

FACTSHEET

TITLE: CHANGE OF ZONE NO. 3269, from R-1 and R-2 Residential to R-T Residential Transition, and from R-1 Residential to H-4 General Commercial, requested by Krein Real Estate, Inc., on property generally located on the west side of the intersection of South 56th Street and Waltz Road, 1/4 mile south of Old Cheney Road.

STAFF RECOMMENDATION: Approval of the request to H-4 and **denial** of the request to R-T.

ASSOCIATED REQUESTS: Special Permit No. 1855, (00R-272) and Use Permit No. 131 (00R-271).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/12/00
Administrative Action: 07/12/00

RECOMMENDATION: Approval of the request to R-T and to H-4 as requested by the applicant (6-1: Carlson, Schwinn, Steward, Krieser, Taylor and Bayer voting 'yes'; Newman voting 'no'; Hunter and Duvall absent).

FINDINGS OF FACT:

1. This change of zone and the associated Special Permit No. 1855 and Use Permit No. 131 were heard at the same time before the Planning Commission.
2. The Planning staff recommendation to approve the change to H-4 but **deny** the change to R-T is based upon the "Analysis" as found on p.7-9, concluding that while the commercial zoning as proposed generally east and north of Beal Slough is not consistent with the Land Use Plan, it is consistent with goals of the Comprehensive Plan. The commercial zoning generally west and south of Beal Slough is not consistent with the Land Use Plan and the goals of the Comprehensive Plan. However, the R-T district would be the best commercial district for the site if not over developed and the design and development is extremely sensitive to the steep slopes and tree cover.
3. The applicant's testimony is found on p.11-13 and 15-17.
4. Testimony in support is found on p.13-14.
5. Testimony in opposition is found on p.14, with concerns about flood control.
6. There was considerable discussion about the flood control issue and compliance with the Beal Slough Basin Stormwater Master Plan. The staff indicated that this project makes an effort to meet the standards proposed by the Beal Slough Basin Stormwater Master Plan by providing for no loss of flood storage and preserving existing vegetation on site. (See Minutes, p.14-17).
7. The applicant's response to the opposition and the questions of the Commission is found on p.15-17.
8. On July 12, 2000, the Planning Commission voted 6-1 to approve the applicant's change of zone request to H-4 and R-T (Newman dissenting, with concerns about the floodplain issues).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: September 18, 2000

REVIEWED BY: _____

DATE: September 18, 2000

REFERENCE NUMBER: FS\CC\FSCZ3269A

SIZE:

R-1 to R-T: 6.239 acres, more or less.
R-2 to R-T: 3.789 acres, more or less.
R-1 to H-4: 5.51 acres, more or less.

EXISTING ZONING:

R-1 and R-2

EXISTING LAND USE:

Single family house with accessory buildings and mostly covered with quality trees.

SURROUNDING LAND USE AND ZONING:

To the north is a recreational facility by special permit and zoned R-1 and R-2,
to the east across S. 56th Street is commercial and zoned H-4 with a special permit for planned commercial,
to the south and west are single family homes and zoned R-2.

COMPREHENSIVE PLAN SPECIFICATIONS:

The Land Use Plan shows the site as Urban Residential and Natural/Environmentally Sensitive along the Beal Slough drainage corridor.

Environmental preservation and sustainable growth is a community vision.(page 36a) As Lincoln grows, it will respect its important environmental resources and use them to enhance the quality of development. Land use policies encourage development which conserves resources for future generations.

One of the goals of the Land Use Plan (Page 37) is to maximize opportunities for planned urban development which are sensitive to the natural qualities of the area.

Future Urban Residential Needs and Plan (Page 44) includes the following goal:

- ! Enhance neighborhoods through the preservation of their natural environment.

City of Lincoln Future Commercial Needs and Plan includes the following goals:(Page 54)

- ! Discourage strip development and spot zoning and encourage more compact and higher quality retail and commercial development.
- ! Assure that economic development is accomplished with respect for environmental quality.

The goals regarding wetland and water bodies includes:

- ! Maintain, preserve and enhance existing wetlands and restore degraded wetlands.
- ! Protect natural stream corridors and enhance man-made open channels for the purpose of improving water quality and reducing flood damage and erosion while retaining open space.
- ! Protect the quantity and quality of ground and surface water.

Wetlands and water bodies provide a number of functions which are important to the health and welfare of the community: they provide storage for stormwater and help to control flooding, they provide habitat for threatened and endangered species, they improve water quality, they provide fish and wildlife habitat, they provide recreational opportunities and they are aesthetically pleasing.

