a building that gives a sense of quality and permanence.

(D) ROOF FORMS

1. Buildings with flat or slightly sloped roofs to drain shall incorporate parapets on all facades that face a public street or residential district. Variations in parapet height and articulation of cornice lines may be used to add interest.

2. Roof forms shall be designed to express various building functions or features, such as entrances.

3. Visible roof materials shall include clay or concrete tile, split shakes, tern metal, architectural grade asphalt shingles, architectural metals, copper, natural or synthetic slate, or similar durable materials.

32.6 Design Guidelines for Industrial Uses

32.6.1 Site Design Guidelines

(A) BUILDING LOCATION AND ORIENTATION

1. To the maximum degree possible, the arrangement of buildings on a site shall screen operational and loading areas from view abutting highway corridor streets. When a property has multiple corridor street frontages, the site plan shall determine the primary orientation and screening shall be used to lessen the visual impact of the remaining frontages.

2. Buildings with customer entrances shall orient such entrances toward the primary access street.

3. Accessory structures shall not front a primary access street and shall be oriented away from public streets, open space, or residential areas.

4. To the maximum degree possible, buildings shall be arranged and oriented so that loading docks, outdoor storage, trash collection and processing, HVAC equipment, servicing areas and other service functions shall be screened as much as possible from the view of Highway 50, Highway 370, or Interstate 80, Platteview Road, Highway 31, and Highway 75. In situation where surrounding topographic features prevents concealment screening shall be used to soften the view from the corridor streets. Site designs shall maximize the amount of landscaping in streetyards along these highways. This standard may be met by building and site orientation, site design, and/or landscaped screening that blocks the view of such areas from the highway corridors. Customer and employee parking areas are permitted in these streetyards, subject to other provisions of this regulation.

5. Vehicle storage or truck parking areas shall use screening to soften the view from the corridor street. Landscaping may be used along the perimeter or interior of the parking lot to achieve this standard.

Deleted: B

Deleted: truck parking and

Deleted: are not visible from

Deleted: except

Formatted: Indent: Left: 1.5", First line: 0"

Formatted: Font color: Black

Formatted: Font color: Black

(B) VEHICULAR ACCESS

1. To the maximum degree possible, access routes for automobiles and trucks shall be distinguished from one another.

2. Drives and access points shall be directed away from residential areas.

(C) PARKING

1. Signage and site design shall distinguish employee and visitor parking areas from truck loading and servicing areas when the project is sufficiently large to make such separation functionally necessary.

2. Landscaping shall be used to direct vehicles through the site, distinguish between automobile and truck service areas, manage storm water, and break up the size of large impervious parking areas.

Deleted: automobile

(D) SIGNS

1. Attached signs shall be integrated into the design of the building elevation.

2. All new industrial development lots abutting the designated highways shall use monument or ground signs, except that industrial development directly adjacent to or within 660 feet of the Interstate 80 right-of-way shall be permitted one detached sign per premises. These detached signs where permitted shall have a maximum height of 80 feet. Lots not abutting the designated highway are allowed detached signs as regulated by Section 39 of the Sarpy County Zoning Regulation.

Deleted: pole

Deleted: pole

Deleted: pole

3. A landscaped base area shall be provided for monument or ground signs appropriate to the mass and height of the sign. All areas within 5 feet of the base of any sign shall be landscaped. The landscaped area may include trees, shrubs, flowering perennials, ornamental tall grass, or turf grass, loose stone, decorative stonework, sculpture, planters, fountains, water features, and decorative paving.

(E) SCREENING

1. Developments shall provide year-round screening of outdoor storage, utility meters, HVAC equipment, trash collection and processing. Utility meters, HVAC, and Trash collection and processing shall be screened to its full vertical height. Outdoor storage shall provide 75% of the vertical plane of this feature to a height of 8 feet. Trash enclosure gates shall furnish a steel frame with decorative steel or wood covering, or another design acceptable to the Planning Director. Chain-link fencing with inlaid slats shall not be considered acceptable. Screening shall be integrated into the overall design of buildings and and may include landscaping, or building materials similar to the main building in order to fully contain the visual impact of these service functions from adjacent public streets and neighboring properties.

Deleted: wood or metal

Deleted: and

2. All rooftop mechanical equipment shall be screened. Acceptable methods of screening include parapet walls or a free-standing screen of a material and color consistent with the building. Screens shall be at least the same height as the equipment they conceal.

(F) LIGHTING

1. All lighting used to illuminate off-street parking areas, signs or other structures shall be arranged so as to deflect light away from any adjoining residential property through fixture type and location.

2. The maximum height of parking lot light poles shall be 45 feet, however, the pole height may be increased when the applicant demonstrates that there will be no light spillage across the property line, the fixtures are hooded to

include sharp cut-off shields, are not intrusive to adjacent properties and are contextually appropriate.

Deleted: The maximum height of lighting standards shall be 45 feet, unless the County grants a specific exception as part of the application approval process.

3. Exterior lighting of buildings shall be limited to low-level spotlights, floodlights, and similar illuminating devices hooded in such a manner that the direct beam of any light sources will not glare upon adjacent property or public streets. The County may approve exceptions to these requirements for sports and athletic field lighting, flagpole lighting, public street lighting, temporary lighting for seasonal/holiday or special events, and lighting used for public safety.

Deleted: incandescent

32.6.2 **Architectural Guidelines**

(A) MASS AND SCALE

1. For buildings with office areas that exceed 3,000 square feet, the mass of the office portion of a building shall be distinguished from the mass of the industrial operations portion of the building. Office and/or public entrances shall be distinguished by elements that provide both identification and scale to the development. *Techniques include but are not limited to the use of* canopies or porticos, overhangs, changes in horizontal plane, variations in façade height and design, arches, peaked or special roof forms, and changes in materials.

(B) BUILDING MATERIALS

1. Permitted exterior building materials on primary exposure facades shall be high quality, durable materials that include, but are not limited to, brick; native or manufactured stone (Renaissance stone or similar masonry materials); integrally colored, burnished, split faced, rock faced, textured, or glazed concrete masonry units; pre-finished architectural metal panel systems; quality metals such as copper; high quality pre-stressed concrete systems; architecturally treated tilt-up concrete panels; and drainable (water managed) EIFS. Primary exposure facades shall include any façade that is oriented to Highway 370, Highway 50, or Interstate 80, Platteview Road, Highway 31, and Highway 75 and all building facades that intersect a façade oriented to these highway corridors for a distance of 200 feet back from such intersection; and any façade oriented to a public open space, or residential area. When a property has multiple corridor street frontages, the site plan shall determine the primary orientation and screening shall be used to lessen the visual impact of the remaining frontages.

2. Smooth-faced concrete block, tilt-up concrete, pre-engineered metal buildings, and standard single- and double-tee concrete systems shall be permitted only on facades that are not primary exposure facades as defined above.

3. *These guidelines are not intended to inhibit creativity and innovation in* building design. The County Board of Commissioners may permit the use of

other materials if the applicant demonstrates that the use of such materials will result in a building that gives a sense of quality and permanence. Before permitting other materials, the County Board shall first receive the recommendation of the Architectural Review Committee, in the same manner as described in 32.5.1.A(3) herein.

(C) ROOF FORMS

Deleted: 2

Formatted: DocID, Font: Not Bold, Font color: Auto

Deleted: 1. Visible roof materials shall include clay or concrete tile, split shakes, pre-finished metal, architectural grade asphalt shingles, architectural metals, copper, natural or synthetic slate, or similar durable materials.

Formatted: Indent: Left: 0", First line: 0", Line spacing: Multiple 1.15 li, Tabs: Not at 0" + 0.5" + 0.98" + 1" + 1.5" + 1.75" + 2.2" + 2.5" + 3" + 3.5" + 4" + 4.5" + 5" + 5.5" + 6" + 6.3" + 6.5" + 7"

SARPY COUNTY DEPARTMENT OF PLANNING
1210 GOLDEN GATE DRIVE, PAPILLION, NE 68046
PHONE: (402) 593-1555 FAX: (402) 593-1558
REBECCA HORNER, DIRECTOR

PLANNING COMMISSION MEETING MINUTES
November 19, 2008

November 19, 2008

Sarpy County Board of Commissioners
Sarpy County Courthouse
1210 Golden Gate Drive
Papillion, Nebraska 68046

To The Sarpy County Board of Commissioners:

The Sarpy County Planning Commission held a regular meeting on November 19, 2008, in the County Board Room at the Sarpy County Courthouse, Papillion, Nebraska. Chairman Wees called the meeting to order at **7:00** p.m. with the following members present: Susan Bliss, Greg Gonzalez, Stacen Gross, Bill Krebs, Jerry Torczon, Thomas Wees, and Doug Whitfield. Absent were: Courtney Dunbar, Donald Fenster, Bernie Marquardt and Alan Wear. Also in attendance were the staff members: Mark Wayne, County Administrator, Rebecca Horner, Planning Director, Nicole O'Keefe, Deputy County Attorney and Michelle Alfaro, Planning Assistant.

Chairman Wees noted that a copy of the Open Meeting Law is posted in the Board Room.

Michelle Alfaro read the rules for the public hearing portions of the meeting.

Chairman Wees asked for a motion to approve to agenda.

- *Bliss moved, seconded by Whitfield to adopt the agenda as stated. Ballot: Ayes- Bliss, Gross, Torczon, Wees, Whitfield. Nays – none. Abstain – Gonzalez and Krebs. Absent – Dunbar, Fenster, Marquardt and Wear.* ***Motion carried.***

Chairman Wees asked for a motion to approve the October 29, 2008, minutes.

- *Bliss moved, seconded by Whitfield, to approve the minutes of the October 29, 2008, meeting as corrected on page seven to read "Whitfield moved, seconded by Wear". Ballot: Ayes- Bliss, Torzon, Wees, Whitfield. Nays- none. Abstain –Gonzalez, Gross and Krebs. Absent – Dunbar, Fenster, Marquardt and Wear.* ***Motion carried.***

I. **CONSENT AGENDA ITEMS**: *Note: All consent items are automatically approved when the consent agenda is approved unless removed by a board member. Removed items will be placed under Regular Agenda Items for action by the Planning Commission.*

None.

II. REGULAR AGENDA ITEMS:

A. Boyer Young Development Company 9719 Giles Road, requests approval of a Preliminary Plat, Change of Zone from AG, Agricultural to RD-50,Two-Family Residential District, and Comprehensive Plan Amendment, to be known as **Whitetail Creek**, on Tax Lots 8 & 9, located in the SW ¼ of Section 17, Township 14N, Range 11E of the 6th P.M., Sarpy County, Nebraska. (192nd & Giles)

Discussion:

Bob Doyle came forward to speak on behalf of the applicant. Mr. Doyle noted that the plat will show the corner that is best suited for the Mixed Use is somewhat environmentally challenged and would probably not be the best use. Mr. Doyle speculated that the commercial business generally will follow the rooftops and there could be plenty of developers that will follow Boyer Young to the area.

Mr. Doyle commented on the Preliminary Plat which was a request for approval of 560 single family lots and 264 multi-family units. The multi-family units will be located on the northeast part of the property. Mr. Doyle stated they can comply with all of the requirements that the Planning Department has stated. Mr. Doyle stated all lots are 5,000 plus square feet.

Ms. Bliss commented on the progress made within the last month.

Mr. Doyle stated they have met with the Planning Director and staff. Mr. Doyle stated they have worked with the neighbors west and the school and the park was changed from the southwest corner and the school district liked the change much better. Mr. Doyle stated the school district will seek bonds for funding after the first 40 rooftops are built.

Jarel Vinduska came forward from the Schram association for a viable environment (SAVE). Mr. Vinduska stated that SAVE was formed to promote sustainable land development in the Schramm Park District of Sarpy County. Mr. Vinduska noted that although this project is not in the district that part of the responsibility for good land stewardship, and to develop land properly, is to manage storm water properly. As this development moves closer to this district, Mr. Vinduska hopes the papio-partnership-rules will be enforced. Mr. Vinduska stated it was decided two years ago that there were going to be storm water plans prior to the preliminary plat stage. It was also agreed that they were going to go by the recommendations by the Papio NRD. The Papio NRD recommended that storm water plans be submitted before it is approved at the preliminary plat stage. There will be a tremendous amount of runoff at this property due to a great percentage of impervious surfaces and there has been nothing discussed about how it will be controlled. Mr. Vinduska asked the Planning Commission to deny the application until it is reviewed to see how they will control the storm water.

Public Hearing closed at 7:15 P.M.

Ms. Bliss inquired on the status of the NRD comments.

