

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, February 24, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Russ Bayer, Ann Bleed, Steve Duvall, Barbara Hopkins, Greg Schwinn and Rick Wallace (Gerry Krieser, Cecil Steward and Joe Wilson absent); John Bradley, Ray Hill, Mike DeKalb, Steve Henrichsen, Nicole Fleck-Tooze and Jean Walker of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair, Barbara Hopkins called the meeting to order and requested a motion approving the minutes for the special meeting held February 3, 1999, on the Comprehensive Plan Annual Review. Motion to approve made by Bayer, seconded by Bleed and carried 6-0: Bayer, Bleed, Duvall, Hopkins, Schwinn and Wallace voting 'yes'; Krieser, Steward and Wilson absent.

Chair Hopkins then requested a motion approving the minutes for the regular meeting held February 10, 1999. Motion to approve made by Wallace, seconded by Bayer and carried 6-0: Bayer, Bleed, Duvall, Hopkins, Schwinn and Wallace voting 'yes'; Krieser, Steward and Wilson absent.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

February 24, 1999

Members present: Bayer, Bleed, Duvall, Hopkins, Steward and Wallace; Krieser, Steward and Wilson absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1726A AND SPECIAL PERMIT NO. 1760.**

Bleed moved to approve the Consent Agenda, seconded by Bayer and carried 6-0: Bayer, Bleed, Duvall, Hopkins, Schwinn and Wallace voting 'yes'; Krieser, Steward and Wilson absent.

The Planning Commission action on **Special Permit No. 1760** is final action by the Planning Commission, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**CHANGE OF ZONE NO. 3164**  
**TEXT AMENDMENT TO SECTION 27.71.120**  
**OF THE LINCOLN MUNICIPAL CODE**  
**FOR TEMPORARY PAVING PLANTS**  
**INSIDE THE CITY.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:** February 24, 1999

Members present: Bayer, Bleed, Duvall, Hopkins, Wallace and Schwinn; Steward, Wilson and Krieser absent.

Planning staff recommendation: Denial

Ray Hill of Planning staff submitted a letter from the applicant requesting a deferral for two weeks. The staff is working with the applicant on revised text which is currently being reviewed by other departments in the city and county.

There was no other testimony.

Bleed made a motion to defer, with continued public hearing and administrative action scheduled for March 10, 1999, seconded by Bayer and carried 6-0: Bayer, Bleed, Duvall, Hopkins, Schwinn and Wallace voting 'yes'; Steward, Wilson and Krieser absent.

**WAIVER OF DESIGN STANDARDS NO. 99002  
TO WAIVE SIDEWALKS AND STREETS TREES  
ON PROPERTY GENERALLY LOCATED ON THE  
NORTH SIDE OF CUSHMAN DRIVE BETWEEN  
SOUTH 16<sup>TH</sup> AND SOUTH 19<sup>TH</sup> STREETS.  
PUBLIC HEARING BEFORE PLANNING COMMISSION**

February 24, 1999

Members present: Bayer, Bleed, Duvall, Hopkins, Schwinn and Wallace; Steward, Wilson and Krieser absent.

Planning staff recommendation: Denial.

Proponents

**1. Bob Ross of Ross Engineering**, 645 M Street, presented the application, indicating that the applicant has come to some consensus and will not request as much as with the initial proposal. The staff and Mr. Ross have observed some pedestrian movement on So. 16<sup>th</sup>, but there appeared to be no such movement along Cushman or So. 19<sup>th</sup>. Most of the businesses that take access to Cushman Dr. are a one stop type operation.

Mr. Ross has discussed this with his client and other property owners involved in the administrative plat. Parks and the Public Works Department are willing at this time to only bond \$1500 for So. 16<sup>th</sup>, which is where we are seeing some movement, and forego the rest of the bonding at this time as long as the owners would not oppose a future sidewalk district if so ordered by the City Council.

Therefore, Mr. Ross revised the request such that they be allowed to bond or construct sidewalk along So. 16<sup>th</sup> and forego the remainder at this time.

With regard to street trees, Mr. Ross submitted that this area is of an industrial nature and you wind up with a lot of driveways off this type of use. Basically, they have taken two very long narrow lots and taken the center portion out and created a third lot. His point was that whatever trees are put in, they will end up being removed for whatever is constructed. If they could eliminate those trees at this time, it would be beneficial. Mr. Ross believes that many times, when the lots are in the one-acre size, the Commission has agreed to waive street trees.

Mr. Ross would agree with denial of the waiver of sidewalks along South 16<sup>th</sup>; provided they could eliminate South 19<sup>th</sup> and Cushman Drive at this time.

There was no testimony in opposition.

Staff questions

Rick Houck of Planning staff agreed with the sidewalk issue; however, the staff is still opposed to the waiver of street trees. The northern portion is a fairly traditional industrial type area, creating a very sterile, hot atmosphere for people driving on the streets. With the street trees, we are at least starting to soften that hardness. Traveling further along So. 16<sup>th</sup>, you get to the gas company building and Cablevision building which are nicely landscaped and more aesthetically pleasing. This is the main reason the city would like to see the street trees in place and would not recommend a waiver of the street tree requirements.

Schwinn asked whether they would be required to put the trees in initially. Mr. Houck stated that the applicant could bond for them or they can work with the Parks Department and put them in.

Buff Baker of Public Works agreed with the applicant's request regarding the sidewalks. Mr. Moxham's memo describes the \$1500 bond for that portion of South 16<sup>th</sup> Street.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 24, 1999

Bleed moved approval of the Planning staff recommendation to deny the waiver of street trees; and to deny the waiver of sidewalks along the east side of South 16<sup>th</sup>, but to approve the waiver of sidewalks on Cushman Dr. and South 19<sup>th</sup>, with the understanding that when a pavement district is created, the abutting property owners will not oppose, seconded by Bayer and carried 6-0: Bayer, Bleed, Duvall, Hopkins, Wallace and Schwinn voting 'yes'; Steward, Wilson and Krieser absent.

**MISCELLANEOUS NO. 99002**  
**AMENDMENT TO THE DESIGN STANDARDS**  
**FOR SUBDIVISION REGULATIONS TO IMPROVE**  
**THE EFFECTIVE OF STORMWATER STORAGE FACILITY DESIGN.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 24, 1999

Members present: Bayer, Bleed, Duvall, Hopkins, Schwinn and Wallace; Steward, Krieser and Wilson absent.

Planning staff recommendation: Approval.

Nicole Fleck-Tooze of Planning staff submitted letter from the North Bottoms Neighborhood Association in support.

Ms. Fleck-Tooze also addressed a memorandum from Public Works requesting to revise the proposed standards.

Proponents

**1. Art Knox**, appeared on behalf of the Public Works & Utilities Dept. and the Lower Platte South NRD. He is a Director of the NRD and has served as co-chair of the Mayor's Stormwater Advisory Committee. This project includes review of stormwater needs and opportunities in Beal Slough and the needs city-wide within the overall area of stormwater management and review of water quality practices associated with land use and development. Beal Slough is the first in development of a city-wide stormwater management master plan. The recommendation is to adopt a set of design criteria for detention and retention of stormwater with revised and new elements. This recommendation is part of a package of five policy recommendations coming from the Committee's work. These recommendations were reviewed with developers, engineers, neighborhoods and environmental organizations, and the majority opinion was to bring these policies forward. This stormwater design standard recommendation is being brought forward now to begin the process toward an enhanced stormwater program for the city. This proposal will provide a benefit to those who will ultimately be homeowners or business owners of those lands being developed and will provide greater assurance to those who own property downstream. Ultimately, the goal of the Committee is to bring forward the remaining recommendations as part of an update of the Land Subdivision Ordinance, hopefully this summer.

Mr. Knox stated that he is requesting the Commission's positive response for several reasons: 1) this measure offers a means to significantly improve the flood preventive features in developing areas; and 2) this criteria is part of a comprehensive review of stormwater management and offers opportunities to take one very positive step—initiating the public process to consider stormwater management on a broader scale. He believes this is the right thing to do for the community and the time is right for implementation.