As the City continues to grow and develop, flood plain regulation and stormwater management will become increasingly important. Maintaining the capacity of our flood ways and flood plains to contain and carry flood waters and prevent damage should be an important consideration in all planning and development.

Environmental Resources (page152)includes:

- ! Floodplains. Extensive development within floodplains decreases the water retention capabilities of the land and can cause serious flooding downstream.
- ! Woodlands. Natural woodlands are scarce. Tree stands, usually found along stream beds, provide unique visual relief and sustain significant wildlife populations.

The future land use plans are specific maps. In some situations, applications will be made for land use changes that are not in conformance with those maps. In each case, the Planning Department will complete an advisory review of Comprehensive Plan compliance for the Planning Commission and the City Council or County Board. This assessment will follow these guidelines:

- ! If an application is generally consistent with the land use map and the zoning criteria, it will be considered to be consistent with the comprehensive plan.
- ! If an application is not consistent with the land use maps but meets the zoning criteria, the proposal will be found to be inconsistent with the land use plan but compliant with the general concepts of the comprehensive plan. An amendment to the land use plan may be approved along with the rezoning proposal. The land use plan can then be updated on an annual basis to remain current.
- ! If an application is inconsistent with both the land use plan and zoning criteria, it will be considered to be inconsistent with the comprehensive plan. Approval of the project will require an amendment to the comprehensive plan. (Page190)

HISTORY:

On **August 30, 1971**, City Council denied Change of Zone #1140, which would have changed the zoning east of S.56th and south of Old Cheney Rd. from A-1 Single Family Dwelling to K Light Industrial.

On **May 24, 1976**, City Council approved Special Permit #755 on land to the west, which allowed 349 single family and 170 multifamily dwellings under the Buckingham South CUP. The Buckingham South 2nd Addition Preliminary Plat (#76207) was also approved at that time.

The property was converted from A-1 Single Family Dwelling and A-2 Single Family Dwelling to R-1 and R-2 Residential in the **1979 Zoning Update**.

On **April 4, 1983**, City Council approved Change of Zone #2013 on property to the east (Lincoln Trade Center), which changed the zoning on 58.8 acres from AGR Agricultural Residential to H-4 General Commercial. At that time, they approved Special Permit #1013 on the same area, which allowed a 53.4 acre Planned Service Commercial development. At that time this site was shown as Parks & Open Space.

On **September 22, 1986**, City Council approved Special Permit #1013A on the Trade Center property to the east, which allowed 69,250 sq. ft. of Service Commercial and 70,400 sq. ft. of warehouse space on Trade Center property west of the railroad tracks.

On **July 10, 1989**, City Council approved Special Permit #1327 on land to the north, which allowed the construction of a miniature golf course, batting cages and a club house.

On **September 5, 1989**, City Council approved Special Permit #1013D on land to the east, which allowed the construction of a self-storage facility south of Waltz Road.

On **September 16, 1991**, City Council approved Special Permit #1327A on land to the north, which allowed outdoor seasonal sales of fireworks and Christmas trees.

SPECIFIC INFORMATION:

UTILITIES:

City utilities are available.

TOPOGRAPHY:

The land located east and north of Beal Slough and a small area south of Beal Slough west of S. 56th Street are relatively level.

The slope from the west property line to the east side of the building on Lot 4 is 11%, on Lot 5 is 6.4%, on Lot 6 is 4%, on Lot 8 is 11%, and on Lot 9 is 6.7%; and from the west side to the east side of the building on Lot 10 is 4%. The slopes through Lots 1, 2, 3, and 7 are less than 1%.

Beal Slough flows through the area with an average bank 8' in depth.

TRAFFIC ANALYSIS:

S. 56th Street is classified as an Urban Principal Arterial Street.

S. 56th Street is planned to be improved to have four through lanes, left turn lane, raised medians inside a 100' ROW.

No new intersections would be required if the change of zone is limited to the area north and east of Beal Slough.

The plan shows an eight foot wide bike path with a 10' wide easement through the site along Beal Slough. The Land Subdivision Ordinance requires at least a 14' wide easement.

PUBLIC SERVICE:

The nearest fire station is located at S. 27th Street and Old Cheney Road

REGIONAL ISSUES:

Increase in storm water run-off into Beal Slough.