Ms. Horner stated that the comments were received and included. There were some storm water management requests which will be resolved prior to scheduling the item to County Board. The Subdivision Regulations call for preliminary drainage plans, which were provided with the application. Stormwater management plans are received prior to building permit. The regulations will be revised, but the applicant did meet the requirements of the Preliminary Plat and Supplemental Data for submittal to Planning Commission. A contingency will be required for the applicant to submit and resolve all of the NRD comments prior to being scheduled to the County Board. Ms. Horner

clarified the application will not be taken forward to the County Board until the comments are resolved.

Ms. Bliss noted that Mr. Lynam didn't mention anything about the bridge and requested the Planning Director speak to him and take his comments into consideration.

Mr. Doyle stated they have complied with regulations.

Motion

- *Torczon moved, seconded by Bliss to approve the Comprehensive Plan Amendment and meeting all stipulations of the planning department settling all outstanding issues prior to moving forward to the County Board. Ballot: Ayes – Bliss, Gonzalez, Gross, Krebs, Torczon, Wees, Whitfield. Nays – None. Abstain – none. Absent – Dunbar, Fenster, Marquardt and Wear.* ***Motion carried.***

- *Gonzalez moved, seconded by Bliss to recommend approval of the Change of Zone AG, Agricultural to RD-50 Two- Family Residential and RG-15, General Residential, meeting all stipulations of the Planning Department to settle all outstanding issues prior to moving forward to the County Board based on the recommendation of the Planning Director.* ***Motion carried.***

- *Whitfield moved, seconded by Bliss to recommend approval of the Preliminary Plat to be known as Whitetail Creek provided that the staff comments are resolved prior to scheduling to County Board as the Preliminary Plat meets the zoning and subdivision regulations of Sarpy County.* ***Motion carried.***

B. **EBD Holdings Inc**, 1125 S 103rd Street, requests approval of a Preliminary Plat and Change of Zone from RG-35, General Residential, to RD-50–PTD, Two-Family Residential District / Planned Townhouse Development, and AG, Agricultural, to be known as **Sunridge West** on the following described property, to wit: part of Tax Lot 2, A Tax Lot in the NE ¼ of Section 17 and part of the Tax Lot 12A, a Tax Lot in said NE ¼ of Section 17, all in the Township 14N, Range 11E of the 6th P.M. Sarpy County, Nebraska. (184th & Harrison Street)

Discussion:

Bob Doyle came forward on behalf of the applicant EBD Holdings. This application will approve 65 townhome sublots and 30 single family lots on a 14.5 acre site, which is adjacent to and an extension of, the existing Sunridge Subdivision. It is approximately 95 lots and will be more-or-less the same as Sunridge. Mr. Doyle stated there are no problems with any comments that have been made by the Planning Department.

Public Hearing Closed at 7:25 p.m.

Motion

- *Bliss moved, seconded by Krebs to recommend approval of Change of Zone from RG-35 to RD-50-PTD contingent upon the comments provided by the Planning Director. Ballot: Bliss, Gonzalez, Gross, Krebs, Torczon, Wees, and Whitfield. Nays – none. Abstain – none. Absent – Dunbar, Fenster, Marquardt and Wear.* ***Motion Carried***

- *Krebs moved, seconded by Gross to recommend approval of the Preliminary Plat for Sunridge West contingent upon resolution of staff comments prior to scheduling to County Board as it meets the zoning and subdivision regulations of Sarpy County.* ***Motion Carried***

C. **Beacon View Inc.,** 4209 S. 149th Street, requests approval of Final Plat of a subdivision to be known as **Beacon View First Addition**, on the following described property, to wit: Tax Lot 2, Part of the SW ¼ of the NW ¼ of Section 29, Township 13N, Range 10E of the 6th P.M. Sarpy County, Nebraska. (Highway 6 and the Platte River)

Discussion:

Chris Dorner with Thompson, Dreesen and Dorner came forward and requested approval of the Final Plat of lot 27 Beacon View First Addition. Mr. Dorner stated the Final Plat is one of the five lots shown on the Preliminary Plat that was submitted and approved. The Final Plat will be prepared in conformance with the staff report.

Bob Schnaidt chairman of Beacon View stated the Final Plat will finish what was started in 2001 and they have been working with Sarpy County and the NRD to plat the remainder of the area. Lot 27 was bumped ahead because other four lots were delayed due to required engineer reports.

Mr. Whitfield asked for clarification on the replacement lot.

Ms. Horner stated.she met with applicants and that specific issue was not addressed, but that the applicant stated in their testimony that they will satisfy staff requirements.

Mr. Whitfield asked if there be a change in configuration to change to turn it into an outlot.

Mr. Schnaidt stated the five lots being platted replace lots that are not allowed to be platted because they are below the flood level.

Ms. Connie Anderson came forward and opposed granting the lot in the flood way. Ms. Anderson referenced a flood in the spring and stated Beacon View was one that had to be evacuated at cost of tax payers. Ms. Anderson stated that the people living in these areas should be allowed to be reduced by attrition, which means not allowing further development even as a replacement to prevent the tax payer from having the tax burden from flooding in the future.

Mr. Bill Hayes, resident of lot 27, clarified that the property has been there since 1984 and he has paid taxes since 1984. It is not a new addition it is the platting of the land for the home owner.

Public Hearing Closed at 7:33 p.m.

Mr. Whitfield questioned if the NRD reviewed this request.

Ms. Horner stated the NRD reviewed the request and their comments were on page C3 of the agenda packet from Amanda Grint. Ms. Horner stated the NRD had no comments.

Mr. Whitfield questioned the shapes on the aerial drawing.

Ms. Horner stated the aerial is correct and the issue was discussed with the applicant and will be resolved prior to County Board.

Motion

- *Bliss moved, seconded by Gross to recommend approval of the Final Plat contingent upon resolution of staff comments and other requirements. Ballot: Ayes – Bliss, Gonzalez, Gross, Torczon, Wees and Whitfield. Nays – Krebs. Abstain – none. Absent – Dunbar, Fenster, Marquardt and Wear.* ***Motion carried.***

D. Dowd Grain requests a text amendment to the Highway Corridor Overlay District.

Mr. Torczon left the meeting at 7:37 P.M.

Discussion:

Mr. Duane Dowd came forward and stated that he was not trying to alter what the ordinance does but to have everyone covered within the designated area and eliminate the exemptions. Mr. Dowd provided a handout of a drawing. He indicated the yellow properties are subject to the overlay district guidelines and the pink properties would fit under the exemption by being platted prior to March of 2004. The purpose of the drawing was to show that right next to each other are properties that have to comply with the guidelines and properties that do not have to comply. Mr. Dowd stated the pink properties have no guidelines. Mr. Dowd stated there is nothing unique about having a platted property that should entitle this type of exemption. The yellow lots are small enough to build on and were created by tax lots and there is no reason to draw a line between the two properties. Mr. Dowd stated nice structures will make bond holders feel better and create better tax value. It is unique as far as the Planning Director and Papillion Planning Director as they did not know of any instance where there are exemptions to building guidelines. No restrictions on use only the guidelines of how it looks.. There isn't any damage to not have the exemption the only damage is to the people that might build something and then devalue what you have. The county board addressed this issue in January, they had a retreat and at that time they voted to make everything consistent and thought it was wrong to be inconsistent and have different rules for different properties and to allow this type of exemption.

Mr. Wees questioned if the board stated they would change it.

Mr. Dowd clarified that he was not there.

Mr. Dowd stated in September Rebecca Horner pointed out provision for him to request the amendment.

Mr. Wees questioned if Mr. Dowd hired Mr. Stursma to work for him.

Mr. Dowd stated that Mr. Stursma does not work for him.

Mr. Krebs questioned if buildings built prior 2004 and buildings built after 2004 have to comply.

Mr. Dowd stated the building is not the determinate. The building built before March 2004 would not have to do anything. The building built after March 2004 to May or June 2007 would comply with the previous overlay district that was in place. Mr. Dowd stated this ordinance exempted lots platted before March 2004, whether they were built on or not. Mr. Dowd stated that it was made broader by adding the language that any lot platted before that time could be re-platted, split, or consolidated and would still remain exempt.

Mr. Wees stated that the regulations were adopted in 2007. Mr. Wees stated that Mr. Dowd was suggesting changes in the overlay district.

Mr. Dowd clarified his suggestion was for the removal of exemptions only, not the requirements.

Patrick Sullivan came forward and represented landowners in the area. Mr. Sullivan stated he sat on sub-committee for Sarpy County Zoning Regulations two significant areas of the zoning code were discussed, specifically the environmental overlay and highway overlay. Mr. Sullivan stated several meetings were scheduled over a number of months, issues were discussed and this particular issue was at forefront of the discussion. Mr. Sullivan clarified that this is not a correction for a technical amendment or something that was overlooked. Mr. Sullivan stated this was a significant matter that took significant discussion not only in the sub-committee but before the Planning Commission, as well as, the County Board. Mr. Sullivan stated not just one public hearing, but several, took place and ultimately adopted the grandfather rights. Mr. Sullivan stated the most compelling reason the grandfather rights are protected was because of the commitments that were made to people when they decided to pull properties out of Agriculture and Greenbelt taxation, to plat those properties and proceed with development. The plat was done through engineering and gives consideration to topography and building orientation. Mr. Sullivan stated that in the code of the Highway Corridor building orientation comes into effect, where bay doors should not face the interstates, which is a problem when topography lays in such a way that you have to place the doors that way. Mr. Sullivan stated if the property has been platted with the anticipation that you can orient buildings in a certain direction and then the code changes and you have to orient the buildings in certain ways, it may make significant changes on how the plat should have been layed out. Mr. Sullivan stated in 2007 the grandfather clause was clarified because as a Planning Department and a County Board it was realized that if a plat was to be grandfathered, someone had to move a line, or re-plat a lot, that should entitle them to an exemption. Mr. Sullivan suggested that the Planning Department speak with the stake holders and discuss issues and problems, study and proceed forward between the parties.

Ms. Bliss questioned what commitments have been made.

Mr. Sullivan stated the commitments are financial commitments. Most of the time different stages of ownership and most of the time a developer is before you with the intention to develop the property in a short period of time and has large infrastructure that has to be put in and is anticipating that the plat or lot be will be sold over number of stages over a number of years. When the developer comes in with the ideas and plans, and zoning planned for and figures finances based upon that. The commitments were what the grandfather clause addressed. New plats that come in know that they will have to deal with these issues and can use a financial model to figure these details out.

Mr. Jobeun came forward to represent the landowners that would be affected by the proposed amendments. Mr. Jobeun concurred with Mr. Sullivan said. Mr. Jobeun stated that the original Highway Corridor as adopted, and later as amended, were done through a number of collaborative efforts and meetings between the private and public sectors through extensive discussions. Mr. Jobeun stated the original intent of the Corridor guidelines were clear and were meant in the beginning to exempt out what was exempted out in the 2007 amendments. Mr. Jobeun stated the reason why was because the intent was clear to protect the investment backed expectations of landowners, developers, builders, investors, fiscal agents, and others including warrant holders and bond holders. Mr. Jobeun referenced the Commerce Business Centre and stated that the plat showed the streets layed out, the grade was set, and now the business owner will be asked to orient the buildings in conformance with the corridor guidelines, which doesn't work after a property has been graded. Mr. Jobeun referenced his previous statement regarding the investment backed expectations to be developed in the manner and that there would not be additional requirements imposed. Mr. Jobeun stated that was extremely important and those factors were considered heavily when the Planning Commission and County Board decided that there should be certain exemptions with these Highway Corridor guidelines because people already had laid out the property, had already put in public infrastructure and already made the investment decision to move forward. Mr.

Jobeun stated they are trying to avoid unintended consequences. Mr. Jobeun recommended to do further studies with the stakeholder to avoid unintended consequences.

Mr. Robert Peterson, attorney, came forward to represent a property owner that would be affected by amendments. Mr. Peterson came to recommend denial. Mr. Peterson addressed Ms. Bliss' question regarding the commitments that have been made to the people and stated his client specifically inquired about the covenants when he bought the property and made specific review of this ordinance. Mr. Peterson stated his client spoke to Mr. Torczon and inquired of him as to if the property would be exempt to which his client was informed it was exempt. This change would significantly impact him because he bought it with that specific intent. Based on the apparent withdrawal of the request of the Planning Commission Mr. Peterson requested a layover because it needed more study.

Mr. Luke Klinker, on behalf of Omaha Steaks came forward and stated that he concurred with the three gentlemen before him and urged the commissioners to lay over the amendment. Mr. Klinker, added that his client, Omaha Steaks, was looking for a place to invest millions of dollars and build a multi-million dollar building based on assurances provided by the County that the overlay ordinance would not apply. Based on that assurance Omaha Steaks built the building and created over 100 new jobs and Mr. Klinker urged the commission to lay over the amendment.