**2. Bob Wolf of Olsson Environmental Sciences**, explained that these standards relate specifically to stormwater storage facilities which includes detention and retention. Back in June, 1976, Lincoln adopted stormwater criteria into the subdivision regulations for essentially the first time. That criteria is still being used today, although technology has moved ahead. In August of 1992, the city implemented amendments to require limitation of increased peak loads. The intent of this was established back in 1992. The current existing criteria is encompassed in one single paragraph in the ordinance. We now have some six years of experience, showing that there are some areas, particularly in the area of safe operation and maintenance provisions, that probably need more attention. The general nature of the existing criteria leaves us subject to some broad interpretation and approaches. Often this results in inconsistent effectiveness. The proposed criteria would change that for hydrology concerns to utilizing existing actual site conditions to determine the peak rates before the development and would clarify that the 2, 10 and 100 year storms are to be controlled to provide a full range of protection.

Mr. Wolf further explained that many of the items proposed are an attempt to get some common sense approaches reduced to black and white. It also provides protection for property owners in the city as a whole. As an example of some coordination that could have been better, Mr. Wolf displayed a photo showed a flooding problem.

With regard to maintenance, Mr. Wolf noted that there are currently no standards provided. What is proposed is based on lessons learned in the past six years.

Mr. Wolf also pointed out that another problem experienced has been that sediment is an issue. This proposal attempts to determine ways to detain that sediment, etc.

This is an attempt to get more consistent use of methodology city-wide; to account for a broader range of storm events; and to have systems that function more consistently as they are intended to function.

**3. Mark Arter**, 5201 Quail Ridge Drive, testified in support. He is a principal with the Arter Group Companies. He has been working with Olsson Environmental Sciences as a consultant in an effort to assess the probable impact of these proposed standards. He participated in several group work sessions and estimated probable cost impact to be in the neighborhood of \$250.00 per lot. That cost could possibly be reduced by incorporating current open space areas. The benefits are difficult to quantify. However, he believes these standards could minimize future storage facility maintenance costs; provide more reliable system of stormwater detention; lessen the need for future retrofit costs; and enhance property values.

A number of citizens have been victimized in the past. While he favors the entire stormwater management plan moving forward, he would focus on progress rather than perfection and start with the implementation of this portion as proposed.

**4. John Layman** of Layman Associates testified in support. He is an appraiser who started back in August on this review as a consultant for the NRD and the city. He talked with engineers and developers. Based on the costs provided, he believes the benefits outweigh the cost. The detention and retention areas can be used as an amenity. Adjoining lots will benefit from the green space amenity. Future maintenance costs will be limited to the homeowners association. Any future maintenance requirement will be based on an existing recorded plan. City and future owners will have documentation showing that storage facilities were constructed and approved. It will provide the owners with location of required easements for the maintenance facilities.

**5. Kent Seacrest** testified in support and as a member of the stormwater management team. His responsibility was to reach some sort of consensus. They concentrated on the stakeholders that would care about the stormwater issues in this community. He submitted the list of 350 people that were kept advised, informed and invited to the workshops. The first workshop was attended by about 49 people, and after that the Mayor's committee came up with five stormwater sedimentation criteria, this being one of them. This criteria was then presented to the same stakeholders and about 35 attended, and there was a strong general consensus to go forward. They conducted seven focus groups on the five criteria. Mr. Seacrest heard from the developers that generally, they would like to see a uniformity of the standards; they would like to see consistency; they do not necessarily want more regulations; however, they are willing to accept the standards if they will provide some consistency. Additional regulations and consistency would provide better safety because we are very concerned about the developer's liability. Secondly, this will help provide a level playing field. The other issue from developers was downstream protection. Some of the quality developers happened to be located downstream and some that don't do it right are upstream, and the mess ends up downstream and the developer downstream pays for that mess. We're just at a situation where the potential liability issue is scary. The cost of redredging is prohibitive, and the reason for the redredging is that we didn't plan for it. These standards will make the overall dredging operations in years to come more economical.

Mr. Seacrest further noted that the environmental groups were very supportive and the neighborhood groups are generally supportive.

Bayer noted that part of the whole issue of the Antelope Valley study was flood control. Were the parameters used in that study different than those imposed by this proposal? Mr. Seacrest believes they are "night and day". Antelope Valley is from Holmes Lake to Bob Devaney. Detention was not required until 1992. All that section of our older city didn't have any detention so that water has a free shot, with 200+ businesses and 800 homes in the way. This is an effort to stop, so that we never have to do another Beal Slough or one of those type of projects.

**6. Russell Miller** appeared on behalf of the **South Salt Creek Community Organization** in support and submitted a written position of the organization. There is one concern,

however. There should be some kind of penalty assessed for people that do not maintain the stormwater facilities. They also believe there should be some type of clause in a deed or something clearly stating that the owners will be responsible for maintaining these facilities, or that states who will have financial responsibility for maintaining them.

Mr. Miller owns commercial property in the floodplain. His general liability insurance runs just at \$680/year, with \$70,000 property valuation. Flood insurance for that same piece of property is \$620/year. General liability covers wind, hail, fire, etc. But \$620 covers only flooding. In other words, flood insurance is extremely expensive and we need to do something to lower this cost. FEMA has rated Lincoln as a Class 8. If Lincoln were rated 10, there would be no flood insurance discount. Class 8 gets a 10% discount. If we implement these different programs to retain stormwater runoff, etc., it will raise our rating and we could become a Class 2 with a 45% insurance discount. He believes this proposal is a step in the right direction toward raising the City's rating.

**7. Danny Walker**, 427 E Street, testified in support. His property is in the floodplain. He thinks it is amusing that Lincoln has had flooding problems and floodplains since the mid 1920's. He suggests that "we are little late and money short as far as protection of the floodplain".

Mr. Walker believes that the floodplains and adjacent areas of Salt Creek and its tributaries have been knowingly grossly abused and mismanaged by various City and other governmental departments. This has disregarded the safety and well-being of 3,000+ residents residing in these floodplains. When decisions are made that create adverse effects to the Salt Creek floodplain, those making such decisions should and will be in part held responsible should a flood occur. As a result of mis-management of the floodplains, the risk of major flooding has increased dramatically and in fact has made current floodplain boundaries obsolete.

Mr. Walker supports the initial submission. He wants to opportunity to rebut to any amendments that are proposed by the opposition.

Mr. Walker was not involved in the public process said to have occurred on this proposal.

**8. Tim Knott** testified in support on his own behalf and on behalf of the Wachiska Audubon Society. They consider this proposal to be a major step forward in solving some of the problems that have existed in the past. The Audubon Society is in favor of increased protection for some of the older areas of Lincoln; particularly, with concerns about sedimentation and erosion problems in and around the parks. He believes these standards will help those problems. Mr. Knott also supports at least the potential for the new improved retention and detention structures to provide open space, green space and

perhaps wildlife habitat for the new neighborhoods that will be developed.

Mr. Knott would like to see some mention made of the idea of retaining existing natural areas when the retention and detention structures are built. The existing natural areas should be retained if at all possible.

**9. Julie Lattimer**, 5220 So. 30<sup>th</sup>, Tierra Subdivision., testified in support on behalf of people who have faced this issue, unfortunately, head-on. She was co-chair of the Stormwater Advisory Committee for Beal Slough. In 1996, she experienced the two 100-year storms that took place 6 weeks apart. If those were the only two bad experiences, she would not be here today; however, the neighbors living in her neighborhood much longer have said that as they see more and more development in South Lincoln upstream, the severity of the flooding has become much worse. They literally had chest-high water on their street; all basements were flooded twice in six weeks; they replaced carpeting; cars were flooded in garages. What she is really tired of dealing with is the fact that her children are now able to play in their backyard, only because they have invested thousands of dollars trenching their back yard, etc., to deal with the water issues they have had. Upon until two years ago, she could not ethically consider selling her house with the problems, but now she could do that after spending so much money making the improvements. The residents are required to re-landscape their yards to direct the flow of the water between the houses. The developer of Tierra is no longer in business. These problems were not listed as a latent defect. The original owner of her home spent \$12,000 on a lawsuit to try and change the grading of the development and lost. Ms. Lattimer urged that when the Commission is considering this proposal, they should not just think about what we need to do better today, but how it affects the people downstream. She sees this as an ethical issue in addition to all the other issues. Please think about the faces behind this issue, not just the fact of what's on the paper.