ENVIRONMENTAL CONCERNS:

The intrusion of land grading in order to locate buildings and parking lots on land that has steep slopes and wooded areas west and south of Beal Slough.

The Beal Slough Stormwater Master Plan was adopted by the City Council on June 5, 2000 as an official component of the Comprehensive Plan, and is before the County Board on July 11. The Plan identifies water quality issues related to urbanization and includes capital cost elements to improve water quality within the Basin. The proposed plans for Country Plaza indicate that runoff from parking areas will be directly routed to Beal Slough through concrete plumes. Parking lots tend to be associated with high pollutant loads. The Beal Slough Stormwater Master Plan notes that the range and average values for oil and grease within the Slough increases as the contributing drainage area increases. "There also appears to be a correlations with the presence of commercial and industrial land uses (i.e., parking lots)" (p. 39).

AESTHETIC CONSIDERATIONS:

Large treed areas will be destroyed in order to locate the buildings south and west of Beal Slough.

ALTERNATIVE USES:

Develop only the area along S. 56th Street east and north of Beal Slough.

ANALYSIS:

1. This site is in a floodplain, has steep slopes and is mostly covered with quality trees.
2. There is a relatively level area north and east of Beal Slough, part of which has no tree cover.
3. The land located east across S. 56th Street is zoned commercial.
4. An increase in the amount of impervious surface material will have an impact on the amount and quality of water entering Beal Slough.
5. Preserving the wooded area and steep slopes west of Beal Slough and developing only the area east and north of Beal Slough meets the following Goals and Strategies of the Comprehensive Plan:

“Maximize opportunities for planned urban development which are sensitive to the natural qualities of the area, including land uses efficiently served by a balanced and energy-efficient transportation system and community services and facilities.”

“Enhance rural and urban neighborhoods through the preservation of their natural environment.”

“Discourage strip development and spot zoning and encourage more compact and higher quality retail and commercial development.”

“Assure that economic development is accomplished with respect for environmental quality.”

“Provide green space, including common green space, for active and passive use.”

“Floodplains. There is strong potential for occasional flooding of selected areas of the county due to the low, flat character of some portions of the land. Extensive development within floodplains decreases the water retention capabilities of the land and can cause serious flooding downstream.”

“Woodlands. Natural woodlands are scarce.”

“Continue implementation of Lincoln's Trails Master Plan.”

“Maintain and expand partnerships with public and private agencies toward trails development.”

“Integrate trails into the expansion of the park system, as well as into development of new neighborhoods and subordinate mixed use areas.”

6. The Comprehensive Plan lists criteria for the review of zoning proposals. These include portions of Nebraska Revised Statutes Section 15-902;
 1. Safety from fire, flood and other dangers;
 2. Promotion of the public health, safety, and general welfare;
 3. Consideration of the character of the various parts of the area, and their particular suitability for particular uses, and types of development;
 4. Conservation of property values; and
 5. Encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan.

There are seven specific criteria established in the Plan for review including;

a. Infrastructure: the availability of the water, sewer, drainage and the transportation systems.

City utilities are available.

The site abuts S. 56th Street a major street that is planned to be improved in the future.

b. Compatibility: harmony and suitability with the surrounding land uses and the natural environment.

The level area outside the floodplain along the west side of S. 56th Street is buffered from the residential area with the wooded areas and would be suitable for commercial zoning similar to the area east of S. 56th Street.

c. Health and Safety: protection against natural and man-made hazards including noise; air, ground and water pollution; flooding; and hazards from industrial or agricultural processes or products.

Developing only the level area outside of the floodplain would eliminate the need to construct a bridge across Beal Slough and eliminate the need for an additional curb cut on S. 56th Street.

An increase in the amount of impervious surface material will have an impact on the amount and quality of water entering Beal Slough.

Parking lots tend to increase pollutants.

d. Physiographic Features: the topography, suitability of proposed land uses with streams, lakes, soil types, natural vegetation or wildlife habitat.

Beal Slough flows through the site.

The area west and south of Beal Slough has steep slopes and is mostly covered with quality trees.

The site provides an area for wildlife.

e. Accessibility: availability, or lack thereof, of public transportation, arterial connections and pedestrian linkages.

The level area along S. 56th Street has access to a major street opposite an existing intersection. Therefore no new intersections would be required along S. 56th Street if the area south of Beal Slough is not rezoned.

f. Open Space: availability of sufficient open space and recreational areas to accommodate a project's residents and employees.