Mr. Will Jones on behalf of Werner Enterprises came forward and concurred with the four speakers before him. Mr. Jones stated Werner Enterprises is a significant stake holder in this portion of the county depending on where the lines are drawn parts of the land have been and will be effected. Mr Jones directed his comments to address the type of commitments and investments that land owners make. Werner Enterprises for several decades bought large portions of land with the idea that the operations would grow and Werner Enterprises has experienced significant growth. There are still tracts of land that are not developed, but those are intended to be developed. Mr. Jones stated the importance of being able to utilize the property in a way that allows Werner to keep their operations continuous and to use the property in a way that fits with their longterm phase development.Mr. Jones stated in regard to building orientation that in order to conduct maintenance operation they are required to have two bay doors on opposite sides, with the existing overlay there is no way they could place the building to be in compliance with the regulation if it weren't for the exemptions granted within the regulation. Mr. Jones stated Werner is committed to working with Sarpy County and being involved in the process that involves a larger scale revision from the beginning.

Mr. Tim Dolan came forward to represent Cross Dillion Tire. Cross Dillion Tire built a store in Commerce Building Centre. Cross Dillion Tire came in on the heels of Omaha Steaks after receiving assurances from Permits and Planning Department, specifically, Ken Tex and Rick Houck, all of whom assured builders that were getting permits in the Commerce Business Centre that the Overlay District did not apply. Had Cross Dillion Tire not been given those assurances, they would not have built in the Commerce Business Centre.

Mr. Dowd came forward and stated Cross Dillion and Omaha Steaks were both represented by large law firms that knew what the law was and were not given assurance. The only assurance they received was from Ken Tex. With regard to the commitments there were not any commitments. They platted their lots. Mr. Dowd stated the orientation that Mr. Sullivan stated does have some truth, but it is not impossible. Werner can figure out how to conceal the doors on both sides of the building. Mr. Dowd provided the example of the Oriental Trading building and stated that you cannot see any doors on any side and it a beautiful building. He stated they could have built those buildings in the Highway Corridor. Mr. Dowd stated that he attended more meetings than all of the speakers and at the meeting when Mr. Sullivan drafted the final words to the ordinance that Mr. Dowd is trying to change. Mr. Dowd stated they did not spend a lot of time on that and it was done at the end of the meeting.

Mr. Wees stated that is not how he recalled the meeting and that the committee helped draft it.

Mr. Dowd stated that was not the long drawn out part and the exemptions happened at the end. The commitment the county board didn't happen with the committee it slid through with the exemptions. The entire purpose of the Overlay District, was to end up with a nice looking entrance into Sarpy County and all the way down Highway 370, which included trips to Des Moines. Mr. Dowd pointed out that most of the yellow is required to comply and is owned by himself and other people associated with Mr. Dowd. Mr. Dowd stated Werner was not in the district as far as he knew. Mr. Dowd stated he did not want a lay over to discuss whether or not his property should be exempt as he does not want to be exempt, he wants Sarpy County to be a beautiful area, like other cities and counties, without the exemptions. Mr. Dowd stated if the bond and warranty holders were present they would want tax base and would not object to this amendment.

Mr. Whitfield asked if Mr. Dowd is interested more in the architectural side or the look and the feel of the Highway Corridor.

Mr. Dowd stated orientation is very important and the look and the feel is important but primarily he was concerned about the type of building and having a nice attractive building.

Mr. Wees stated it is possible to design a building with doors on all four sides that is presentable. Mr. Wees stated that there are citizens, professional staff, and professional planners to review it and determine if it should be in Sarpy County. Mr. Wees referenced the land across the street from the Shadow Lake Shopping Center and questioned how they are going to cover all of the industrial land that is grandfathered.

Mr. Dowd stated that if they choose to build something on the land that Mr. Wees referenced, would have to comply and will have to be nice, where as the other land would not have to comply.

Mr. Wees indicated that Mr. Dowd was saying to rule everything out.

Mr. Dowd clarified that he was not saying that, but he stated that anything could be built because there are not any rules.

Mr. Dowd questioned Ms. Horner if there are any rules that state what can or cannot be built as far as the appearance of the building.

Ms. Horner requested clarification of Mr. Dowd's question and asked if his question was in reference to the areas where there was no overlay.

Mr. Dowd stated "or in areas where exempt".

Ms. Horner stated there are no building designs standards in areas that are outside of the overlay.

Mr. Dowd stated "or within the exempted area".

Ms. Horner clarified that was correct.

Mr. Wees stated they all have to meet the architectural standards.

Ms. Horner stated that there are architectural standards in the Highway Overlay Corridor. Ms. Horner stated that Mr. Dowd's question was outside of the Highway Corridor and in the exempted areas of the Corridor Overlay.

Mr. Wees asked Mr. Dowd if he had enough time to present his case.

Mr. Dowd stated he does not want a layover as he does not see the purpose of laying it over.

Ms. Horner stated since this item was tabled from the October meeting, She initiated contact with some of the stake holders in the Overlay District, and after speaking with them, Ms. Horner came to the conclusion that the best professional recommendation would be to sit down with those stake holders, which include the applicant, to work toward a consensus on the standards and Ms. Horner felt that the stakeholders were interested in maintaining dialogue. Ms. Horner stated she wanted to withdraw her previous recommendation regardless of whether or not a recommendation was made to move the item forward, as she will continue to work with the stakeholders on a separate amendment.

Mr. Whitfield asked for clarification on the inserted and deleted information on page D7 was what they were dealing with for this agenda item.

Ms. Horner stated item D7 was her recommendation and the applicant recommendation was on page D5 of the agenda. Ms. Horner stated that after the delay of the item in October, she was able to spend more time considering the changes and then initiated contact with the stakeholders, and she thought it was an opportunity for staff to work with the stakeholders, toward an overlay that most everyone can support.

Mr. Whitfield stated there are two sets of recommendations within one agenda, and questioned which the commission is moving on.

Ms. Horner stated the applicant is asking for the commission to consider page D5, Ms. Horner requested the commission, to not consider page D7.

Mr. Wees stated the Planning Commission received letters from Sapp Brothers and Mr. Reeder and confirmed all commissioners were in receipt of those letters.

Mr. Whitfield stated that he thought it was important that Ms. Horner reinstate the committee, but he also thought it was important to move forward as Mr. Dowd has been here two months in a row.

Mr. Jobeun came forward and represented stakeholders in the area and stated he is uncertain why the commission would move the item forward when they knew something else was going to follow. Mr. Jobeun questioned why they would send the amendment to the County Board when something better could follow it that has been worked out with the stakeholders. He stated Mr. Dowd's amendment request needed further study. Mr. Jobeun stated the amendment should be taken as a collective whole and recommended that the commission lay over the matter until further study of all the amendments can be reviewed with the stakeholders, and Mr. Dowd, has been completed.

Mr. Dowd stated his request was extremely narrow with regard to exemptions and will not change the details of the ordinance, and would like to move it forward.

Mr. Vinduska came forward and stated that he was a member of the subcommittee that was referenced throughout the discussion and stated the county is in trouble because the county had a bad planning director, the meeting was rushed, and there were issues that Mr. Dowd brought up, and Mr. Vinduska agreeed with most of the attorneys points about the investments made by stakeholders, but the county was in trouble because of bad meetings and people that were hand selected on that committee that were against good planning.

Mr. Ken Slauser a stake holder who owns two lots in the Highway Corridor, since 1984 and he sold Duane Dowd three yellow lots, and they are the only ones on that side of the street that were yellow. Mr. Ken Slauser stated when Mr. Dowd moved in, nothing was in yellow, it was in red like the other landowners. Mr. Slauser stated he has a construction company there, and it used to be zoned industrial and Mr. Slauser cannot afford to put up a regency style building for a construction company which is why he purchased the property.

Mr. Dowd clarified that he did not come and paint them yellow that he owned it when it changed they were not platted, they were all tax lots. They were yellow when he purchased them.

Ms. Kim Stewer came forward and stated that she is an unbiased citizen that does not own any land there and is not paid by anyone to be at the meeting. She would like to see a nice corridor in Sarpy County. She stated she understands the landowners need to be considered, but she thinks that is more short term than the future of the county. She mentioned that she attended one of the meetings and she stated, in her opinion, it was a very biased group of stakeholders.

Public Hearing Closed at 8:36 p.m.

Motion

- *Bliss moved, seconded by Krebs to recommend approval of the amendments as outlined by the applicant on page D5 of the agenda. Ballot: Ayes – Bliss. Nays – Gonzalez, Gross, Krebs, Wees, Whitfield. Abstain – Torczon. Absent – Dunbar, Fenster, Marquardt, and Wear.* ***Motion Fails***

Ms. Horner stated this item will move forward to the County Board meeting on December 9, 2008.

Ms. O'Keefe stated as legal counsel she recommended to supplement a motion to deny to supplement their actions. .

- *Whitfield moved seconded by Gonzalez to recommend denial of the application and direct staff to move forward and recommend that Rebecca Horner move forward with the committee to discuss amendments with the stakeholders in the Highway Corridor Overlay District . Ayes –Gonzalez, Gross, Krebs, Wees, Whitfield . Nays - Bliss . Abstain. Torczon – Absent - Dunbar, Fenster, Marquardt, and Wear.* ***Motion Carried***

E. Sarpy County requests a text amendment to the Sarpy County Zoning Regulations Section 32, Highway Corridor Overlay District.

Discussion:

Mr. Torczon continued to abstain from the meeting.

Ms. Horner stated after the last amendments in September it was brought to her attention that there was a clerical omission July 17, 2007. The county attorney researched the background history to determine if she could administratively put the omission back in or if it had to be brought back to the Planning Commission and it was determined that it had to come back to make it official and put it into the record. It was a paragraph that discussed the prohibited uses within the Highway Corridor.

Public Hearing Closed at 8:54 p.m.

Motion

- *Bliss moved, seconded by Krebs to recommend approval of the proposed text amendment as outlined by staff. Ballot: Ayes – Bliss, Gonzalez, Gross, Krebs, Wees, Whitfield.. Nays – none. Abstain – Torczon. Absent – Dunbar, Fenster, Marquardt, and Wear.* ***Motion carried.***

Mr. Torczon entered the meeting at 8:56

F. Sarpy County requests a text amendment to the Sarpy County Zoning Regulations Section 38, Storm Water Management Regulations and Section 6 of the Sarpy County Subdivision Regulations Preliminary Plat and Supplemental Data.

Discussion:

Ms. Horner stated the item was a culmination of work of the Papio-Missouri NRD and the watershed partnership work. On July 25, 2006, Sarpy County adopted the Storm Water Management Regulations to meet the requirements of the Clean Water Act. Since 2006 the watershed parternship has continued to work toward developing a uniform regulation that members of the partnership will use to amend their ordinances and regulations. In the past few months the city of Omaha, Boys Town, and City of Papillion have taken similar amendments to their elected officials and the rest of the partnership members will be taking them in November and December because it is required to have these amendments adopted by January 2009. Ms. Horner stated essentially the amendment establishes the requirements for post storm water management plans. The Plans will provide for water quality control of the first ½ inch of by applying low impact development best management practices, detaining the first ½ inch of rainfall will reduce the amount pollutants which would normally get flushed into streams and rivers. This amendment is not intended as a flood control measure and does little to reduce water quantity during significant rain events. This amendment was prepared as a cooperative effort between the jurisdictional entities of the watershed partnership and it is their intent to adopt very similar amendments in each of their jurisdictions. Ms. Horner stated from a policy perspective these amendments are ones that have been agreed to bring forward to the elected officials.

Mr. Whifield asked for clarification on if this is a cleanup of the existing regulation.

Ms. Horner stated it included the low impact development and the first half inch of rain fall, which was a significant change. Ms. Horner stated the subdivision regulations were also being amended to require storm water management plans with the submittal. There were changes and it was moving forward incrementally to get to a place where the federal government would like the county to be and the partnership as a whole would like to be.

Mr. Jeral Vinduska came forward and stated good storm water management was a very important factor as water is a very important resource for all human and wildlife. Mr. Vinduska stated this was a low set bar. Mr. Vinduska stated it was astounding that the partnership could spend several man hours and thousands of dollars trying to meet Phase II water mandates and come up with trying to control the first half inch. Mr. Vinduska stated he would like to see no net increase regulated.

Amanda Grint, represented the Papio-Missouri NRD, and stated on behalf of the Papillion creek watershed partnership and requested the Commission adopt this regulation amendment because it was an important step in water quality and that was what it was intended for. The Partnership looks for a watershed wide plan for water quality and flood control and this would be a step in the water quality control direction. Ms. Grint stated the first half inch does not do a lot to protect from any flooding, but does go a long way for the water quality and that was what it was intended to meet the criteria that was in the storm water permits.