**10. Richard Vestecka**, 1923 King Arthur Court, testified in support. He was a member of the committee and believes he was asked to be a member because he was pumping water out of his back yard a couple of years ago until 3:00 a.m. He is also a contractor and he has found that you cannot legislate common sense. This is something that he hopes the appointed and elected officials keep in mind—that is, that some of these issues can be solved by common sense. A lot of people do not understand. If contractors, realtors and the city are responsible to give as much information to people and produce as much information for people to digest as possible, a lot of mistakes can be prevented. Along with “location, location, location” comes the location of the house, the garage, trees, everything else. The committee has come up with some real good ideas. He is totally in favor. But it needs to be kept simple and we need to get as much information to the people as we possibly can so that they can make their own decisions. A problem with a lot of people is understanding this. It needs to be a common sense approach.

In addition, Mr. Vestecka would like to see this come forward in one solidified package—don't piecemeal it. This is too important of an issue to piecemeal it. If we are

going to pass this, let's get it right the first time. Too many people can chew holes in things. The committee spent a great deal of time and did a marvelous job getting ideas. He wants this to be a finished product and suggested that it should be postponed in order to do that.

Neutral

**1. Mark Hunzeker** appeared on behalf of the **Home Builders Association** and requested additional time to review the proposal. He is also concerned about this process – what is on today's agenda is only a very small piece of what the advisory committee has been going through and studying. Because he had not seen this proposal before this week, he is not sure that this particular piece of it has any big impact. One question he has, which has not been answered by staff, is what effect, if any, will this particular change have on plats which have been submitted prior to the effective date of this change in the design standards? There are number of plats currently in the process that have been engineered and are on their way to the Planning Commission agenda. A preliminary plat takes a minimum of 10 weeks to reach this agenda. What is the intended effect of these changes on plats which are already in the process?

In addition, Mr. Hunzeker reminded the Commission that this legislation is part of a larger package of amendments and he would like to see this come through as a package. There have been a number of items identified which are costly; the information he saw at the last advisory committee meeting indicated the cost would be somewhere around ½ of 1 percent of the cost of an average new house, which is substantially more than \$250. It could be as high as \$750 or \$800 per dwelling unit, which he believes is pretty substantial. There are techniques which have been identified along the way which can mitigate some of those costs. To his knowledge, none of those have yet been included in any of the materials now before the Commission, and there are none in the package coming forward later. If we are talking about beneficial legislation which will cost \$250-\$800 per unit, where we know there are possibilities of mitigating those costs, it is incumbent upon the proponents to at least raise the issue of how those costs can be mitigated and propose amendments which will permit them to be mitigated. None of that is coming forward to his knowledge.

Mr. Hunzeker requested that this application be deferred for at least 30 days – he does not understand the push to get this piece done. Unless there is an intent that plats which are already in the process will be adversely affected and required to meet this standard, then most, if not all, of the construction that will take place this year is already in the process and past what would be affected by this legislation. Thus, he does not believe there is a rush and the whole package should come forward at once.

Bleed viewed the proposal as having little effect if a developer is really doing what was intended by the existing standard; that is, to make sure there is not flooding downstream. Mr. Hunzeker agreed and he is not disputing any of the testimony in support. But, to the extent you have plats which are pending where applications have been filed with the city,

it seems unfair to require that new regulations be applied to those plats retroactive. But at the same time, Bleed believes this is basically flushing out a design standard that exists, and it appears that this does provide a vehicle to maintain structures, etc., and that is very important. It seems very important that if we have a plat coming before us now that could adversely affect residences downstream and create problems, that we should deal with it now and we should not wait. If we have something in place now that looks like it will work, why should we not go ahead? She does not see that this is so integrated with the rest of the package. Hunzeker stated that it is just a matter of having the opportunity to review this proposal which has not been generally available – at least he didn't get it until last weekend. As he understands it, it was available at the open house, but it is difficult to get your hands on a staff report before 3:00 on Thursday afternoon. Be that as it may, he suggested that if there is an already engineered plat that is in accordance with existing design standards, there should be some recognition that that costs money and rules should not be applied retroactive. He may not have a problem with this proposal, but he has not had the time to review it.

As to the problems raised by Mrs. Lattimer, Mr. Hunzeker is very, very familiar with that situation and he defended the lawsuit on behalf of the Homeowners Association. This legislation has zero to do with that situation.

Blead noted that Hunzeker had attended a meeting on March 3, 1998. Mr. Hunzeker stated that this proposal was not given out at that meeting. The general statements of the policies and goals were all approved but none of the specifics of this amendment to the design standards or other amendments to the design standards have been distributed. None of the actual amendments to the design standards were ever presented at the meeting.

Hopkins asked for a specific example for mitigating the costs. Mr. Hunzeker suggested that one example would be eliminating curb and gutter on streets in order to slow down the flow of water and allow for more absorption and eliminating concrete channel liners in drainage areas, to name two. Mr. Hunzeker believes that unless some possibilities toward mitigating the costs are brought forward and considered along with the costly requirements, we will never see a day when we get consensus from the Planning Department on having an option of eliminating curb and gutter.

**2. Glenn Cekal**, 1420 C Street, testified at this time, stating that he is very tired of having the various committees, boards, etc., such as the Planner Commission, vote counter to our paid experts such as the Planning Department. He helps pay for the Planning Director; the person who fails to plan plans to fail. He does not like it when a group of amateurs and lawyers who represent very biased interests oppose the staff. He believes the weight broke the bridge. We have been moving too slow for too long and it is time because the city is going to be held accountable in many ways.

Staff questions

Don Taute, Assistant City Attorney, addressed the intent to which Mr. Hunzeker has alluded. As far as existing plats, those which have been approved, it is the City Attorney's opinion that we cannot impose any new conditions. As far as those in process, he agrees that we probably cannot go back and impose these conditions on those plats that have been submitted to the Planning Department with the existing design standards. There has not been any intent to make these design standards retroactive.

With regard to this application being a part of the total package, Mr. Taute stated that this amendment for stormwater storage facilities was addressed with the Mayor and he encouraged the management committee to take the issue to Council. A precouncil meeting was held on January 19<sup>th</sup> to get the Council's feeling on proceeding with a resolution to adopt the amended design standards. Then on January 21<sup>st</sup>, the advisory committee held another meeting, at which time they discussed bringing this particular aspect forward. The minutes of that meeting reflected that on February 9<sup>th</sup>, a memo went out to the members of the committee with a notation indicating that the amendments are to be placed on the Planning Commission agenda for public hearing on February 24, 1999. He believes Mr. Hunzeker was probably aware that this was coming forward at least as early as February 9<sup>th</sup>. He is also aware of a meeting held with the Home Builders Association on February 4, 1999, at which time these particular standards were discussed with those present. Bob Wolf from Olsson Environmental Sciences indicates that the draft of what is before the Commission was sent to the participants of that meeting. In any event, the information was certainly available prior to last week.

Steve Masters of Public Works & Utilities submitted a letter from Ron Marquardt of the Lincoln-Lancaster County Health Department, in support for this legislation.

Mr. Masters went on to inform the Commission that over the last year or so, Public Works has had a number of conversations with developers, builders and attorneys about the sedimentation, erosion control and flood stormwater design issues, and the staff has always met with interest and responsiveness. There is interest in a desire to see things handled well. We want to bring this forward now because there are structures being built that do not provide the measure of control that we would like to see, especially in the lower frequency storms. There will potentially be 3,000 acres of increased development in the community and acting now prevents construction of those facilities that do not provide the measure of flood protection we

would like to see. The proposal provides for review in the planning review process; it does not require additional staff or an agreement with another governmental entity; and the current process being used can be applied to the proposed system.