By concentrating development on the level area along S. 56th Street the floodplain, steep slopes and the wooded area would provide open space and the natural area would be preserved.

g. Fiscal Impacts: whether the proposed use does not create a burden to local tax revenues and/or available resources.

There appears to be no fiscal impacts.

STAFF CONCLUSION:

The commercial zoning as proposed generally east and north of Beal Slough while it is not consistent with the Land Use Plan it is consistent with goals of the Comprehensive Plan.

The commercial zoning generally west and south of Beal Slough is not consistent with the Land Use Plan and the goals of the Comprehensive Plan. However the R-T district would be the best commercial district for the site if not over developed and the design and development is extremely sensitive to the steep slopes and tree cover.

STAFF RECOMMENDATION:

Approval to the requested H-4
Denial to the requested R-T

Prepared by:

Ray Hill
Planner

**CHANGE OF ZONE NO. 3269
and
SPECIAL PERMIT NO. 1855
and
USE PERMIT NO. 131**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 12, 2000

Members present: Carlson, Schwinn, Steward, Krieser, Taylor, Newman and Bayer; Hunter and Duvall absent.

Planning staff recommendation: Approval of the change of zone to H-4; denial of the change of zone to R-T; conditional approval of the special permit; and denial of the use permit.

Ray Hill of Planning staff submitted proposed additions to the conditions of approval on the special permit and the use permit to add a note indicating that the relocation of existing utility facilities will be at the owner/developer's expense.

With regard to Condition #1.1.10, Hill requested that the word "easement" be added after "bike path".

Proponents

1. Mark Hunzeker appeared on behalf of **Krein Real Estate**. This is a 16 acre site with miniature golf and batting cages to the North; 56th Street and the Trade Center to the east; and residential uses to the south and west. It is a fairly difficult site to deal with in terms of topography. Beal Slough runs through the site mostly from north to south, cutting off a substantial portion. When they looked at the site, the developer tried to evaluate what uses could be used without too much incursion into the Beal Slough floodplain and/or floodway. It is not good residential property from the standpoint of proximity to both 56th Street and the commercial uses on two sides. The portions which could be used for residential are very steep with a lot of trees. Multi-family residential would be the only option that could be considered.

This project is a plan to use the property along 56th for general commercial purposes and proposes office uses on the area south and west of Beal Slough. The applicant took these plans to the neighbors to test their reaction as far as compatibility issues. The initial plans had two-story buildings and substantially more office space than what they are showing today. In response to the concerns of the neighbors, the applicant has reduced the building heights to one-story and has designed the buildings into the side of the hill to keep the profile below the existing residential uses. They have increased the setbacks. R-T allows a 10' building setback—this plan shows 50'. They have moved the parking around so that no parking would be between or behind the buildings. All the parking will be in front of the buildings on the opposite side of the building from the residential uses. They have provided screening in the form of a 6' wooden fence which would meet and exceed all design standards, but it would be

20' inside the property line with landscaping on the outside abutting the residential uses. There will be some gates in the fence to provide for maintenance, etc. There will be additional landscaping between the fence and the residential neighbors.

The floor-area ratio (FAR) is 11.5%, which is well under half of the average development ratio for this type of use as set forth in the Comprehensive Plan. The area that is proposed to be zoned R-T is an 8% FAR.

This application has used the Beal Slough Master Plan data to delineate floodway and floodplain elevations. That has the effect of raising those flood elevations over and above what the FEMA floodplain would show, so this development is restricted substantially by utilizing that data. There will be no net fill in the floodplain. There are areas with parking in the floodplain, but no buildings in any case. The only area showing fill in the floodplain is where Waltz Road crosses Beal Slough, and the amount of fill being placed is being moved from parking areas.

The box culvert for Waltz Road is designed assuming that none of the improvements called for in the Beal Slough Master Plan will be made, so it is oversized. The area on the west side of Beal Slough on Waltz Road is in Phase 3, so that in the event some of those improvements upstream are made, they will be able to downsize that culvert.

This proposal also requests a reduction in the width of Walt Road. The Planning Department has recommended approval of this waiver.

In summary, Hunzeker stated that this developer has done a lot to respond to what the neighbors have said they wanted to see. This is a site which lends itself very well to this type of development. Hunzeker is not sure what one would accomplish by denying the change of zone to R-T. This would still leave a 10-acre parcel zoned R-1 and presumably the Commission would be faced with an application either for another change of zone or some sort of residential. It is hard to conceive of a single family configuration on that 10 acres. It would have some impact on the wetland area. The alternative would be multi-family, but a community unit plan with multi-family on the piece south and west of the creek would result in greater building coverage and greater parking coverage, resulting in more trees being destroyed and probably more hard surface area in the floodplain.