Public Hearing Closed at 9:16 p.m.

Mr. Whitfield referenced page F11 Section 38.20. Mr. Whitfield stated he agreed with the plan aspect and needing a copy of it, he wanted to be specific as to when the plan would be required and when it would not be required. Mr. Whitfield stated there have been cases when someone wanted to put a house on an acreage and people have paid money to study 80 acres of run-off on a five acre lot. Mr. Whitfield questioned if the requirement was for a larger impact than someone requesting to put a home on the lot.

Ms. Horner stated the regulation read that it was a part of any preliminary plat application, grading permit application, or building permit application that creates 5,000 square feet or more of impervious coverage.

Mr. Whitfield questioned, if a house is built on ten acres with a driveway would it be required.

Mr. Whitfield requested to change the wording of preliminary plat to final plat.

Ms. Horner stated that these are the regulations that the partnership agreed on and it was important to move forward. Ms. Horner stated the change would be the prerogative of the elected officials, but the partnership should move forward together and have similar regulations. Ms. Horner requested to keep the regulation as they are proposed because there are several jurisdictions that have approved them the way they are proposed.

Mr. Wees questioned why they decided on the 5,000 square feet.

Amanda Grint stated the City of Omaha set the significant as that was their definition of significant redevelopment and it is the limit that requires a grading permit or any new development that needs a grading permit would have to comply with this regulation and any redevelopment would have to comply as well.

Mr. Wees questioned the cost of the study.

Ms. Grint stated there was a guidance document that the partnership has come out with along with the City of Omaha. Ms. Grint stated it was a half inch of the total area being developed and the only area that can be excluded was native vegetation, not turf grass, but native vegetation, because that will infiltrate a certain amount. Ms. Grint clarified they are asking for it at the preliminary stage so the developer or engineer do a preliminary calculation to know what sort of volume they are dealing with and plan for that volume while they are laying out their site. Specific documents can come with the construction documents.

Mr. Wees questioned how much that would cost the owner.

Ms. Grint did not have an estimate as to the cost to the owner.

Mr. Torczon stated the issue is mainly a Sarpy County issue. He was involved in MOBA and Omaha does not allow acreages.

Ms. Grint stated they can be amended to fit the County's situation. The intent of the amendment was to infiltrate water to improve water quality. If the acreage had native vegetation and was not all turf grass that part would be exempt and they may not have to do this.

Ms. Horner questioned when Douglas County was taking the amendment to their elected officials.

Ms. Grint stated they would be taken forward in November.

Ms. Horner questioned if the amendments were the same as proposed.

Ms. Grint stated they were the same.

Mr. Whitfield questioned the definition of a post storm water management plan.

Ms. Grint stated the guidance document outlines what goes into the plan.

Mr. Wees asked for Ms. Grint to describe what is required.

Ms. Grint stated that at the time of the preliminary plat it was a plan that identifies the natural resources that are existing in the area and it requires that the volume is calculated and set aside a portion of the plan for the best management practice.

Mr. Wees questioned if it could be a drawing with notes for small pieces of property.

Ms. Grint stated definetly at the preliminary level.

Mr. Whitfield stated it is called a post storm water management plan which means when is a plan showing how they will manage the storm water after completion.

Mr. Wees questioned what would happen if a farmer put agricultural buildings on the property.

Ms. Horner stated that a building permit application may not be required for a certain agricultural buildings.

Mr. Wees restated his question to if the farmer placed a substantial building on the property.

Ms. Horner stated that the same situations will arise in Douglas County and in the Residential Estates portion of Papillion. Those jurisdictions brought forward the same proposed amendments to their elected officials.

Ms. Grint stated the City of Omaha provided a guidance table that shows when it was required and when it was not required. Ms. Grint stated they developed that to be specific for Omaha, so if there were specific concerns Sarpy County needed to address they could provide a guidance table.

Ms. Horner added in the existing regulations in Section 38.21 an exemption from the post construction storm water management plan states that systems designed to accommodate only one single family dwelling unit, duplex, triplex, or quadraplex, provided the single unit was not part of the larger common plan development or sale, are exempt from the requirements in this Regulation to submit a post-construction Storm Water Management Plan.

Mr. Whitfield questioned the definition of systems in Section 38.21.

Ms. Horner stated that amendments can be made and could be taken before the County Board.

Mr. Whitfield inquired about the old one acre rule.

Ms. Horner clarified the rule is still in the regulation.

Mr. Wees asked for Ms. Horner's recommendation.

Ms. Horner stated that they are moving together as a partnership and to deviate from that may damage the partnership and recommended approval of the recommendations as submitted.

- *Bliss moved, seconded by Krebs to recommend approval of the amendments to Sarpy County Zoning Regulations Section 38 Storm Water Management Regulations as submitted. Ballot: Ayes – Bliss, Gonzalez, Gross, Krebs, Torczon, Wees. Nays – Whitfield. Abstain – none. Absent – Dunbar, Fenster, Marquardt, and Wear.* ***Motion carried.***

- *Bliss moved, seconded by Krebs to recommend approval of the amendments to the Sarpy County Subdivision Regulations Section 6 Preliminary Plat and Supplemental Data as submitted. Ayes – Bliss, Gonzalez, Gross, Krebs, Torczon, Wees, Whitfield. Nays –. Abstain – none. Absent – Dunbar, Fenster, Marquardt, and Wear.* ***Motion carried.***

III. CORRESPONDENCE:

Discussion of 2009 Planning Commission Dates

Michelle Alfaro provided dates for the 2009 Planning Commission Dates for the Commissioners review. The Commission accepted the dates provided.

Discussion of Planning Commission Pay Roll

Ms. Alfaro discussed the Sarpy County Expense and Per Diem Report for the Sarpy County Commissioners and explained the procedure and state statutes regarding the payment for commissioner duties.

Mr. Wees questioned if the requirement was to submit a bill.

Ms. Alfaro stated the requirement would be to submit the pay claim, signed, in order for payment to be processed.

IV. ADJOURNMENT:

Being no further discussion, *Stacen moved, seconded by Gonzalez to adjourn the meeting.* By a unanimous oral vote, Chairman Wees declared the meeting adjourned at 9:36 p.m.

Respectfully Submitted,

Tom Wees, Chairman
Michelle Alfaro, Planning Assistant

Additional Information

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Memorandum

Date: December 5, 2008

To: Sarpy County Commissioners

From: Mark Wayne, County Administrator

RE: Duane Dowd's request to change the Highway Corridor regulations

Duane Dowd has requested that the exemptions in the Highway Corridor regulations be removed from the regulation. This effects primarily new construction in the Highway Crossing and Commerce Business Park Developments.

As you remember in January, we discussed the need to eliminate the exemptions and broaden the area in the Highway Corridor. Addressing these changes was delayed by the lawsuit regarding Omaha Steaks along with the fact that we did not have a Planning Director for part of that time.

Rebecca Horner is working with Sapp Brothers, Werner Enterprises and other stakeholders to amend the regulation that would make it acceptable to them so that we can include their developments in the Highway Corridor. I have no objection to eliminating the exemption for all new development in the corridor in order to provide consistency in the area governed by the Highway Corridor Regulation.

The building material criteria and design standards are not a burden for any developer. The most restrictive part of the regulation is building orientation to the corridor.

My suggestion would be to either approve elimination of the exemption language as request or table it until Rebecca makes the other revision to the regulations.

Sarpy County
County Board of Commissioners Report
December 9, 2008

Subject	Type	By
Amendments to the Highway Corridor Overlay Section 32 of the Sarpy County Zoning Regulations	Resolution and public hearing	Rebecca Horner, Planning Director.

This is a request for approval of amendments to the Highway Corridor Overlay Regulations by Dowd Grain Co. Inc.

- Highway Corridor Overlay Regulations
  - In 2002, an interlocal agreement between the City of Papillion and Sarpy County was signed to cooperate in the development of the Highway Corridor. The agreement indicates it was to share costs to develop an overlay district that would serve and be adopted by both jurisdictions. The overlay was adopted by the City of Papillion and Sarpy County separately in November 2003. The overlay district regulations as adopted by Sarpy County were applicable to "new development proposals within the area of application including plats, zoning changes or site plan review".
  - In 2007 the overlay district was amended and included exceptions to read
    - "Any new development requiring a building permit built on land within the boundaries of the HC Highway Corridor Overlay District after the effective date of this Regulation, except any land that was platted prior to March 9, 2004; provided however, that land within the boundaries of the HC Highway Corridor Overlay District that was zoned other than agricultural prior to March 9, 2004, that was part of a Phased Development shall also be excepted.
    - Replats, lot line adjustments, and lot consolidations of such platted properties shall remain excepted.
    - Phased Developments shall mean property that was, at a minimum, preliminary platted and at least a part of the property within the preliminary plat was final platted.
    - The requirements of the HC Highway Corridor Overlay District do not apply to any rehabilitation, repair, addition(s) or enlargement(s) of a building in place or under construction on a site as of the effective date of this Regulation, provided that the cumulative gross floor area of any addition(s) does not exceed 50% of the gross floor area of the pre-existing building(s).
    - The requirements of the HC Overlay District do not apply to replacement of building in place or under construction on a site as of the effective date of this regulation necessitated by casualty loss."
  - Dowd Grain Requests to remove the exceptions from the overlay district as indicated in the attached proposal.

- Staff Analysis
  - The existing exemptions are unique in that it is atypical to adopt design standards that would not apply universally upon the request for a building permit.
  - With the existing exemptions there are several areas within the corridor that are exempt. Likewise, several lots are not exempt which leads to inconsistent application of the design standards in the corridor. An attached map illustrates the exemptions. The purpose of the corridor is to provide a continuous quality of design within the corridor. Permitting exemptions and exempting non-conforming buildings conflicts with the purpose of the corridor and will inhibit the long term goal of the corridor which is to provide a seamless quality of development within the corridor.
  - Planning staff met with Sapp Brothers and Werner to discuss the proposed changes and their concerns. Both agree to work with staff to address concerns that would be created if the exemptions are eliminated. Staff is committed to working with stakeholders in the

area to address concerns and work toward an overlay that is applicable to all property in the corridor.
  - Planning staff had originally made a counterproposal to the requested amendments however after meeting with property owners determined a more detailed analysis is necessary to provide a comprehensive revision that may be supported by a greater number of stakeholders.

- Planning Commission Action
  - Several people spoke in opposition and two spoke in support of the amendments.
  - The Planning Commission voted (5-1) to recommend denial of the zoning amendments as submitted by planning staff on November 19, 2008.

- Recommendation
  - Staff is not opposed to the requested amendments but plans to meet with stakeholders to continue to move forward to address concerns raised by property owners and bring forward an amended regulation that has greater support of members of the corridor.

Respectfully submitted by:

Rebecca Horner
Planning Director

Attachments: Proposed amended Regulations, Corridor application map, Planning Commission report, meeting minutes and associated materials.

Presented to Sarpy County Board on 12/09/2008

SARPY COUNTY PLANNING

• 1210 GOLDEN GATE DRIVE PAPILLION, NE 68046
•PHONE: 402-593-1555 •FAX: 402-593-1558 • E-MAIL: PLANNING@SARPY.COM

OCT 9 2008

SARPY COUNTY
PLANNING DEPARTMENT

CHANGE OF ZONE APPLICATION

In order for your application to be considered **COMPLETE**, please answer all applicable questions and provide the following:

1. Submit complete Change of Zone Application
2. Submit Non-Refundable Fee of $_____ made payable to Sarpy County Treasurer
3. Copy of Deed on file with Register of Deeds (showing applicant as owner)
4. 25 full size site plan drawings (folded)
5. 1 reduced size sit plan drawing (8.5 x 11)
6. Detailed operational plans

PLANNING STAFF USE ONLY:

APPLICATION NO.: _____ ____ - _____
DATE RECEIVED: _____
CP DESIGNATION: _____
ZONING DESIGNATION: _____
FEE: $_____ RECEIPT NO. _____
RECEIVED BY: _____
NOTES: _____

APPLICANT INFORMATION: [X] CHECK BOX IF TEXT AMENDMENT APPLICATION – See Attached

NAME: DOWD GRAIN Co., INC E-MAIL: joedowd13@cox.net

ADDRESS: 220 N 89th St., Ste 201 CITY/STATE/ZIP: OMAHA, NE 68114

MAILING (IF DIFFERENT)
ADDRESS: _____ CITY/STATE/ZIP: _____

PHONE: 402-391-5033 FAX: 402-391-5182

PROPERTY OWNER INFORMATION: (If multiple owners, attach separate sheet)

☐ Please check box if attaching separate sheet with owner information.