Mr. Masters believes the city has made an effort to make this proposal available. Mr. Hunzeker has suggested that this be delayed; however, if the Planning Commission does

see fit to vote today, Mr. Masters stated that he would assure there would not be a public hearing before the City Council until the first Monday in April. This would provide the month that Mr. Hunzeker is requesting as an opportunity to schedule a meeting with those that are interested. Mr. Masters stated that the design criteria was made available in early January to engineers who have been identified as frequently doing work with Public Works. The comments received have primarily been supportive or have suggested ways to make the criteria more effective. This is part of the reason there have been amendments coming forward today.

Wallace commented that this relates more to aesthetic design changes as opposed to structures in existing plats. Mr. Masters stated that there could be some structural changes, primarily weirs on the end of pipes. This legislation focuses upon the smaller storm and changing the control structure to more effectively address the more frequent storms.

In response to questions by Bleed, Mr. Masters stated that it would be the city's desire to be creative in how the criteria is applied. The need to maintain some kind of access area into the detention/retention structures for maintenance has been discussed, and that access could be trails or common areas that are already part of proposed plats. The opportunity for flexibility and creativity exists.

Bleed inquired about the requirement that these structures are properly maintained. Mr. Masters acknowledged that the requirement for maintenance is not directly provided in the legislation, but the staff is trying to build into this criteria the opportunity to be able to perform maintenance in a positive way, by being able to quickly control the water level elevation, etc.

Rick Peo, Assistant City Attorney, stated that basically, there is a subdivision agreement that goes along with the approval of a final plat, which requires the developer to maintain all private improvements unless a property owners association is established, so there is a contractual obligation for future maintenance. Bleed confirmed with Mr. Peo that this would imply that the original design criteria would have to be maintained. Mr. Peo's response was that the obligation is on the developer to initially install it. Future maintenance responsibility continues but it could be passed to a homeowners or property owners association. There are conditions that could be spelled out in the ordinance and incorporated in the agreement.

Wallace inquired about green space. Mr. Peo suggested that there is always negotiation as to who acquires the open area. These would be contractual issues that are negotiated. It can be open space, but the question is, who owns the open space?

Schwinn inquired why this portion as opposed to the entire package? Mr. Masters advised that the desire is to bring the rest of the package forward with the update to the Land Subdivision Ordinance. This has been identified as one component that would have

immediate effect, to be implemented with the minimum amount of budgetary impact upon the city, and in some instances is already in place. The costs discussed today do not address the expenses that are already in place. Some of those expenses are included in that .5 percent and do not include the benefit. It seemed like this was a feature that is already in place and required within existing ordinances and gave us the opportunity to start the process rather than wait for the opportunity to bring it forward at a later date.

Mr. Taute added that one of the reasons this component was focused upon is because the current subdivision ordinance talks about minimizing the flow of water as a part of the plat in accordance with design standards. This component is not a change to the ordinance provision – it is strictly design standards. The other components to the package involve changes to ordinance language. This proposal does not require any specific ordinance changes.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** February 24, 1999

Bleed moved approval of the staff recommendation with the revised language as submitted by staff, seconded by Wallace.

Bleed thinks a lot of the discussion points were made by the committee and it appears to have been a very comprehensive process; there were a lot of people involved, many of whom will be directly affected; this is a very, very important issue for the City and she believes the sooner we get the design standards in place the better off we are going to be to make sure that whatever new development is going in is put in in such a way to minimize, to the extent reasonably possible, any downstream water problems and flooding. It has been indicated that this does not apply to applications already in process so that should not be a major issue.

Schwinn noted that this amendment replaces one paragraph with a 25-page appendix. He is concerned about the cost of implementation. This is really technical stuff and it is difficult to digest and understand. No one has explained this proposal to him. He is not real comfortable voting because he is not sure what the impact might be. He recognizes the importance of this as he has had real life experiences with water problems. However, he is not sure of the urgency that what we do today is going to make that big of an effort on that point. He has gone to a workshop about concepts for mitigation, but he also remembers watching the Antelope Commons debate where people were uncomfortable with a lot of the concepts and fought a lot of them. He is not that comfortable about trusting this legislation. He will vote against the motion because he would be more comfortable giving it more time for debate.

Bleed suggested that this legislation is really the criteria for how water flows through an area—it does not include great details about installing gutters or channel liners, etc. It is

really setting out how to evaluate what you put in to meet the design criteria which is already on the books. These are very standard formulas. She would be concerned if it was more specific about construction, etc., but she does not see that. She sees a set of design criteria which would allow a developer to do something innovative as long as they could show that it met the criteria.

Motion for approval carried 5-1: Bayer, Duvall, Bleed, Wallace and Hopkins voting 'yes'; Schwinn voting 'no'; Steward, Krieser and Wilson absent.

**ANNEXATION NO. 99002;**  
**CHANGE OF ZONE NO. 3157,**  
**FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;**  
**PRELIMINARY PLAT NO. 98029, VAVRINA MEADOWS;**  
**AND SPECIAL PERMIT NO. 1573,**  
**VAVRINA MEADOWS COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 14<sup>TH</sup> STREET AND PINE LAKE ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 24, 1999

Members present: Bayer, Duvall, Schwinn, Bleed, Wallace and Hopkins; Steward, Krieser and Wilson absent.

Planning staff recommendation: Approval of the Annexation, subject to an annexation agreement; approval of the Change of Zone; and conditional approval of the Preliminary Plat and Community Unit Plan.

Proponents

**1. Rick Krueger of R.C. Krueger Development Company,** presented the application. This land has been shown in the Comprehensive Plan for urban development since 1994. He displayed a map showing the major entrance to the development coming in off of 14<sup>th</sup> to a roundabout, with an open area at that point functioning as a detention cell with a transmission line over it and a sewer through it. About ½ of the dwelling units are located south of the turnaround and ½ of the dwelling units are located north of the turnaround. There is a not a collector street because the distribution of trips throughout the site is pretty well balanced.

Mr. Krueger explained that they have included the two roundabouts on South 16<sup>th</sup> to attempt to slow down traffic into and out of the site. By and large, most of the development is single family homes with some townhomes scattered through the site.

They anticipate creating some small neighborhood uses at the front entrance off South 14<sup>th</sup>, coming through some of the B-2 zoning. Just north of the B-2 zoning line there is some property they wish to use for either assisted living or day care, and then one parcel

of apartments.

Bleed inquired about the requirement to eliminate one of the two mini-parks. Mr. Krueger pointed out that this is a requirement imposed by the staff. The developer had originally proposed two little parks and he understands that the Parks Department is requiring one mini-park in the center.

There was no testimony in opposition.

Bleed asked staff about the removal of one of the mini-parks. Steve Henrichsen of Planning staff clarified that the proposal is for two mini-parks, one near 16<sup>th</sup> Street and another on the northeast corner immediately adjacent to the greenway. The developer has agreed to deed both of these two buildable lots to the city for mini-parks. But the homeowners association maintains the drainageway and adjacent private open space. In order to reduce the maintenance cost of the two parks, the homeowners association would agree to mow the grass in the one mini-park. Staff is also in discussions with the developer in terms of the developer making contribution for installation of playground equipment. This is also a benefit to the future homeowners association in that they will not have to have liability insurance on these two parks, which would be the case if they were private parks. Rather than having separate private equipment in the apartment complex, the two separate parks were provided to be generally within a couple of blocks of walking distance for the area. The Parks Department appreciated the offer of the two sites and the equipment, but there would still be some maintenance concerns for stopping weekly to pick up the trash and rake the sand, and this is a concern because the city-wide maintenance budget has been reduced. It is not that they had problems with the locations. It was strictly the last bit of maintenance that they would have to do and combining the two into one park would be less maintenance.

The proposal is for two parks. Condition #1.1.4 of the special permit eliminates one of the mini-parks and combines them into one central location. It has been recommended that the one park be located in Lot 14. It would be a public park. The mini-parks were at the major entrances to the subdivision and one advantage to the developer was a selling point to the neighborhood with the playground equipment being installed right away. There are 24 neighborhood parks identified in the Parks Plan, so there is a challenge to the Parks Dept. to acquire the land and provide the equipment.

Hopkins noted, however, that the size of the one mini-park does not equate to the two mini-parks. Mr. Henrichsen concurred. The Parks Department is concerned about maintenance. Hopkins thinks the one park should be larger if it is taking the place of two parks.