With regard to Condition #1.1.8 of the special permit, Hunzeker noted that it requires the elimination of some parking spaces and reduces the parking ratio to the minimum required for doctors. This special permit only applies to the commercial buildings along 56th Street. The proposed parking ratio is probably a little over the 1 space per 225 sq. ft., which is the doctor requirement, but this has been done intentionally with the idea that some portion of one of those three buildings could become something like a coffee shop or small sit-down restaurant which would need additional parking. Therefore, Hunzeker requested that Condition #1.1.8 on Special Permit No. 1855 be deleted.

With regard to Condition #1.1.10 of the use permit, Hunzeker stated that the applicant agrees with respect to the R-T area.

Hunzeker requested that Condition #1.1.9 on the use permit be deleted. That condition requires deleting four of the seven buildings. He also requested that Condition #2 be amended to 35,000 sq. ft. and 7 buildings (as opposed to 15,000 sq. ft. and 3 buildings).

Hunzeker believes this is a good project. It is good use of this land. It leaves 70+ percent of the land area open and in a relatively natural state. The developer will be working with the NRD to provide some channel improvements which are called for in the Beal Slough Master Plan and will make those improvements.

Hunzeker noted that there was one comment by some folks concerned about the bike path and its location. Hunzeker advised that the location of the bike path will be flexible and they will voluntarily add a note to amend the location of the bike path at the request of the Parks Department. The Parks Department report is not yet available.

Carlson asked for clarification of the use permit. Hunzeker advised that the staff is recommending denial of the use permit, which is the R-T area. However, if the Commission approves the change of zone to R-T, the staff is recommending that the amount of office space be reduced to 15,000 sq. ft. in three buildings. The buildings the staff is recommending be deleted are Lot 4, and Buildings 8, 9 and 10. Hunzeker does not understand the staff's logic at all. If we are going to cross that channel, we should go ahead and do the three buildings. The way this is situated leaves a minimal impact with the 7 buildings. It resolves the issue with respect to a very difficult piece of ground.

Steward noted that the site plan suggests that the bike path cross Waltz Road on the surface. Hunzeker concurred. Waltz Road is not going to have a great deal of traffic. It is 21' wide. He does not believe that there is a crossing under Old Cheney Road for a bike path or at 56th Street. Steward believes it should cross in an intersection condition rather than just straight across the road. Hunzeker stated that they will work with Parks Department on this issue.

2. David Lauten(sp), 6120 So. 53rd, testified in support. The neighbors have ben involved with the developer for a year. He was nominated as representative of the group of neighbors. They have had many meetings with the developer and have expressed their initial total rejection of the project, but they also understand that it is zoned residential and far worse things could happen to this land. The developer has followed through and given the neighbors what they have requested. He has discussed this with all the homeowners bordering this property and there is general acceptance from the neighborhood. They are not 100% in agreement but they have come a long way in understanding that development is going to happen. There is a tremendous amount of trust being put in this applicant and the neighbors believe this will be a positive development given the current zoning. The neighbors are fearful of three-story apartment houses. This design has protected most of the tree mass, except in the south section south of Beal Slough along London Road. This land has been uncared for over the last 10 years, so there is a tremendous amount of tree waste, garbage, construction debris, etc. It is not a place that will be easy to clean up.

3. Gene Simpson, property owner at 6300 So. 53rd, testified in support. His irregular tract is the reason why the applicant's tract is irregular. He does not believe there is a single property owner along 53rd that did not factor the wilderness area behind them into their decision to buy their house. One of the good things that this buffer area does is provide a sound barrier from 56th Street. Simpson wanted

to inform the Commission that when it rains, that area turns into a waterfall. It is not flat. There are considerable topographic elevations. He has seen water coming down from the apartment complex. The water goes right back behind the property. That water has to go somewhere.

4. Gary Hansel, 5920 So. 53rd, testified during support testimony; however, he has concerns. His property line is on the far northwest corner. Betsy Egan owns the miniature golf course that is in his back yard. If we let this applicant develop this proposal, what is going to happen with Betsy Egan? Let's be realistic about the bike path. He also has a concern about looking out from his deck at the roofs of the businesses. If we allow this development, what will Betsy Egan be able to do down the road between this property line and Old Cheney?