NAME: N/A E-MAIL: _____

ADDRESS: _____ CITY/STATE/ZIP: _____

MAILING (IF DIFFERENT)
ADDRESS: _____ CITY/STATE/ZIP: _____

PHONE: _____ FAX: _____

ENGINEER INFORMATION:

NAME: N/A E-MAIL: _____

ADDRESS: _____ CITY/STATE/ZIP: _____

MAILING (IF DIFFERENT)
ADDRESS: _____ CITY/STATE/ZIP: _____

PHONE: _____ FAX: _____

F3

PROJECT DESCRIPTION: *(Describe the project in detail, including physical features of the site, proposed improvements, proposed uses or business, operating hours, number of employees, anticipated customers, etc. – Attach additional sheets if necessary.) PLEASE NOTE: A detailed project description is essential to the reviewing process of this request.*

N/A

PROJECT SITE INFORMATION: *Complete each section in its entirety. If a question is not applicable to your project, please indicate this to show that each question has been carefully considered.*

ASSESSOR'S PARCEL NUMBER: N/A

ADDITIONAL PARCEL NUMBERS _____ _____

LEGAL DESRCIPTION: *(Describe property to wit:)*

N/A

GENERAL PROPERTY LOCATION: N/A **ACRES:** _____

CURRENT ZONING: N/A **REQUESTED ZONING:** _____

ADDITIONAL INFORMATION: *Please use this space to provide any other information you feel is appropriate for the County to consider during review of your application. Attach extra sheets if necessary.*

PLEASE NOTE THE FOLLOWING PROCEDURES:

1. **The Planning Commission will hold a public hearing and make a recommendation to the County Board.**
2. **County Board will hold a public hearing and make a final decision on the Change of Zone Permit**
3. **All necessary agreements will be recorded with the Sarpy County Register of Deeds, the cost of which will be borne by the Special Use Permit applicant or the property owner.**

I, the undersigned, understand a sign will be posted on my property and will remain until the public hearing process at the Planning Commission and County Board is complete. I further understand the Special Use Permit process as stated above and I authorize County Staff to enter the property for inspection related to the specific request during this process.

Owner Signature (or authorized agent) — Date 10/9/08

Owner Signature (or authorized agent) — Date

F4

Presented to Sarpy County Board on 12/09/2008

AS proposed by applicant

APPLICATION TO AMEND TEXT OF
HC HIGHWAY CORRIDOR OVERLAY DISTRICT

In accordance with Section 43.1.1(C) of the Sarpy County Zoning Ordinances, Dowd Grain Company, Inc., as an owner of property within the Overlay District and an interested party, hereby proposes and requests that Section 32.3 of the Sarpy County Zoning Ordinances relating to the HC Highway Corridor Overlay District, be modified and amended to read, in its entirety, as follows:

32.3 Project Application and Exceptions. The HC Highway Corridor Overlay District, its development guidelines, and other provisions, apply to the following:

Any new development requiring a building permit built on land within the boundaries of the HC Highway Corridor Overlay District after the effective date of this ordinance.

The requirements of the HC Highway Corridor Overlay District do not apply to any rehabilitation or repair of a building in place or under construction on a site as of the effective date of this Ordinance.

The requirements of the HC Overlay District do not apply to replacement of a building in place or under construction on a site as of the effective date of this Ordinance necessitated by casualty loss.

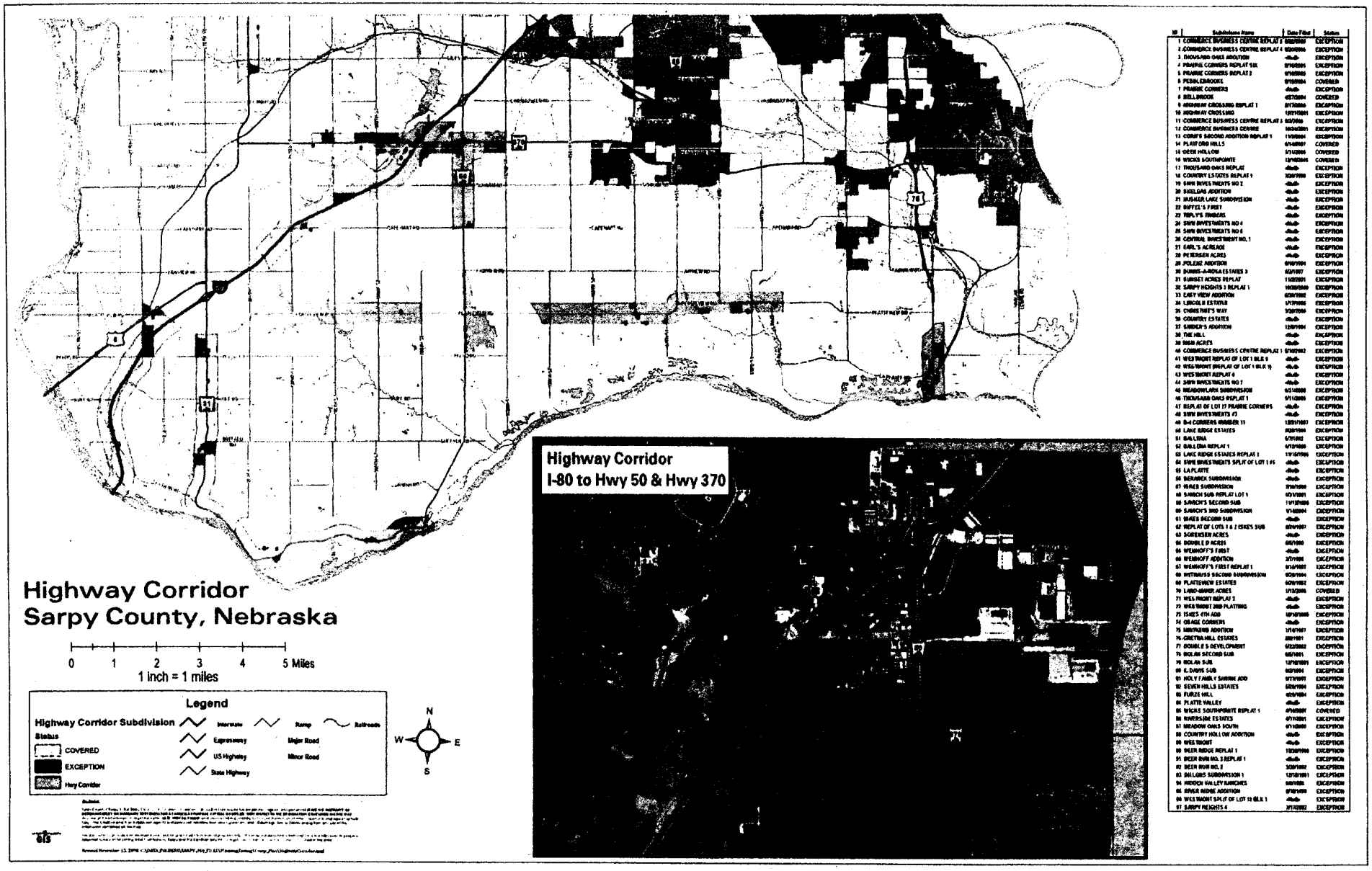
DOWD GRAIN COMPANY, INC.

By: _____
Duane J. Dowd, President

F5

APPLICANT'S PROPOSAL

Presented to Sarpy County Board on 12/09/2008



ID	Subdivision Name	Date Filed	Status
1	COMMERCE BUSINESS CENTRE REPLAT 6	[illegible]	EXCEPTION
2	COMMERCE BUSINESS CENTRE REPLAT 4	[illegible]	EXCEPTION
3	THOUSAND OAKS ADDITION	<null>	EXCEPTION
4	PRAIRIE CORNERS REPLAT SIX	[illegible]	EXCEPTION
5	PRAIRIE CORNERS REPLAT 2	[illegible]	EXCEPTION
6	PEBBLEBROOKE	[illegible]	COVERED
7	PRAIRIE CORNERS	<null>	EXCEPTION
8	BELLBROOK	[illegible]	COVERED
9	HIGHWAY CROSSING REPLAT 1	[illegible]	EXCEPTION
10	HIGHWAY CROSSING	[illegible]	EXCEPTION
11	COMMERCE BUSINESS CENTRE REPLAT 5	[illegible]	EXCEPTION
12	COMMERCE BUSINESS CENTRE	[illegible]	EXCEPTION
13	CORP'S SECOND ADDITION REPLAT 1	[illegible]	EXCEPTION
14	PLATFORD HILLS	[illegible]	COVERED
15	DEER HOLLOW	[illegible]	COVERED
16	WICKS SOUTHPOINTE	[illegible]	COVERED
17	THOUSAND OAKS REPLAT	<null>	EXCEPTION
18	COUNTRY ESTATES REPLAT 1	[illegible]	EXCEPTION
19	SWM INVESTMENTS NO 2	<null>	EXCEPTION
20	SICELOAS ADDITION	<null>	EXCEPTION
21	MUSKER LAKE SUBDIVISION	<null>	EXCEPTION
22	RIFFEL'S FIRST	<null>	EXCEPTION
23	TEPLY'S TIMBERS	<null>	EXCEPTION
24	SWM INVESTMENTS NO 4	<null>	EXCEPTION
25	SWM INVESTMENTS NO 6	<null>	EXCEPTION
26	CENTRAL INVESTMENT NO. 1	<null>	EXCEPTION
27	EARL'S ACREAGE	<null>	EXCEPTION
28	PETERSEN ACRES	<null>	EXCEPTION
29	POLENZ ADDITION	[illegible]	EXCEPTION
30	SUNNS-A-ROLA ESTATES 3	[illegible]	EXCEPTION
31	SUNSET ACRES REPLAT	[illegible]	EXCEPTION
32	SARPY HEIGHTS 3 REPLAT 1	[illegible]	EXCEPTION
33	GREY VIEW ADDITION	[illegible]	EXCEPTION
34	LINCOLN ESTATES	[illegible]	EXCEPTION
35	CHRISTINE'S WAY	[illegible]	EXCEPTION
36	COUNTRY ESTATES	<null>	EXCEPTION
37	SNIDER'S ADDITION	[illegible]	EXCEPTION
38	THE HILL	<null>	EXCEPTION
39	BIGB ACRES	<null>	EXCEPTION
40	COMMERCE BUSINESS CENTRE REPLAT 1	[illegible]	EXCEPTION
41	WESTBRIDGE REPLAT OF LOT 1 BLK 9	<null>	EXCEPTION
42	WESTBRIDGE (REPLAT OF LOT 1 BLK 9)	<null>	EXCEPTION
43	WESTBRIDGE REPLAT 4	<null>	EXCEPTION
44	SWM INVESTMENTS NO 7	<null>	EXCEPTION
45	MEADOWLARK SUBDIVISION	[illegible]	EXCEPTION
46	THOUSAND OAKS REPLAT 1	[illegible]	EXCEPTION
47	REPLAT OF LOT 17 PRAIRIE CORNERS	<null>	EXCEPTION
48	SWM INVESTMENTS #3	<null>	EXCEPTION
49	B-4 CORNERS NUMBER 11	[illegible]	EXCEPTION
50	LAKE RIDGE ESTATES	[illegible]	EXCEPTION
51	BALLENA	[illegible]	EXCEPTION
52	BALLENA REPLAT 1	[illegible]	EXCEPTION
53	LAKE RIDGE ESTATES REPLAT 1	[illegible]	EXCEPTION
54	SWM INVESTMENTS SPLIT OF LOT 1 #5	<null>	EXCEPTION
55	LA PLATTE	<null>	EXCEPTION
56	BERWICK SUBDIVISION	<null>	EXCEPTION
57	ISAES SUBDIVISION	[illegible]	EXCEPTION
58	SANCH SUB REPLAT LOT 1	[illegible]	EXCEPTION
59	SANCH'S SECOND SUB	[illegible]	EXCEPTION
60	SANCH'S 3RD SUBDIVISION	[illegible]	EXCEPTION
61	ISAES SECOND SUB	<null>	EXCEPTION
62	REPLAT OF LOTS 1 & 2 ISAE'S SUB	[illegible]	EXCEPTION
63	SORENSEN ACRES	<null>	EXCEPTION
64	DOUBLE D ACRES	[illegible]	EXCEPTION
65	WEINHOFF'S FIRST	<null>	EXCEPTION
66	WEINHOFF ADDITION	[illegible]	EXCEPTION
67	WEINHOFF'S FIRST REPLAT 1	[illegible]	EXCEPTION
68	WITBRAUS SECOND SUBDIVISION	[illegible]	EXCEPTION
69	PLATTEVIEW ESTATES	[illegible]	EXCEPTION
70	LAND-MINER ACRES	[illegible]	COVERED
71	WESTBRIDGE REPLAT 2	<null>	EXCEPTION
72	WESTBRIDGE 2ND PLATTING	<null>	EXCEPTION
73	ISAES 4TH ADD	[illegible]	EXCEPTION
74	OSAGE CORNERS	<null>	EXCEPTION
75	MONTGOMERY ADDITION	[illegible]	EXCEPTION
76	GRETNA HILL ESTATES	[illegible]	EXCEPTION
77	DOUBLE S DEVELOPMENT	[illegible]	EXCEPTION
78	BOLAN SECOND SUB	[illegible]	EXCEPTION
79	BOLAN SUB	[illegible]	EXCEPTION
80	E. DAVIS SUB	[illegible]	EXCEPTION
81	HOLY FAMILY SHRINE ADD	[illegible]	EXCEPTION
82	SEVEN HILLS ESTATES	[illegible]	EXCEPTION
83	FURZE HILL	[illegible]	EXCEPTION
84	PLATTE VALLEY	<null>	EXCEPTION
85	WICKS SOUTHPOINTE REPLAT 1	[illegible]	COVERED
86	RIVERSIDE ESTATES	[illegible]	EXCEPTION
87	MEADOW OAKS SOUTH	[illegible]	EXCEPTION
88	COUNTRY HOLLOW ADDITION	<null>	EXCEPTION
89	WESTBRIDGE	<null>	EXCEPTION
90	DEER RIDGE REPLAT 1	[illegible]	EXCEPTION
91	DEER RUN NO. 3 REPLAT 1	<null>	EXCEPTION
92	DEER RUN NO. 2	[illegible]	EXCEPTION
93	DELLONS SUBDIVISION 1	[illegible]	EXCEPTION
94	HIDDEN VALLEY RANCHES	[illegible]	EXCEPTION
95	RIVER RIDGE ADDITION	[illegible]	EXCEPTION
96	WESTBRIDGE SPLIT OF LOT 12 BLK 1	<null>	EXCEPTION
97	SARPY HEIGHTS 4	[illegible]	EXCEPTION