Rick Peo, Assistant City Attorney, pointed out that the maintenance responsibilities that a homeowners association would assume is more of a voluntary arrangement. The permanent maintenance of the park cannot be established because the homeowners

association may not agree to it. It is not handled by assessment against the property owners to insure maintenance.

Lynn Johnson, Parks & Recreation, further explained the rationale of the Parks Departments. What is required to maintain a playground is a daily visit because there is to be 12" of sand maintained for the fall zones. In order to maintain that service the parks should be visited daily. Trash is typically picked up on a weekly basis. In taking a look at this, the Parks Department took the position that they would prefer one mini-park site with playground equipment and a basketball court centrally located within the plat for the single family residential area, and then a second playground located as part of the apartment complex. Preschool children have a small walking radius distance on their own and typically those activities are provided by families on their own residential lot. That is not the case in an apartment complex--the residents rely on what is provided as part of the apartment complex. The Parks Department would recommend one public mini-park, with the city doing the maintenance and the homeowners association providing the mowing; and a second privately developed playground as part of the apartment complex, privately maintained, for use of the younger children living in the apartment complex.

Bleed asked for the cost to maintain two versus one of the mini-parks. Mr. Johnson explained that essentially, they would have a summer employee visit this site. Most of the time is involved in driving. The second site would not double the cost, but it does increase it. Mr. Johnson suggested that the cost would be no more than \$1,000/yr. Maintenance on a typical neighborhood park runs about \$7,000/yr with the mowing. The playground equipment is also checked for safety weekly.

Mr. Johnson also stated that Parks questions the placement of the playgrounds, particularly at the entrance, fronted by what will probably be a fairly heavily traveled residential street. It is the position of the Parks Department that the playground area should be tucked back into the neighborhood a little bit more. It would require a 4' fence at the current location.

Hopkins suggested that there would still be two sets of playground equipment with the apartment complex playground.

Response by the Applicant

Mr. Krueger stated that he would be willing to do the two parks as proposed, or the one in the center. He is not sure he wants to commit to a private park for the apartment complex. He was not previously aware of the recreational facility for the apartment complex.

With regard to the conditions of approval, Condition #1.1.1 on the plat requires moving the main entrance off its present location south. He requested that this condition be deleted. The entrance is needed at this location to keep the openness they desire in the

development. All other conditions are acceptable.

Wallace noted the drainage information on pp.90-91 with questions about changing the natural drainageway. Mr. Krueger did not know they would need a 404 permit until last week. He believes that particular area is in the third phase of this development and they would immediately start the 404 permit process. They could proceed with the first and second phases. He agrees with the conditions of approval covering this issue.

Public hearing was closed.

**ANNEXATION NO. 99002**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** February 24, 1999

Schwinn moved approval of the staff recommendation, seconded by Duvall and carried 6-0: Bayer, Duvall, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Steward, Krieser and Wilson absent.

**CHANGE OF ZONE NO. 3157**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** February 24, 1999

Wallace moved to approve, seconded by Schwinn and carried 6-0: Bayer, Duvall, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Steward, Krieser and Wilson absent.

**PRELIMINARY PLAT NO. 98029**

**VAVRINA MEADOWS**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** February 24, 1999

Wallace moved to approve the Planning staff recommendation of conditional approval, as revised, seconded by Bleed.

Bayer moved to amend to delete Condition #1.1.1, seconded by Schwinn.

Bayer commented that in looking at the map, he believes it makes all the sense in the world where they located the boulevard at the entrance. He believes it is an attractive design.

Motion to amend to delete condition #1.1.1 carried 6-0: Bayer, Duvall, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Steward, Krieser and Wilson absent.

Main motion for conditional approval, as amended, carried 6-0: Bayer, Duvall, Schwinn,

Bleed, Wallace and Hopkins voting 'yes'; Steward, Krieser and Wilson absent.

**SPECIAL PERMIT NO. 1753,**  
**VAVRINA MEADOWS COMMUNITY UNIT PLAN.**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 24, 1999

Bleed moved to approve the Planning staff recommendation of conditional approval, seconded by Schwinn.

Bleed also made a motion to amend to delete Condition #1.1.4 regarding the mini-parks, second by Bayer.

Bleed understands the concerns of the Parks Department as far as budgetary constraints. But, there will be a lot of homes. There is no requirement that can be imposed for a park at the apartment complex. She believes it makes sense to have the two parks as opposed to one. Anytime we can get more open space in a development where there are families, she is in favor.

Bayer thanked the developer for being willing to give up buildable lots. We are talking about 340 lots, averaging \$100,000 in value, adding 34 million dollars to the tax rolls. If the city cannot give a thousand dollars of that new tax to the Parks Department to rake the sand, there is something wrong.

Schwinn echoed the comments by Bleed and Bayer. He commended the developer for maintaining the drainageway so nicely and to actually have north/south streets and squared off blocks, where people can figure out how to get around.

Bleed also likes the roundabouts concept. She appreciates the developer providing park space.

Motion to amend to delete Condition #1.1.4 carried 6-0: Bayer, Duvall, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Steward, Krieser and Wilson absent.

Main motion for conditional approval, as amended, carried 6-0: Bayer, Duvall, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Steward, Krieser and Wilson absent.

**AMENDMENT #11 PURSUANT TO THE**  
**1999 COMPREHENSIVE PLAN ANNUAL REVIEW**  
**TO INCREASE THE NUMBER OF LANES AND**  
**RIGHT-OF-WAY WIDTH OF EAST "O" STREET**  
**BETWEEN 52<sup>ND</sup> STREET AND WEDGEWOOD DRIVE.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** February 24, 1999

Members present: Bayer, Duvall, Schwinn, Bleed, Wallace, and Hopkins; Steward, Krieser

and Wilson absent.

Steve Henrichsen of Planning staff requested an additional two-week deferral. This project is still under review by the City Council and their action to some degree will further clarify what the Comprehensive Plan Amendment will be. It was hoped that the City Council would have stated some preference by now; however, that initial proposal has not yet been forwarded. There is a possibility that there will need to be another delay at the next meeting as well.

Bleed moved to defer for continued public hearing and administrative action on March 10, 1999, seconded by Duvall and carried 6-0: Bayer, Duvall, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Steward, Krieser and Wilson absent.

**CHANGE OF ZONE NO. 2531AA**  
**AMENDMENT TO THE WILLIAMSBURG VILLAGE FINAL P.U.D.**  
**And**  
**MISCELLANEOUS NO. 99001**  
**TO VACATE ALL OF WILLIAMSBURG VILLAGE 17<sup>TH</sup> ADDITION,**  
**ON PROPERTY GENERALLY LOCATED BETWEEN**  
**SOUTH 38<sup>TH</sup> STREET AND SOUTH 40<sup>TH</sup> STREET,**  
**NORTH OF PINE LAKE ROAD.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** February 24, 1999

Members present: Bayer, Duvall, Schwinn, Bleed, Wallace and Hopkins; Krieser, Steward and Wilson absent.

Steve Henrichsen of Planning staff submitted an email from the President of Pine Lake Heights Homeowners Association. The Association does not have a meeting until the end of March, but the President advised that he is in opposition as an individual member of the Association.

Mr. Henrichsen also submitted a letter from Nelda Hunt of Home Realty showing floor plans in Savannah Circle, which is the cul-de-sac to the west. Her letter points out that she has been involved with the sale of lots to the west and they have had difficulty selling the lots because of Pine Lake Road. She is in support of the Savannah Pines project.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Hampton Development Services** in support. At the last meeting there was some question with respect to downstream impact on drainage facilities and the applicant has since had Bob Dean recalculate all of that information and resubmit to Public Works. It is his understanding that Public Works has indicated their approval of that recalculation.

Mr. Hunzeker reminded the Commission of his two requests for amendment, deleting Condition #1.1.2 to keep the right-in, right out, and to add language to Condition #1.1.6 at the end of the sentence, “, except in the middle section of the building where the distance from residential lot lines is 175' or more.”