Opposition

1. Foster Collins, 2100 Calvert Street, testified in opposition on behalf of the **Blue Stem Group of the Sierra Club**. They generally oppose this project. Flood control is an issue. They are glad to see the applicant is proposing no net loss of flood storage capacity but they are concerned about the downstream flood level rise. That stretch of Beal Slough has demonstrated a history of flooding. They would also like to see a condition of approval that the Parks & Recreation Department reach agreement with the developer for the location of the bike path. From an environmental standpoint, Collins states that the tree masses represent a substantial riparian corridor, good wildlife habitat and function as a buffer to improve the water quality downstream. Collins would like to see a conservation easement over a large portion or assurance of environmental sensitivity, such as bio-engineering for stabilizing of the bank and buffering of the runoff from the parking lots to protect the water quality downstream.

2. Ken Reitan, 2310 So. Canterbury Lane, testified in opposition and requested denial of this development because it straddles Beal Slough. The City now has a plan to reduce flooding along Beal Slough, but this proposed development will make the situation worse. He does not believe it is possible that this development will not cause any rise in the 100 year flood elevation outside of the limits of this development. Somewhere the flood will be higher. Folks downstream will suffer property damage from parking lot runoff. Tree removal will contribute to water quality and quantity problems. He does not see this development being beneficial to the city.

Carlson wondered if there was some mitigation that could be done to deal with the parking lot runoff. Ray Hill of Planning staff advised that sometimes they use a detention basin that lets the pollutants filter out before dumping into the main stream. Nicole Fleck-Tooze of Planning staff suggested that they could explore options for bio-engineering techniques to filter the water. She does not know whether this has been done by the applicant.

With regard to the downstream rise, Fleck-Tooze informed the Commission that she had suggested that the highest standard is to show that you create no rise in the 100 year flood level. It would be desirable to show that that didn't occur. It would be desirable to see it at the downstream end. That could be done with a hydrological study.

Steward noted that this is one of the first projects following the approval of the Beal Slough Stormwater Basin Master Plan. He inquired whether Fleck-Tooze believes that this development does or does not

meet those standards. Fleck-Tooze responded that she believes it makes an effort to meet those standards by providing for no loss of flood storage and preserving existing vegetation on site. The one concern is whether or not there will be any rise in flood heights downstream. It would be desirable to show that. Another item would be water quality issues.

If this application is approved, Steward wanted to know whether there are enough checks in place to assure conformance to the design standards of the Beal Slough Master Plan. Fleck-Tooze does not know that there are specific conditions to identify bio-engineering measures for water quality; and there is not a condition that they show no rise in flood elevation downstream.

Taylor inquired about the sound barrier from 56th Street—would this development harm that barrier or will it enhance the sound level for the residents? Hill was not sure he could answer that. This would require measuring the sound to see how much is absorbed by the buildings, etc., and that has not been done. Taylor wondered whether this was a concern to the staff and Hill indicated that it was not.

Hill explained the rationale for the staff recommendation to remove four of the proposed buildings. For Lot No. 4, the grading plan shows an extreme amount of grading to be completed in order to put that flat building on that very steep slope. This is an attempt to save some of the natural features of the property. On the other three buildings (lots), almost all of the trees have to be removed in order to construct those buildings and the parking lot. Lot #7 is closer to 56th Street, there is an opening there and the ground is flatter; there is only one 5,000 sq. ft. building on that location and the amount of traffic from and to that location would have less of an impact on 56th Street. Regrading the ground for the buildings changes the natural lay of the land and destroys the natural vegetation. It creates unstable ground until any new vegetation is established.

Carlson noted an outlot but this is not a community unit plan. Hill clarified that this is a use permit and special permit which would be followed up with a final plat. Carlson and Hill concurred that the density on this parcel is by virtue of the special permit. Carlson noted that the outlot is not protected from development like in a community unit plan.

Newman observed that the applicant says this is the best they can do and that residential would be more destructive. Can they put up as many residential homes as they would like? Hill advised that they would have to go through the subdivision process, which also has floodplain regulations.

Response by the Applicant

With respect to parking lot runoff, Hunzeker pointed out that there is a condition which requires resubmission of a grading and drainage plan to meet design standards and approved by Public Works. The applicant has had preliminary discussions and it is possible that bio-engineering of the runoff would be a possibility and could be incorporated into the grading plan. They do not object, but there are some places on the site which may be a little steep for doing that. They could be drained through a constructed wetland area to filter some of the parking lot runoff as described by Fleck-Tooze.