SARPY COUNTY
PLANNING COMMISSION
STAFF REPORT
OCTOBER 29, 2008 AGENDA
CHANGE OF ZONE – TEXT AMENDMENT
HIGHWAY CORRIDOR OVERLAY DISTRICT
CZ-08-0054

I. GENERAL INFORMATION

A. APPLICANT:

Dowd Grain Co., Inc.
220 N. 89th Street, Suite 201
Omaha, NE 68114

B. REQUESTED ACTION:

To approve a text change to the Highway Corridor Overlay District.

C. LEGAL DESCRIPTION:

Sarpy County Zoning Regulations, Highway Corridor Overlay District.

D. BACKGROUND:

In 2007 the Zoning Regulations were amended. Later, the Highway Corridor Overlay was amended to provide exemptions to platted land, including any subsequent replats. The exemptions were added to clarify the existing interpretation and enforcement by the Building and Planning Department.

II. ANALYSIS

A. STAFF COMMENTS:

1. The applicant requests to remove the existing language related to exemptions due to existing platted lands.
2. The existing exemptions are unique in that it is atypical to adopt design standards that would not apply universally upon the request for a building permit. The original highway corridor language was "applicable for new development proposals within the area of application including plats, zoning changes or site plan review". (page 69, 2005 Zoning Regulations)
3. With the existing exemptions there are several areas within the corridor that are exempt. Likewise, several lots are not exempt which leads to inconsistent application of the design standards in the corridor. An attached map illustrates the exemptions. The purpose of the corridor is to provide a continuous quality of design within the corridor. Permitting exemptions and exempting non-conforming buildings conflicts with the purpose of the corridor and will inhibit the long term goal of the corridor which is to provide a seamless quality of development within the corridor.

4. Staff supports the elimination of the exemption language provided that additional language is provided to account for the phasing of new buildings on campuses with existing non-conforming buildings in the corridor as it relates to building materials that are no longer permitted. Staff recommends that owners be permitted to use a percentage of prohibited materials in the design of any new buildings on existing campuses in order to transition building design from non-conforming to conforming. Any existing non-conforming buildings should follow the guidelines for non-conforming development in Chapter 4 of the Zoning Regulations.
5. Additionally the existing language provides an exemption for replacement of existing buildings or rehabilitation or repair of a building within the corridor. Staff recommends that any non-conforming development within the corridor follows the same non-conforming guidelines in the Zoning Regulations so that all non-conforming development is treated equally across the County.

III. RECOMMENDATION: Recommend approval to the proposed text amendments as amended by staff.

IV. COPIES OF REPORT TO:
Applicant
Public upon request

V. ATTACHMENTS:
Draft Regulations as requested by applicant
Draft Regulations as amended by staff
Map of Overlay District as it currently exists
Associated materials

Report prepared by:

Rebecca Horner, Planning Director

D2

MEMO

To: Sarpy County Planning Commission

From: Nicole O'Keefe

RE: Agenda Item D: Dowd Grain requests a text amendment change to the Highway Corridor Overlay District.

Date: November 19, 2008

There appears to be a certain amount of controversy surrounding any amendments to Section 32 of the Sarpy County Zoning Regulations, the Highway Corridor Overlay District. At the October 2008 meeting, the Sarpy County Attorney's Office recommended that the Planning Commission table a proposed amendment to the Highway Corridor Overlay District until the November 2008 Planning Commission meeting. The purpose of tabling the item was so this office could address the significance of the Court of Appeals decision in the *Dowd Grain* matter with regard to the current status of the built Omaha Steaks building. Additionally, the County Attorney's Office wanted an opportunity to evaluate how the proposed modifications would impact grandfather rights and/or non-conformity rights of the various properties along Highway 370.

1. The Omaha Steaks Building

***Dowd Grain v. Sarpy County Board of Adjustment and OSI Properties* Summary; A-06-681 (2008 WL 2511150):**

In this case, Sarpy County issued two building permits for the Omaha Steaks building, one for the footings and foundation and one for the construction of the commercial building. The building permit applications were submitted in October 2005 and November 2005 respectively. In November 2005 and December 2005 Dowd Grain Co., Inc.,; Duane J. Dowd, trustee; Grand Prix, Inc., Duane J. Dowd; and Lawrence Dowd (hereinafter collectively "Dowd Grain") filed appeals with the Board of Adjustment. In January 2006, The Board of Adjustment denied the appeals and by a 3-to-2 vote, concluded that the building coordinator did not err in issuing the building permits. In February 2006, Dowd Grain filed an appeal with the District Court. The District Court heard the matter and in May 2006 entered an Order affirming the Board of Adjustment decision.

Dowd Grain further appealed to the Court of Appeals, who issued their opinion on June 24, 2008. The Court of Appeals analyzed whether or not the Board of Adjustment decision was illegal, not supported by competent evidence, arbitrary, unreasonable, clearly wrong and contrary to law. It is significant that the Court of Appeals specifically declined to address whether the Building Coordinator improperly issued the building permits. The Court of Appeals analyzed the

application of the 2004 overlay district ordinance and concluded "that the plain language of the overlay district ordinance applies to OSI's proposed building, which constitutes a 'new development proposal' within the meaning of the ordinance."[1] The matter has been remanded back to the District Court.

Analysis

What is the effect of the *Dowd Grain* Court of Appeals opinion when the proposed building is no longer proposed, but actually built; and the 2004 overlay district ordinance specifically analyzed by the Court of Appeals no longer exists because that section of the Sarpy County Zoning Regulations has been amended since 2004? Simply put, the Court of Appeals decision does not address the situation as it currently stands. The Court of Appeals decision examined the language of the *2004* overlay district ordinance as *applicable* to the Omaha Steaks *proposed building*. The Court of Appeals reversed the Board of Adjustment to the extent that the Board of Adjustment relied upon the inapplicability of the overlay district ordinance. Thus the Court of Appeals essentially stated that the 2004 overlay district ordinance applied to the OSI proposed building. However, it is important to note a fine distinction is made in the Court of Appeals decision. The Court of Appeals did *not* state that the building permits were issued improperly, because the Court of appeals *specifically declined* to address that issue.[2] The Court of Appeals stated that the 2004 overlay district ordinance was applicable to the Omaha Steaks proposed building, but went no further.

In order to fully understand the significance of the *Dowd Grain* Court of Appeals opinion within the framework of the facts as they currently stand, it is necessary to review Nebraska Supreme Court opinions analyzing zoning regulations. The Nebraska Supreme Court has stated, "A landowner has no vested right in the continuity of zoning in a particular area so as to preclude subsequent amendment, and a zoning regulation may be retroactively applied to deny an application for a building permit even though the permit could lawfully have issued at the time of the application"[3] Additionally, the Court has held, "a new zoning ordinance will not have retroactive effect where an applicant has substantially changed position in good-faith reliance upon the existing zoning by causing substantial construction to be made or by incurring substantial expenses related to construction..."[4]

The Court has essentially stated that a zoning authority has the power to amend their zoning regulations at any time and that no landowner has a vested right in the continuity of the zoning regulations. In the *Dowd Grain* analysis, the Court of Appeals held that the 2004 Highway Corridor Overlay district applied to the Omaha Steaks *proposed* building and reversed the Board of Adjustment's decision to the extent that the Board of Adjustment held that the 2004 overlay district ordinance did not apply to the Omaha Steaks building. However, the Court of Appeals did not consider the effect of any amendments made to the Zoning Regulations; their

---

[1] *Dowd Grain v. Sarpy County Board of Adjustment and OSI Properties;* 2008 WL 2511150
[2] *Id.*
[3] *Whitehead Oil Company v. City of Lincoln,* 245 Neb 660 (1994) citing to *Whitehead Oil Company v. City of Lincoln,* 234 Neb. 527 (1990).
[4] *Id.*

analysis was based strictly on the language of the 2004 Highway Corridor Overlay district and its applicability to the Omaha Steaks proposed building.

The Sarpy County Board addressed an amendment to the Sarpy County Zoning Regulations, specifically the Highway Corridor Overlay District on May 8, 2007 (Resolution 2007-0138). After taking public input on the matter, the Sarpy County Board exercised their authority and specifically amended the Highway Corridor Overlay District by adding exemption language, which states,

> 33.3.1 Any new development requiring a building permit built on land within the boundaries of the HC Highway Corridor Overlay District after the effective date of this Ordinance, except any land that was platted prior to March 9, 2004; provided however, that land within the boundaries of the HC Highway Corridor Overlay District that was zoned other than agricultural prior to March 9, 2004 that was part of a Phased Development shall also be excepted.
> (a) Replats, lot line adjustments, and lot consolidations of such platted properties shall remain excepted.
> (b) Phased Developments shall mean property that was, at a minimum, preliminary platted and at least a part of the property within the preliminary plat was final platted.
>
> 33.3.1 The requirements of the HC Highway Corridor Overlay District do not apply to any rehabilitation, repair, addition(s) or enlargment(s) of a building in place or under construction on a site as of the effective date of this Ordinance, provided that the cumulative gross floor area of any addition(s) does not exceed 50% of the gross floor area of the pre-existing building(s).
>
> 33.3.2 The requirements of the HC Overlay District do not apply to replacement of a building in place or under construction on a site as of the effective date of this Ordinance necessitated by casualty loss. [5]

Commerce Business Park was originally platted on October 2, 2001. Thus, the Omaha Steaks building sits on land that was platted prior to March 9, 2004. The Omaha Steaks lots were replatted by an Administrative Replat filed during September or October of 2005. According to the above language, the Administrative Replat is also specifically included in the exemption as long as the original plat was filed prior to March 9, 2004. This suggests that when the building permits were issued to Omaha Steaks under the 2004 Highway Corridor Overlay District, as analyzed by the Court of Appeals, the proposed building was likely a non-conforming building. Typically, a non-conforming building or use brings about an enforcement action, which would attempt to bring the building into compliance with the Zoning Regulations. However, in this case, no enforcement action was begun in light of the Board of Adjustment ruling, the District Court ruling and May 8, 2007 amendments to the Zoning Regulations. The previous Highway

[5] Resolution 2007-0138, May 8, 2007

Corridor Regulation, that is, the one in use prior to the May 8, 2007 amendments, was repealed by the May 8, 2007 amendments. To the extent that the 2004 regulation differs from the 2007 regulation, the 2004 regulation is not enforceable.