Bayer was not at the initial hearing but he has heard that the overall height of the building, not the building structure, would be lowered 5'. Mr. Hunzeker explained that the grade of the site from the time it was originally proposed and discussed with staff and the neighbors, has been lowered by 5'. Prior, they agreed to lower the site 3', but since they changed from the bank on the corner to Haven Manor, they have been able to lower the site an additional 2'.

Bayer noted that he has witnessed a lot of games in this community with respect to heights of buildings. This is going to be at 35' at the middle of the eave of the roof from a true ground level? Mr. Hunzeker displayed a line of sight rendering, showing grading in the outlot to berm in the outlot and to place the trees on the berm. The trees shown were 15-20', which is taller than what will be installed. The minimum required in the conditions is 10'.

Opposition

**1. Melissa Folsom, President of Williamsburg Village Homeowners Association,** testified in opposition and sought to clarify the position of the Association in light of the various letters the Commission has received. Ms. Folsom submitted a resolution approved by the Board members on January 19<sup>th</sup>, which states that the Board does not support this project as proposed. However, some Board members are worried about Mr. Hampton's reaction to their opposition. The motion was unanimously approved. The resolution does not say they will never support a retirement complex or Bob Hampton. They have valid, substantial concerns about this specific proposal. The Association has previously submitted a petition and map that makes it plain that the majority of the Williamsburg households are opposed to this amendment.

Bayer noted a letter from Georgeanne Rashilla, a board member, indicating that the board did not unanimously oppose this plan. Ms. Folsom could not explain Ms. Rashilla's letter. Ms. Folsom stated that she read the resolution to everyone on the telephone, including Ms. Rashilla.

Schwinn concurred that it is difficult to sell homes on Pine Lake Road. If there was a relaxation of the covenants, would this change the association's position. Mr. Schwinn suggested that Mr. Hampton may have to do commercial if he cannot sell the property. Ms. Folsom believes the board would be interested in discussing that. There are no covenants on the subject property, other than those on the other side.

Wallace noted the conflicting information received from the neighbors. Who is

representing the neighborhood? Ms. Folsom stated that she is the President of the neighborhood association. She knows of no association members who have circulated petitions to in any way influence people's opinions. However, they have been interested in talking to people about their opinions. There is a group in the neighborhood who have been circulating a petition to get information but she does not know where the conflicting information is coming from. She is speaking for the seven board members. Part of the problem is that she happens to be married to one of the people who has been an active neighborhood person, but she does not believe that should disqualify her from representing the board.

**2. Don Spinar**, 3760 Savannah Circle, directly west of the proposed development, testified in opposition. Mr. Hampton has suggested that there was not a majority feeling associated with the opposition to this development. He disagrees. 63% of the homes have been contacted; 85% of those signed the petition in opposition, which gives us a 53% opposition. That's the bottom line of what the neighborhood has signed, and that's the democratic process. One of the major issues associated with the development of this property is erosion control. The neighborhood association hired the Assessment Group out of Omaha to do some long range planning for the neighborhood which identified \$170,000 of water erosion problems that the developer is now passing on to the neighborhood association. The soil itself is silty clay, which is not a very good soil. The issue here is that it does create a significant problem for erosion and runoff. The Assessment Group's analysis was done prior to any knowledge of the potential for a retirement home that would add between 30-50% additional concrete on land that is already having problems absorbing rainfall. There is a significant contour problem associated with this land. To add another complex which could impact significantly on water flow concerns him.

Mr. Spinar believes in "truth in advertising". Mr. Hampton suggests that he has been talking about this with others for as much as two years, but this concept was never on any of the printed material provided by him or his agents. Properties are selling on Pine Lake Road. Two sold on Savannah Circle this past weekend. He believes they will sell; pricing is a problem, but he does not want this project approved because over-development will cause a significant water problem in the future.

**3. Jim Stewart**, 6712 Old Dominion Road, testified in opposition. The letter from Kent Folsom in the staff report sets forth very well the issues and concerns which he has as well as many of his fellow residents of Williamsburg. In 1996, he and his wife were one of the first to build in the southeast corner of Williamsburg, and they reviewed the Hampton sales literature, looked at the plat and researched the PUD, all calling for residential homes on this property. They relied on this information when they purchased their lot and built their home. Mr. Stewart contends that the planning process is an implied contract between the developer, the homeowner and the city. A change of this proportion at this time damages the integrity of the entire planning process. He believes this is a breach of trust. He has concerns about the proposed facility, including the height, the lighting and the water runoff.

**4. Jan Moore**, 6735 Leesburg Court, directly north, testified in opposition because she relied on the information provided to her when she purchased her home. She was promised trees but nothing has happened. They have gotten grass and a good drainage system. Their back yard is pretty low and a hard rain causes the water to come out of the cement drainage system about 6' right to the very corner of their yard. Are we going to start experiencing problems in our basement? The plan looks pretty good, but if it is a tree half as tall as that shown on the picture, she is not sure how it will look. She does not know how much a berm will help from her area. Most of her windows face to the south--what kind of lighting will this mean? It is different from what they had envisioned when they built their dream home about five years ago. There are townhouses east of 40<sup>th</sup> Street on the south side in a development that she knows have sold pretty well. There needs to be some sort of sound or visual barrier put in place to sell the lots. She bought her home according to a plan, a plan which she hopes can be retained. There is already one elderly housing project in their planned neighborhood-- Tabitha. There is another facility on Old Cheney, so she questions the need for the retirement facility. She would prefer residential to maintain the integrity of the neighborhood.

**5. John O'Connor**, who is building a house at 3811 Old Dominion Court, right behind the subject site, testified in opposition. He is opposed to this deception. He paid a premium price for a premium lot, based upon the advertising materials submitted by Hampton. He purchased his lot directly from Mr. Hampton. He picked up the literature last summer at a billboard. Please protect the citizens from this deception. Mr. O'Connor believes he picked up the literature the first part of June, 1998, when he started looking for lots. Mr. O'Connor found out from his builder that they were closing with Mr. Hampton himself two days before they closed.

**6. Kent Folsom** testified in opposition. There are a lot of ambiguities and discrepancies. thus the neighbors start to worry about putting trust in the process or in the developer. There is a letter from Raasch Appraisal and Consulting in the

information submitted by the applicant. Mr. Raasch was instructed by Mr. Hampton to conduct his appraisal based on a 122-unit residential care unit project. In other words, everything Mr. Raasch says is predicated on this facility and nothing else. Mr. Folsom believes Mr. Raasch's report works hard not to discuss the impact upon those residents that will be living in the shadow of this facility. Common sense tells us that our property values will be negatively impacted. The letter from the builder on Savannah Circle confirms that they believed the east side of 38<sup>th</sup> was to be townhomes like the west side. With regard to the letter from Nelda Hunt, Mr. Folsom notes that everything she says in support is also conditional. It suggests sufficient landscape screening and green space to protect the adjoining property values. The plan as submitted does not have that green space built into it. Therefore, he does not believe Ms. Hunt's letter really supports the proposal. There is a letter from Larry Corbett, another realtor, indicating that Woods Bros. Realty had these lots for sale since 1994 and they could never interest any parties in

purchasing lots on this cul-de-sac because the traffic on both South 40<sup>th</sup> and Pine Lake Road was too much to overcome. Mr. Folsom suggests that this was on the edge of town in 1994, with slow crossroads. He submits that the reason the lots were not sold is because they were overpriced and under-marketed—not because of their location.

Mr. Folsom does not believe the drainage issues have been sufficiently addressed. The residents want some assurance that water is not going to continue to be a problem.

Mr. Folsom notes that Mr. Hampton has suggested that the petitioners were unprepared to discuss the site plan, specifically that the petition circulated had no facts or accurate information. Mr. Folsom has two letters from the people who approached Mr. Hampton's home and the home of his parents. Both of them refute what Mr. Hampton has suggested.

Mr. Folsom addressed the visual impact as being another critical issue. He displayed a photograph taken from the back door of the Patterson Home, Lot 4 on Old Dominion Court, showing where the building envelope begins, the height being projected, the berming and 10' trees. Mr. Folsom contends that this will not screen the residents from the new building.