With respect to increased runoff, Hunzeker suggested that the Beal Slough watershed is a huge area, and the incremental increase in runoff from this site will be so small that it would be hard to measure.

He does not know whether it will be possible to have an engineer certify that there will be no increase, but he believes it fair to say that the increase will be so minimal as to be unnoticeable with respect to any property downstream. Any amount of construction in the area that will drain into this or any other watershed will in some amount increase runoff into the stream that is below it. It is impossible to not increase it. No additional runoff into that creek is an impossible standard. We are not encroaching into the floodplain. We are respecting a flood elevation which is not legally in effect. Legally, the floodplain is the FEMA floodplain. This development respects the Beal Slough Master Plan elevations which are much higher.

Hunzeker also advised that this developer has obtained a 404 Permit from the Corps of Engineers for the crossing of Beal Slough at Waltz Road. Those box culverts will be tall enough that we possibly could run a bike path through there, but it may not be the desire of the Parks Department to do that.

With respect to grading and drainage and erosion control, Hunzeker noted that the Commission and City Council recently approved a land disturbance permit requirement. They will be required to get a permit through Public Works and the NRD for the disturbance of this land, which will have a condition for all sorts of erosion control measures. It is not a matter of going in there and making a vast cut and fill for these building sites because we are tucking those buildings into the side of the hill. They are utilizing the building itself as a retaining wall.

Hunzeker also stated that if this proposal is approved, the developer would not be opposed to granting a conservation easement over the outlot, which would then permanently protect against the possibility of additional development on this site. However, the developer would not be willing to grant a conservation easement if he is limited to 3 buildings without the R-T zoning, as recommended by the staff.

Carlson asked staff to respond to the applicant's comments about the parking lot runoff consideration. Fleck-Tooze indicated that it would be more clear if there was something specifically referenced in the conditions such as the incorporation of bio-engineering techniques for water quality purposes. However, there may or may not be an opportunity to do that at every location. Steward wondered if that concern could be satisfied if the conditions make reference to compliance with the Beal Slough Stormwater Basin Master Plan. Fleck-Tooze suggested that the conditions might provide that the applicant address the issues raised by the Beal Slough Master Plan. It talks about certain standards, but the design standards and ordinances were separate from the Master Plan document.

Carlson is also concerned about the downstream measurement. Fleck-Tooze suggested that there are two possible ways that flood heights might be impacted downstream. One is by additional runoff from hard surfaces, and that is the situation that our current design standards and stormwater regulations addressed with the requirement for stormwater detention. It talks about not increasing peak flows during major storm events. That detention is not provided here because that is a requirement of the subdivision ordinance and this is not a plat. The second possible way to impact flood heights is from a hydrological standpoint by displacement of water within that drainageway. That can be measured by showing you have no rise in flood heights downstream of your property line. If it were mentioned in that way it would guarantee that the flood heights were not being increased by either of those methods.

Hunzeker suggested that if the Commission wants to incorporate a condition relative to bio-engineering, language could be added to Condition #1.1.15 of the use permit and Condition #1.1.13 of the special permit: "A water system, sanitary sewer system, and grading and drainage designed to meet design standards, including compliance with the Beal Slough Basin Stormwater Master Plan, and approved by the Public Works & Utilities Department." He does not know whether Public Works would be anxious to incorporate detention into a project that is directly abutting the stream. Historically, Public Works has taken the position that the closer a property is to the stream itself, the quicker you want that water to get into the stream and on downstream. It is upstream where you want to have detention. If you detain water next to the stream, you run the risk of increasing the peaks.

Steward wondered whether it would cause difficulty if the condition required them to meet design standards, "and the conditions and issues of the Beal Slough Stormwater Master Plan". Hunzeker does not know what that really means. That Master Plan does not contain any standards. It is an identification of problems; it includes some proposed solutions to those problems; it does not have design standards relative to this issue. But, Steward commented that the Commission is faced with trying to micro-design circumstances that have come up spontaneously by a separate condition. And we have just completed a lengthy study of the stormwater conditions in Beal Slough, and here we have a project which needs to meet those conditions. Hunzeker believes that the main aspect of that Master Plan affected by this project is to accomplish one of the identified channel improvements that are part of that program of work that is going to cost \$15 million. This developer will be accomplishing that for the city at his own expense. This project probably does more good with respect to that plan than any other. Hunzeker believes that a reference to the plan may identify some concerns but it does not point to a set of standards. The standards are in the subdivision ordinance design standards and the land disturbance permit requirements. Before grading, they will have to get a permit to disturb that land. The permit will have to address how we intend to control erosion on the site and how we intend to revegetate the site, etc.