The County Attorney's Office had deferred any prior analysis of the built Omaha Steaks building pending the outcome of the Court of Appeals decision. Since the Court of Appeals decision strictly analyzed the 2004 overlay district ordinance as applicable to Omaha Steaks *proposed* building which as discussed above is not the current fact scenario, the County Attorney's Office has done its own research and analysis. Based on the above reasoning, it appears that the building permits were initially issued based upon the erroneous assumption that the *proposed* Omaha Steaks building was exempted from the Highway Corridor Overlay District. In light of the May 8, 2007 amendments which specifically exempted some developments, including the Omaha Steaks building, it appears that the built Omaha Steaks building should be analyzed by the Planning Department for conformity with the current Sarpy County Zoning Regulations. Should there be any non-conformity found, an analysis of whether such non-conformity is a *prior* non-conformity would be necessary. Thus it is recommended that the Planning Department review the Omaha Steaks building for compliance under the current Zoning Regulations.

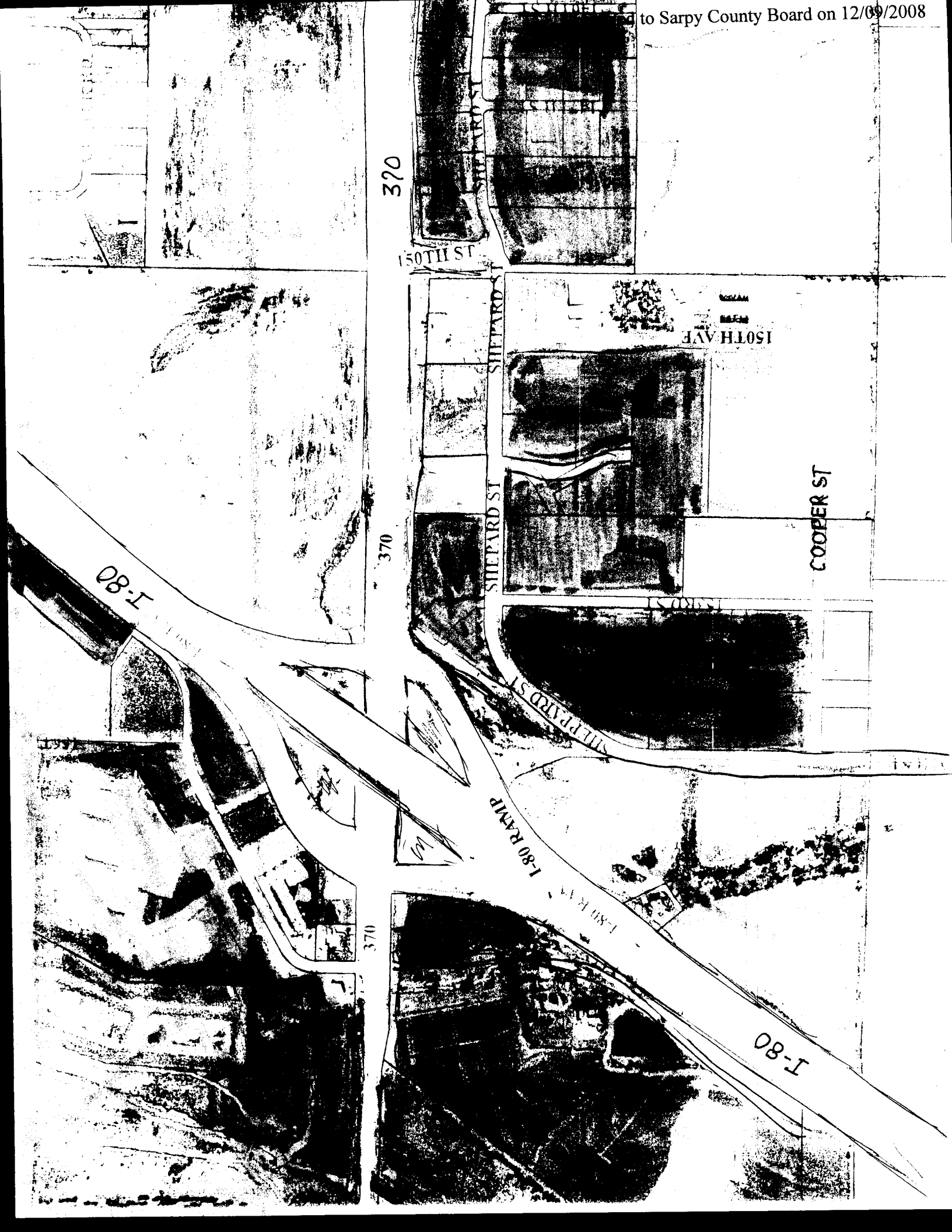
2. Other Buildings along Highway 370 / Grandfather rights

Other buildings within the exempted language of the May 8, 2007 amendments to the Highway Corridor Overlay District would likely be in the same legal situation as the Omaha Steaks building. That is, any such building should be examined for compliance under the current Zoning Regulations, and if any non-compliance is noted, a further analysis would be recommended to determine whether said non-conformity is considered a prior non-conforming use as defined by Nebraska case law.

3. Exemption Clause issues

Article III, Sec. 18 of the Nebraska Constitution prohibits "special legislation", which is legislation that creates an arbitrary and unreasonable method of classification.[6] In this instance, it is clear that the intent of the language exempting property that had been platted prior to a certain date was to allow that property to proceed under the rules in place at the time of the platting. Though some of the previously platted property may have already been put to the non-conforming use, and accordingly would be allowed to remain as such, this language would provide the same treatment to land that had been platted, but not yet put to the non-conforming use. This would appear to bear a reasonable and substantial relation to the objective of the exception language of the ordinance, and would be in compliance with the Nebraska Constitution.

[6] *Le v. Lautrup*, 271 Neb. 931(2006)


370
150TH ST
SHEPARD ST
150TH AVE
COOPER ST
370
I-80
SHEPARD ST
I-80 RAMP
370
I-80

FILE COPY

MEMO

To: Sarpy County Planning Commission

From: Nicole O'Keefe
RE: Agenda Item F: Dowd Grain requests a text amendment to the Highway Corridor Overlay District.
Date: October 29, 2008

Sarpy County is engaged in on-going litigation over issues surrounding the Highway Corridor Overlay District zoning regulations. As you may know, the Nebraska Court of Appeals has issued a ruling regarding the application of the 2004 exemption language of the overlay district to Omaha Steaks building. That case was remanded to District Court for further proceedings. There is also a pending case in District Court regarding the Cross-Dillon Tire building.

There are a number of issues that need to be addressed by our office, and we are concerned about how subsequent modifications to the exemption language would impact the current litigation and how that would be applied to other activities in the area covered by the Highway Corridor Overlay District. These issues include: the applicability of the July of 2007 modifications, the applicability of "grandfather rights" to various properties and the legality of any exemptions to the overlay district.

At this time, the legal ramifications of removing the exemptions or modifying the existing exemptions are unknown. The County Attorney's Office would like to thoroughly review the matter and establish the status of the buildings which are the subject of the litigation as well as form an official opinion as to the status of other currently exempted buildings prior to changing the Highway Corridor Overlay District zoning regulations. Thus the County Attorney's Office is suggesting that the Planning Commission table Agenda Item F until the November 2008 meeting.

Presented to Sarpy County Board on 12/09/2008

FILE COPY

October 28, 2008

OCT 28 2008

SARPY COUNTY
PLANNING DEPARTMENT

Re: CZ 08-0054

Dear Planning Commission member:

When the Highway Corridor Overlay District was adopted in 2004 and revised in 2007 it was specifically discussed that existing developments with zoning and platting in place would be exempt from the Overlay District. The exemption language was written because some persons had already made substantial investments in the development of Sarpy County land, had completed the zoning and platting process through the Planning Commission and County Board and formed Sanitary Improvement Districts (SID's). SID's that had sold construction bonds and warrants financing the improvements with a specific plan for repayment. One of the Sarpy County Attorneys made it clear at a public hearing for the original Overlay District that it would be a mistake to try and apply an Overlay District on property that was already zoned and platted.

The approved ordinance, with the exemptions, did not keep Mr. Dowd from filing frivolous lawsuits or threatening to file lawsuits against businesses constructing new buildings that did not comply with his interpretation of the language in the Overlay District. Businesses that have brought jobs and tax revenue to Sarpy County. The committee working on the revision in 2007, which was subsequently approved by the Planning Commission and County Board, specifically defined "new development" in the revision so there would not be any misinterpretation what was desired in the original Overlay District.

The Sarpy County Planning Department, nor anyone, should overlook all the previous meetings, public hearings, approvals of both the Planning Commission and County Board to help advance the agenda of a few by attempting to make an amendment to the text of the Overlay District.

The Commerce Business Centre, Highway Crossing, Hilltop Industrial Park, Valley Ridge Business Park and property owners like Werner Enterprises have made substantial investments in Sarpy County providing developed sites in a cohesive manner for numerous businesses in the last eight years. Perhaps Mr. Dowd could share with the Planning Commission how he has contributed to Sarpy County during this time frame other than the filing fees he has paid to the Sarpy County courthouse.

Sincerely
COMERCE BUSINESS CENTRE, LLC
Steven Reeder
Steven Reeder

Presented to Sarpy County Board on 12/09/2008

FILE COPY

Sapp Bros Petroleum, Inc.

9915 SOUTH 148TH STREET
P.O. BOX 45305
OMAHA, NE 68145-0305
TELEPHONE 402-895-2202
TOLL FREE (800) 233-4059
FAX (402) 895-4253

October 29, 2008

OCT 29 2008

SARPY COUNTY
PLANNING DEPARTMENT

Sarpy County Planning Commission Members
Via email

Re: Application No. CZ 08-0054, Dowd Grain Co., Inc.
Request Text Amendment to Highway Corridor Overlay District

Dear Commission members:

As the developer of one of the largest and mature developments in Sarpy County, Sapp Bros. is opposed to the approval of the requested change as referenced above.
The existing exemptions were permitted when the Highway Corridor Overlay District was approved. This approval was given consideration at the time as to the "Grandfather" rights to previously existing zoning regulations. The current request overrides these rights and places an undue burden upon the development of platted areas, new construction and renovations/remodeling and will create inconsistency within these areas.

The original platting was done so in accordance the then existing zoning regulations and there have been no violations of these regulations in the 35 plus years since of the Sapp Bros development.

The planning staff recommends approval of the change with certain language changes. The language changes will create ambiguity in the future permitting and is an attempt to pacify the opponents of the change. Please study their recommendation fully to understand this issue. Too many regulations and laws are written in such a manner without totally understanding the implications created.

Thanks you for your consideration of our request.

Sincerely,

William D. Sapp
CEO
Sapp Bros. Petroleum, Inc.
Sapp Bros. Travel Centers, Inc.

Sincerely,

Lee H. Sapp by [illegible]
Lee H. Sapp
President
Lee Sapp Enterprises

WDS/lh

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA
Resolution Authorizing Chairman to Sign Interlocal Cooperation Agreement - Hwy 370 Corridor Plan and Contract to Develop Corridor Plan

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 1997), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 1997), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, Sarpy County and the City of Papillion have a desire to develop a consistent planning and zoning land use map and corridor concept plan for Hwy 370 from 96th Street to I-80; and,

WHEREAS, Sarpy County and the City of Papillion have chosen Olsson Associates to develop the concept plan for future development along the HWY 370 corridor.

NOW, THEREFORE, BE IT RESOLVED, By the Sarpy County Board of Commissioners, that the Chairman and Clerk are hereby authorized to execute on behalf of Sarpy County, Nebraska the Interlocal Cooperation Agreement with the City of Papillion and the Contract Document with Olsson Associates, copies of which are attached hereto, the same being approved by the Board.

DATED this 6th day of August, 2002.

MOVED by Inez Boyd, seconded by Aldona Doyle, that the above Resolution be adopted. Carried.

YEAS:	NAYS:	ABSENT:
Inez M Boyd	None	Jack Postlewait
[illegible]		
Tom Schram		ABSTAIN:
Aldona K. Doyle		None

Attest:

SEAL

COUNTY CLERK SEAL SARPY COUNTY, NEBRASKA

[illegible], Deputy
County Clerk

Distributed to:
- ☐ County Board
- ☒ Administrator - M. Wayne
- ☒ Fiscal Admin. - D. Peoples
- ☒ Co. Atty. M. Smith
- ☐ Elected Official(s)
- ☐ Dept. Head(s)
- ☐ Check here for ALL Elected Officials/Dept. Heads
- ☐ Other: Dept./Employee
- ☒ Contract file - Hwy 370 Corridor

December 06, 2008

Re: Text Amendment Application: Zoning Regulations Section 32
Highway Corridor Overlay District

Dear Sarpy County Commissioner:

When the Highway Corridor Overlay District was adopted in 2004 and revised in 2007, it was **specifically** discussed that existing developments with zoning and platting in place would be exempt from the Overlay District. The exemption language was written because some persons had already made substantial investments in the development of Sarpy County land, had completed the zoning and platting process through the Planning Commission and County Board, and formed Sanitary and Improvement Districts (SID). Various SIDs had sold construction bonds and warrants financing the improvements with a specific plan for repayment. One of the Sarpy County Attorneys made it clear at a public hearing for the original Overlay District that it would be a mistake to try and apply an Overlay District on property that was already zoned and platted.