**7. Linda Patterson**, 3821 Old Dominion Court, testified in opposition. Her main concerns are: 1) fairness—she believes she was deceived when she purchased her property; 2) within one-half mile, Tabitha has plans for a retirement center—do we need two; 3) elevation and proximity are also a concern—her home will be 100' from the back of the proposed building; and 4) increased traffic. The petition indicates that the majority of the homeowners in Williamsburg Village are opposed. When these homeowners purchased their homes, they were expected to adhere to the established covenants and it was costly. She requested that the Commission take into consideration the commitment that the applicant made to the community. Ms. Patterson requested that the Commissioners cast their vote as if living in her home which she has only lived in for one week. She thought she would be looking at patio homes, but instead it will be a three-story apartment complex.

Bayer asked Ms. Patterson where she received information that assured her of the townhomes. Ms. Patterson stated that it was from her real estate agent and builder. She purchased the lot the first part of July, 1998.

Staff questions

Bayer asked staff when they first became aware of this proposal. Mr. Henrichsen believes it would have been some time in the fall when staff would have had discussions with the developer. Often, the staff has discussions which the applicant requests be remained private before official submittal of the application. The first time that Mr. Henrichsen knew it was public was a meeting he attended on November 22, 1998, and there may have been

one meeting earlier before that in November. If anyone called the Planning Department in September or October, they probably would have been shown the final plat showing 26 final platted lots for townhomes. By mid-November, the staff would have probably started saying it was platted for 26 lots but that there is a proposal being discussed for something different.

Bayer referred to the two different pictorial representations, one by the applicant and the other by Mr. Folsom. Does staff have any sense of their accuracy? Mr. Henrichsen advised that staff has not taken the opportunity to try to measure each off to determine independently which is accurate. He does know from the grading plan that it is accurate to say that some of the houses are probably 15' below the elevation of this building. Mrs. Patterson's house is probably more in the range of 8' to 10' below the elevation.

Schwinn noted the flyer submitted by Larry Corbett of Woods Bros. Realty, showing the corner as being reserved for future office space or apartments in June, 1997. Has that corner been replatted? Mr. Henrichsen responded that at this time, it is still platted for 26 lots--it has not been replatted.

Bleed asked staff to respond to the drainage issue. Dennis Bartels of Public Works stated that he did not do an in-depth study but he did review the calculations with Mr. Dean and he believes he was relatively conservative with his numbers. The Security Mutual discharge would be similar to residential. The concern raised about the drainage was toward the drainage ditch that is to the east and north. The roofs can or will be drained through a pipe system to this ditch which has a low flow liner. It is Mr. Bartels' opinion that there would be a small increment of increase in the depth of the flow, which is below all the houses. The biggest concern would be as you get close to the first street, it appears that the home was built at an elevation lower than what was shown in the approved preliminary plat. If the houses remained in accordance with the approved preliminary plat, they would have been several feet above that curb elevation. Mr. Dean's calculations are correct that that street could be overtopped even under today's conditions. Mr. Bartels suggested that there will be some increment of increased runoff because of higher paved areas, but it is a relatively large drainage area that contributes at this location. The free flow along the ditch should not be a problem. The first potential problem is the street crossing, but that potential is there whether or not this development is approved.

Robert Dean, Engineering Design Consultants, testified that this subbasin area drains about 33 acres, only 4 of which are from Savannah Pines, which drains down through the swell. The houses immediately adjacent are just downstream of Savannah Pines. The lower flow elevations of those houses will be 2' above flood elevation. As you move downstream toward Williamsburg Drive, the houses there would be a minimum 6' above the 100 year flood elevation. There is a 10% increase at the north property line, but as you move further downstream the impact is less and less. The entire drainage basin is about 455 acres. Savannah Pines, 6.5 acres, represents less than 1.5 percent of that total area, so it is his opinion that there is no impact due to this development. His calculations

indicate that there will be no negative impacts to the drainage system as it exists today.

Response by the Applicant

Mr. Hunzeker responded to the opposition. There are a fairly substantial number of people who have said they relied upon various information when they purchased their lot or home. That really does bring into focus the question of how much is anyone entitled, at any point in time, to rely upon the status quo. If, in fact, in 1996, they relied upon sales literature of the existing plat and the PUD, they would have found that by that time this PUD had been amended over 20 times. This is amendment #27. There have been a number of those amendments which have been very minor and some of which have been fairly substantial. Over a period of time, development of 230 acres requires changes in plans. He reviewed some of the changes that have taken place with regard to the roads and the area that was not indicated in the Comprehensive Plan, i.e. Security Mutual, Bryan Hospital office complex, Pine Lake Road itself. There has been a great deal of change over the period of time that Williamsburg has developed and we must anticipate this kind of change. As you think about Williamsburg, it is one of the very few places in the community where there is and has been a fairly consistent design theme that was set out at the very beginning and carried all the way through the process. There have been changes, but the package that ended up 10 years later is very consistent, very high quality and very much created the identity of Williamsburg Village. While it is relevant for people to have strong feelings about what they thought was going to be on a vacant piece of ground, it is not the decision making criteria that should be employed when deciding whether this is an appropriate use of this property. Is this within the range of uses that we recognize in this zoning district? Is this project going to have adverse impact on the abutting property? The answer is no, it is not, based on similar projects across the community.

Bob Hampton testified in response to the opposition. He lives and works in Williamsburg Village; he has been on the Board of the homeowners association since its inception; he has gotten to know many of the members; there are two members that were at the board meeting that have told him that there was not an agreement to oppose this project. The people circulating the petition were asking people if they were opposed to “commercial” property at this location—not a retirement center. He has a problem when people accuse him of deception, truth in advertising, bait and switch. He met with the neighbors – they have had three meetings – he was very up-front with everyone. When he put half the road in two or three years ago, he noted on the plat this corner was reserved for possible future office or apartments. Anybody can find a plat that was before that, but nobody ever asked him about it. If these people were so concerned with what could happen on that property and were so diligent, then they should have looked at the allowed uses for that property in the current zoning. This is clearly an allowed use. He is not asking for any density bonuses. This proposal shows five to eight times more setback than what is required. Mr. Hampton assured that he builds very quality projects. Between this project and Haven Manor, it will be a 15 million dollar investment. It will be a quality project and they will be a very, very good neighbor. This project will also block the neighbors’ view of what is going

to become a five-lane intersection. The approved townhouses would not provide that barrier.

Bayer asked Mr. Hampton when he began thinking about a scheme other than townhomes. Mr. Hampton stated that it was when he installed half the street for East Savannah Court about 2 to 2 ½ years ago. He installed half the street to try to do half the townhouses. He put in tall trees, built a berm and added a fence. No builder wants to go in there and take four years to build out 20-some lots. When Security Mutual is built, Bryan is built, and the road is widened, it will be more difficult to sell lots. He has had a lot of calls for an office building on that corner. He thought a retirement village would make a better neighbor than an office building.

Mr. Hunzeker suggested that the drawing which Mr. Folsom submitted is not the way you do a photographic rendering. The computerized drawings put some distance in and take into account distance from structures instead of just using a ruler. Mr. Folsom's representations were not accurate. This is a large building but there are distance factors that do come into play.

Bleed asked when it was determined that Pine Lake Road would become five lanes. Mr. Hunzeker believes it was in the 1994 Comprehensive Plan. It was a major road in the 1977 plan; it was taken out of that category in the 1985 plan when all the residential area south of Pine Lake Road was thought to be excess; it was designated as a four-lane by 1994. Mr. Henrichsen advised that the 1994 Comprehensive Plan, as originally adopted, showed Pine Lake Road from 15<sup>th</sup> to 70<sup>th</sup> as four through lanes with center turn lanes.

Bayer inquired what could be built "by right" in this zoning. Mr. Henrichsen advised that R-3 zoning allows single family and duplex by right. Special permitted uses include apartments, etc. Once this was approved under a change of zone for a PUD, the entire area of Williamsburg was approved for various uses and a specific final PUD was approved for this site showing that this particular site was for townhomes. Apartments are only allowed in R-3 through a special permit or a PUD. This application changes it from one Final PUD to another Final PUD. Apartments could not be built without going through the Planning Commission.