Schwinn suggested that the conservation easement on the outlots be added as a condition of approval. Hunzeker agreed that the applicant would certainly be willing to do that, assuming that the amendments to Condition #2 are approved as he requested.

Public hearing was closed.

CHANGE OF ZONE NO. 3269

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 12, 2000

Schwinn moved approval, as requested by the applicant, seconded by Taylor.

Carlson commented that he will be purchasing these sensitive areas the day that he wins the lottery. It is hard to say "no, you can't develop the land". He believes the applicant makes a compelling case that this land is not going to remain undeveloped. He wants to make sure, however, that this is the development that takes place and that we mitigate where mitigation needs to occur. He wants to add those mitigations to the conditions of approval.

Newman keeps asking herself, what is the best use for this land? Is it residential? Or pouring concrete parking lots and 7 buildings? Realistically, she can see more water runoff with parking lots and 7 buildings than with 15 houses. She will vote against the motion. She is very sensitive to the floodplain issues.

Steward stated that he will support the motion on the basis that he has come to the conclusion that it is the best use and that there is a more sensitive opportunity in this strategy for preservation of the tree mass and the stormwater and the natural habitat of that drainage than there would be with streets, curbs, driveways and houses at the maximum density possible. We're talking about choices between two conditions on a very difficult site. He thinks housing is unrealistic.

Motion for approval, as requested by the applicant, carried 6-1: Carlson, Schwinn, Steward, Krieser, Taylor and Bayer voting 'yes'; Newman voting 'no'; Hunter and Duvall absent.

SPECIAL PERMIT NO. 1855

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 12, 2000

Schwinn moved approval, with conditions, with amendment deleting Condition #1.1.8 and adding the word "easement" after "bike path" to Condition #1.1.10, seconded by Krieser. Bayer pointed out that this is the property adjacent to 56th Street.

Steward moved to amend to add language to Condition #1.1.13, "including compliance with the Beal Slough Basin Stormwater Master Plan", seconded by Krieser.

Carlson asked whether the amendment to Condition #1.1.13 is intended to address the parking lot runoff. Steward stated that the intent is to assure that this project has the scrutiny of Public Works and all of the elements of the city in its best opportunity to conform to that Master Plan without becoming specifically involved in whether it is a bio-engineering condition or not, and whether we get into stream bank specifics. Carlson is not sure that language will satisfy those concerns. Steward agreed, but if we don't have the design standards that will, he does not believe the Commission should be trying to make those design standards here.

Motion to amend Condition #1.1.13 carried 7-0: Carlson, Schwinn, Steward, Krieser, Taylor, Newman and Bayer voting 'yes'; Hunter and Duvall absent.

Carlson is concerned about the rise outside the parcel. Steward would have the same rationale--that it is protected by compliance with the Beal Slough Master Plan.

Main motion for conditional approval, as amended, carried 6-1: Carlson, Schwinn, Steward, Krieser, Taylor and Bayer voting 'yes'; Newman voting 'no'; Hunter and Duvall absent.

USE PERMIT NO. 131

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 12, 2000

Schwinn moved approval, with conditions, with amendments:

1. Deleting Condition #1.1.9;
2. Adding “easement” after “bike path” in Condition #1.1.12;
3. Amending Condition #1.1.15 to reflect the amendment to Condition #1.1.13 of Special Permit No. 1855;
4. Adding Condition #1.1.19, “grant a conservation easement to the outlots”; and
5. Amendment to Condition #2 to 35,000 sq. ft. and 7 buildings.

seconded by Taylor.

Carlson encouraged the Sierra Group to find out how their concerns can be addressed in the code and get those measures put in place if the community is interested in doing so.

Schwinn believes the developer has done an excellent job of taking a difficult site and addressing the Beal Slough and neighborhood concerns. He believes it will be beneficial to the neighborhood.

Motion for conditional approval, as amended, carried 6-1: Carlson, Schwinn, Steward, Krieser, Taylor and Bayer voting ‘yes’; Newman voting ‘no’; Hunter and Duvall absent.