The approved ordinance, with the exemptions, did not keep Duane Dowd from filing lawsuits or threatening to file lawsuits against businesses constructing new buildings that did not comply with his interpretation of the language in the Overlay District. These were businesses that have brought jobs and tax revenue to Sarpy County. The committee working on the Overlay District revision in 2007, that was subsequently approved by the Planning Commission and County Board, specifically defined "new development" in the revision so there would NOT be any misinterpretation of the original Overlay District.

The Sarpy County Planning Department, nor anyone, should overlook all the previous meetings, public hearings, approvals of both the Planning Commission and County Board to help advance the agenda of a few by attempting to make an amendment to the text of the Overlay District. It should be noted that the Sarpy County Planning Commission on November 19, 2008 denied another attempt by Duane Dowd to manipulate the wording of the Overlay District.

The Commerce Business Centre, Highway Crossing, Hilltop Industrial Park, Valley Ridge Business Park ,and property owners like Werner Enterprises have made substantial investments in Sarpy County by providing developed sites in a cohesive manner for numerous businesses in the last eight years. Perhaps Mr. Dowd could share with the Sarpy County Board how he has contributed to Sarpy County during this time frame other than the filing fees he has paid to the Sarpy County Courthouse.

Sincerely
COMERCE BUSINESS CENTRE, LLC
Steven Reeder
Steven Reeder

AFFIDAVIT OF PUBLICATION

State of Nebraska}

ss.

County of Sarpy}

Being duly sworn, upon oath, Shon Barenklau deposes and says that he is the Publisher or Paul Swanson deposes and says that he is the Marketing Director of the **Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor**, a legal newspaper with a bonafided circulation of 300 copies published in Bellevue, Papillion, Gretna and Springfield, Nebraska; and said newspaper has been published for at least 52 consecutive weeks prior to publication of attached notice: that said publications are of general circulations: that the attached notice was published 1 times on:

Wednesday, November 26, 2008

And that said newspaper is a legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge.

Shon Barenklau OR Paul Swanson
Publisher Marketing Director

Today's Date 11-25-2008
Signed in my presence and sworn to before me:

Notary Public

GENERAL NOTARY - State of Nebraska
MARCIA L. BRYANT
My Comm. Exp. Feb. 12, 2010

SARPY COUNTY
DEPARTMENT OF PLANNING

Sarpy County Courthouse
1210 Golden Gate Drive
Papillion, Nebraska 68046
Phone (402) 593-1555 - Fax (402) 593-1558
Rebecca Horner, Director

NOTICE OF PUBLIC HEARING
SARPY COUNTY BOARD
OF COMMISSIONERS

Notice is hereby given that a regular meeting of the Sarpy County Board of Commissioners will be held on Tuesday, December 9, 2008, at 3:00 P.M. in the Sarpy County Board Room, Sarpy County Administration, Papillion, Nebraska.

Sarpy County requests a text amendment to the Section 38 of the Storm Water Management Regulations of the Sarpy County Zoning Regulations, and Section 6, Preliminary Plat and Supplemental Data of the Sarpy County Subdivision Regulations and a text amendment to Section 32, Highway Corridor Overlay District of the Sarpy County Zoning Regulations.

Dowd Grain request a text amendment to the Section 32, Highway Corridor Overlay District of the Sarpy County Zoning Regulations.

11979709—11/26

Printer's Fee $ 14.55
Customer Number: 0003985

OCT 16 2008

AFFIDAVIT OF PUBLICATION

SARPY COUNTY
PLANNING DEPARTMENT

State of Nebraska}

ss.

County of Sarpy}

Being duly sworn, upon oath, Shon Barenklau deposes and says that he is the Publisher or Paul Swanson deposes and says that he is the Marketing Director of the **Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor**, a legal newspaper with a bonafided circulation of 300 copies published in Bellevue, Papillion, Gretna and Springfield, Nebraska; and said newspaper has been published for at least 52 consecutive weeks prior to publication of attached notice: that said publications are of general circulations: that the attached notice was published 1 times on:

Wednesday, October 15, 2008

And that said newspaper is a legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge.

Shon Barenklau OR Paul Swanson
Publisher Marketing Director

Today's Date 10-14-2008
Signed in my presence and sworn to before me:

Notary Public

GENERAL NOTARY - State of Nebraska
MARCIA L. BRYANT
My Comm. Exp. Feb. 12, 2010

Printer's Fee $ 36.38
Customer Number: 000947
Order Number: 11975652

SARPY COUNTY
DEPARTMENT OF PLANNING

Sarpy County Courthouse
1210 Golden Gate Drive
Papillion, Nebraska 68046
Phone (402) 593-1565
Fax (402) 593-1583
Rebecca Homer, Director

NOTICE OF PUBLIC HEARING
SARPY COUNTY
PLANNING COMMISSION

Notice is hereby given that a regular meeting of the Sarpy County Planning Commission will be held on Wednesday, October 29, 2008, at 7:00 P.M. in the Sarpy County Board Room, Sarpy County Administration, Papillion, Nebraska.

Boyer Young Development Company 9719 Giles Road, requests approval of a Preliminary Plat, Change of Zone from AG, Agricultural to RD-50 Two-Family Residential District, and Comprehensive Plan Amendment, to be known as *Whitetail Creek*, on Tax Lots 8 & 9 located in the SW 1/4 of Section 17, Township 14N, Range 11E of the 6th P.M., Sarpy County, Nebraska. (192nd & Giles)

Hoich 192nd LLC, 4418 S. 180th Street, request approval of a Special Use Permit, to be known as Pawradise Animal Daycare on the following described property, to wit: Lot 4 Sugar Creek Neighborhood Center, in the Northwest Quarter of Section 17, Township 14N, Range 11E of the 6th P.M., Sarpy County, Nebraska. (190th Edna Street)

Western Land Company, LLC, 10580 S. 147th Street, Omaha, requests approval of a Final plat to be known as Wicks Southpointe, being a platting of Tax Lot 10 of the SE 1/4 in Section 34, Township 14N, Range 11E of the 6th P.M., Sarpy County, Nebraska.

EBD Holdings Inc, 1125 S 103rd Street, requests approval of a Preliminary Plat and Change of Zone from RG-35, General Residential, to RD-50-PTD, Two-Family Residential District / Planned Townhouse Development, and AG, Agricultural, to be known as Stinridge West on the following described property, to wit: part of Tax Lot 2, A Tax Lot in the NE 1/4 of Section 17 and part of the Tax Lot 12A, a Tax Lot in said NE 1/4 of Section 17, all in the Township 14N, Range 11E of the 6th P.M. Sarpy County, Nebraska. (184th & Harrison Street)

Gretna Rural Fire District, PO BOX 185, Gretna, Nebraska, requests approval of Preliminary Plat, Final Plat, and Change of Zone from AG, Agricultural, to RS-100, Single Family Residential, to be known as Gretna Rural Fire located on the following described property, to wit: a parcel of land a portion of the SW 1/4 of the NW 1/4 of Section 27, Township 14N, Range 11E of the 6th P.M., Sarpy County, Nebraska (south of Cornhusker Road east of 168th Street)

Dowd Grain requests a text amendment to the Highway Corridor Overlay District.

Sarpy County Planning Department
Rebecca Homer, Director
September 17, 2008

11975652—10/15

AFFIDAVIT OF PUBLICATION

State of Nebraska}

ss.

County of Sarpy}

JAN 15 2009

SARPY COUNTY
PLANNING DEPARTMENT

Being duly sworn, upon oath, Shon Barenklau deposes and says that he is the Publisher or Paul Swanson deposes and says that he is the Marketing Director of the **Bellevue Leader, Papillion Times, Gretna Breeze and Springfield Monitor**, a legal newspaper with a bonafided circulation of 300 copies published in Bellevue, Papillion, Gretna and Springfield, Nebraska; and said newspaper has been published for at least 52 consecutive weeks prior to publication of attached notice: that said publications are of general circulations: that the attached notice was published 1 times on:

Wednesday, January 14, 2009

And that said newspaper is a legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge.

Shon Barenklau OR Paul Swanson
Publisher Marketing Director

Today's Date 01-13-2009
Signed in my presence and sworn to before me:

Notary Public

GENERAL NOTARY - State of Nebraska
MARCIA L. BRYANT
My Comm. Exp. Feb. 12, 2010

SARPY COUNTY
DEPARTMENT OF PLANNING
Sarpy County Courthouse
1210 Golden Gate Drive
Papillion, Nebraska 68046
Phone (402) 593-1555
Fax (402) 593-1558
Rebecca Horner, Director

NOTICE OF PUBLIC HEARING
SARPY COUNTY BOARD
OF COMMISSIONERS

Notice is hereby given that a regular meeting of the Sarpy County Board of Commissioners will be held on Tuesday, January 27, 2009, at 3:00 P.M. in the Sarpy County Board Room, Sarpy County Administration, Papillion, Nebraska.

Beacon View Inc., 4209 S. 149th Street, requests approval of Final Plat of a subdivision to be known as Beacon View Lot 27, on the following described property, to wit: Tax Lot 2, also known as Government Lot 2, Part of the W 1/2 of Section 29, Township 13N, Range 10E of the 6th P.M. Sarpy County, Nebraska. (Highway 6 and the Platte River)

Dowd Grain request a text amendment to the Section 32, Highway Corridor Overlay District of the Sarpy County Zoning Regulations.
11984051—1/14

Printer's Fee $ 14.98
Customer Number: 000947

#19

Dowd Grain Co., Inc.
220 North 89th Street
Suite 201
Omaha, Nebraska 68114
(402) 391-5033
Fax: (402) 391-5182

January 27, 2009

HAND DELIVERED

Ms. Rebecca Horner
Sarpy County Director of Planning
1210 Golden Gate Drive
Papillion, Nebraska 68046

Re: Overlay District Ordinance/Amendments

Dear Ms. Horner:

I have reviewed the materials submitted to the Sarpy County Board with respect to Agenda Item No. 19 for the January 27, 2009 meeting, particularly the January 21, 2009 letter from Omaha Steaks International, Inc. and, for the record, I would like to make the following points with respect to the Overlay District Ordinance and the proposed amendments:

1. It is apparent that Omaha Steaks has no real interest in the various provisions of the Overlay District Ordinance. Their sole and only goal is to have the property and building located at the Intersection of I-80 and Highway 370 totally excluded from the provisions of the Overlay District Ordinance.

2. The intersection of Highway 370 and I-80 is the most significant western access into Sarpy County and it was never intended that this area be exempt from the provisions of the Overlay District Ordinance.

3. The intent of the 2004 Overlay District Ordinance was to provide grandfather rights only for existing buildings. New development was required to comply with the provisions of the Overlay District Ordinance; any other approach would have allowed new buildings on vacant land to be constructed outside the provisions of the Overlay District Ordinance and would completely frustrate the stated intent and clear language of such Ordinance.

4. The original Overlay District Ordinance did not have, nor was it intended to provide for, the exemptions cited by Mr. Simon. *See, Dowd Grain Co., Inc. v. Sarpy County Board of Adj. 2008 WL 2511150 (Neb. App.)*, which determined that <u>the Omaha Steaks building was not</u>

exempt from the provisions of the Overlay District Ordinance, that the provisions of the Overlay District Ordinance applied to the Omaha Steaks building and that Omaha Steaks did not and does not have a valid building permit for the construction of its building.

5. We believe that Omaha Steaks is bound by the above-referenced Appellate Court decision and that the provisions of the Overlay District Ordinance continue to apply to their property and building.

6. We believe that the May 8, 2007 amendments to the Overlay District Ordinance are unconstitutional and constitute special legislation. *See* the presently pending case of *Dowd Grain Co., Inc. v. Sarpy County* (CI09 143, Sarpy County District Court).

7. At its January 2008 retreat meeting the Sarpy County Board recommended that all exemptions to the Overlay District Ordinance be eliminated in order to have the building standards applied consistently across the county.

8. The presently existing version of the Highway Corridor proposed by the Sarpy County Planning Director provides for removal of the exemptions to the Overlay District Ordinance.

I want to make it clear that we welcome Omaha Steaks to Sarpy County as a good corporate citizen and appreciate the economic impact of their business, however, as with all residents and corporate citizens of the County, they must comply with Sarpy County zoning ordinances.

DOWD GRAIN CO., INC.,

By: _____
Duane J. Dowd, President

C:\Share\WordPerfect\13-Dowd\OverlayDist\horner-lt.012709.wpd