Mr. Hunzeker pointed out that there is a special permit provision specifically for the elderly which you could apply for and receive under the R-3 zoning.

Public hearing was closed.

**CHANGE OF ZONE NO. 2531AA**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 24, 1999

Schwinn moved approval of the Planning staff recommendation of conditional approval, seconded by Bleed.

Wallace noted some correspondence in favor of the retirement facility as a good neighbor, but that is not what he heard today. He thinks there is some unfinished work in the development around these neighbors that needs to be concluded. He is sure these neighbors would not want some of the uses that could be developed other than an elderly facility. He is confused about the neighborhood association representation and position. He wishes the neighborhood association could get their issues down and cleared up. There needs to be closure, particularly with the residents in close proximity, to where the picture the applicant put on the screen really reflects the aesthetics of the environment. He will support the application but wants the caveat that some of the issues be dealt with.

Bayer thought that Ms. Patterson came up with five items that were good issues: Drainage, traffic, proximity, another elderly care center and fairness. With respect to drainage, he is relying on the staff and paid professionals and this does not appear to be an issue. The increased traffic is not an issue to him. Tabitha should have built when Tabitha wanted to build. But, proximity and fairness are important. This developer should not have had a piece of paper out there a year ago that said townhomes if he was thinking about this 2 ½ years ago. This is unfair. He believes the neighbors deserve a right to at least in the near future have some belief. He thinks it is too big. Although he will support the application, he will not support the change to Condition #1.1.6.

Bleed stated that she is really conflicted on this one. Frankly, from a purely land use point of view, it appears to be a decent proposal for a corner that she agrees most single family homeowners will not be real interested in. She is not sure she buys the argument that property values will decrease or that this would be a real adverse impact to neighbors. On the other hand, she is bothered to some extent with the truth in advertising issue. It is a real tough situation. When we originally gave the PUD, this is exactly one of the concerns we had when we platted the whole area—we knew it would take a long time to develop and would change. Frankly, she thinks she will vote to make sure this does not go forward with unanimous approval because she thinks there is more work to be done; however, she is not absolutely against it.

Hopkins stated that she has also had a difficult time with this. The Planning Commission, however, is not here to decide what is fair—our role is to determine land use issues. The #1 problem appears to be communication and this is troublesome. She encouraged that there be better communication. It is a teaching situation. The neighbors need to be educated. The tone of the neighborhood relies on both parties. Without that give and take, all the decision making sits before the Commission and that is where you lead us. Compromise is a better situation. The files say that traffic will be less; the drainage is taken care of; but there is still property in the segment that has not been developed and if it takes 6 more months to help things to be communicated, she hopes they take that opportunity to make amends and compromises. “Would I want to be living next to this in this case? No.”

Motion for conditional approval failed 3-3: Bayer, Schwinn and Wallace voting 'yes'; Duvall, Bleed and Hopkins voting 'no'; Steward, Krieser and Wilson absent.

This item will be held over for administrative action on March 10, 1999. Public hearing has been closed.

**MISCELLANEOUS NO. 99001**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 24, 1999

Schwinn moved approval, seconded by Bayer. Motion failed 3-3: Duvall, Schwinn and Wallace voting 'yes'; Bayer, Bleed and Hopkins voting 'no'; Steward, Krieser and Wilson absent.

This item will be held over for administrative action on March 10, 1999. Public hearing has been closed.

**SPECIAL PERMIT NO. 1574**

**FOR A MONOPOLE TOWER**

**ON PROPERTY GENERALLY LOCATED ONE-HALF MILE**

**SOUTH OF ARBOR ROAD, EAST OF NORTH 40<sup>TH</sup> STREETS.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 24, 1999

Members present: Bayer, Schwinn, Bleed, Wallace and Hopkins; Duvall, Steward, Krieser and Wilson absent.

Proponents

**1. Terri Dolezal of Aliant Cellular** testified in support of the application. Aliant is proposing to locate a cellular tower site which includes a 12 x 20 equipment shelter and a monopole tower 100' tall with 6' lightning rod on property just southeast of 40<sup>th</sup> & Arbor.

After filing this application, the applicant was informed that this site is in the Capitol View Corridor. They have met one time with the Nebraska Capitol Environs Commission and they asked for additional information. The Capitol Environs Commission will not take action on this application until tomorrow.

Ms. Dolezal stated that when they found out the site was in the Capitol View corridor, they were surprised because of the tree cover in the area. She displayed some photos of the view from the base of the tower looking towards the Interstate.

Commissioner Bleed interrupted the presentation and suggested that it would be in the applicant's better interest to ask for a deferral until the report is made by the Capitol Environs Commission. Personally, Bleed would defer to the staff's recommendation of denial until she gets a recommendation from Capitol Environs. Ms. Dolezal was concerned about being able to speak at the Capitol Environs Commission. It's an open meeting but

this application is not on their agenda. Bayer suggested that if she is not allowed to speak, that would make a difference to him.

Bleed moved to defer with continued public hearing and administrative action scheduled for March 10, 1999, seconded by Schwinn and carried 5-0: Bayer, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Duvall, Steward, Krieser and Wilson absent.

**ITEMS NOT APPEARING ON THE AGENDA**

The Clerk requested the Commission take action upon a written request by J. Michael Rierden to defer hearing on **Amendment #1a pursuant to the 1999 Comprehensive Plan Annual Review, Change of Zone No. 3149, Special Permit No. 1744 and Preliminary Plat No. 98026, Lindenwood Park; and Amendment #1b and Amendment #19 pursuant to the 1999 Comprehensive Plan Annual Review** until March 24, 1999. So moved by Bayer, seconded by Bleed and carried 5-0: Bayer, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Duvall, Steward, Krieser and Wilson absent.

**COUNTY CHANGE OF ZONE NO. 183  
FROM AG AGRICULTURAL TO B BUSINESS  
ON PROPERTY GENERALLY LOCATED  
SOUTH AND WEST OF N.W. 70<sup>TH</sup> & AGNEW ROAD.**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 24, 1999

Members present: Bayer, Schwinn, Bleed, Wallace and Hopkins; Duvall, Steward, Krieser and Wilson absent.

Mike DeKalb of Planning staff submitted one letter in support and one letter in opposition.

Schwinn moved approval, seconded by Bayer.

Bleed commented that there are some issues which, by the letter of the law so to speak, give her an understanding of the staff recommendation of denial, but, on the other hand, this piece of property is fairly close to Agnew and it is also something that may not be appropriate next to some people's back yards. However, it is somewhat set away from the town site. She does not know that this use will increase traffic that much. She is concerned about water in this area; however, this is an operation that does not depend a great deal on the availability of water. She thinks it makes good sense. There is a certain amount of "owner beware" in terms of water but she believes it makes sense to have this kind of facility in the area.

Motion to approve carried 5-0: Bayer, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Duvall, Steward, Krieser and Wilson absent.

**OTHER BUSINESS**

**MISCELLANEOUS NO. 99003**  
**AMENDMENT TO THE PLANNING COMMISSION**  
**RULES AND REGULATIONS CONCERNING**  
**ABSTENTION VOTES.**

**ACTION BY PLANNING COMMISSION:**

February 24, 1999

Members present: Bayer, Schwinn, Bleed, Wallace and Hopkins; Duvall, Steward, Krieser and Wilson absent.

Bleed moved approval, seconded by Bayer.

Bayer explained that the subcommittee of Joe Wilson, Gerry Krieser and Russ Bayer met with Cecil Steward regarding his request that the Planning Commission bylaws provide the ability to abstain from voting in certain circumstances. The proposed language was developed by the City Attorney's office. A Commissioner will not be allowed to abstain from voting if it means it will delay a decision, but it does provide the ability to abstain when talking about approving minutes of a meeting that someone may have not attended and personal as opposed to financial conflicts.

Wallace believes this language is much needed for the Commissioners and the public so that none of us feel absolved from doing things in the community.

Motion for approval carried 5-0: Bayer, Schwinn, Bleed, Wallace and Hopkins voting 'yes'; Duvall, Steward, Krieser and Wilson absent.

There being no further business, the meeting was adjourned at 5:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 10, 1999.