

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, February 20, 2002, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Linda Hunter, Gerry Krieser, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor (Mary Bills and Steve Duvall absent); Kathleen, Sellman, Ray Hill, Mike DeKalb, Jason Reynolds, Becky Horner, Brian Will, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held February 6, 2002. Krieser moved to approve the minutes, seconded by Carlson and carried 5-0: Carlson, Krieser, Newman, Schwinn and Steward voting 'yes'; Hunter abstaining; Bills, Duvall and Taylor absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

February 20, 2002

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1957; SPECIAL PERMIT NO. 1958; and FINAL PLAT NO. 98006, DOLEZAL 2ND ADDITION.**

Krieser moved to approve the Consent Agenda, seconded by Newman and carried 6-0: Carlson, Hunter, Krieser, Newman, Schwinn and Steward voting 'yes'; Bills, Duvall and Taylor absent.

Note: This is final action on Special Permit No. 1957, Special Permit No. 1958 and the Dolezal 2nd Addition Final Plat No. 98006, 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. 3350
and
CHANGE OF ZONE NO. 3352
TEXT AMENDMENTS TO TITLE 27
OF THE LINCOLN MUNICIPAL CODE
REGARDING THE STORAGE OF VEHICLES
FOR SALE IN THE FRONT YARD SETBACK
IN THE H-2, H-3 AND I-2 ZONING DISTRICTS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 20, 2002

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

Staff recommendation: Approval of Change of Zone No. 3350, with revisions; and denial of Change of Zone No. 3352.

Brian Will of Planning staff submitted a letter from Ron Sisel in opposition to both applications.

1. Brian Will also advised that the staff has had several conversations with the applicant for Change of Zone No. 3352 and has met with the Lincoln Independent Auto Dealers Association and auto dealers on West "O" Street. At this time, the staff would propose a two week deferral. Will believes that a consensus among all parties has been reached and the intent of the two-week deferral is to bring the proposal forward as one ordinance which everyone has agreed upon.

2. Bill Austin, attorney for the applicants for Change of Zone No. 3352, acknowledged that he has spoken with the staff and that they have had several meetings in an attempt to agree upon a compromised proposal. He, too, believes they are in agreement and a two-week delay would allow the proposal to be put into a complete form for the Planning Commission review.

Carlson moved to defer, with continued public hearing and administrative action on March 6, 2002, seconded by Newman.

Hunter inquired about the fence that was put on the west side of the Red Star Auto property. Is it legal to put that fence that close to the street? Will indicated that it is legal for that zoning district. Hunter stated that the owner of Popeye's believes this fence was installed out of spite.

Steward suggested that in revisions to the text, the staff might consider using the word “permitted” as opposed to “utilized” on page 4, line 6 (v). Will concurred, advising that there will be some further text changes as this legislation comes back on March 6th. He agreed that there are some inconsistencies and grammatical changes that need to be made. In fact, the paragraph that Steward was referring to will be deleted in its entirety on the revised ordinance.

Newman noted that in the particular case on West “O” Street, Red Star Auto has double frontage on “P” and “O”. Will this text amendment address situations like that? Will indicated that it would not. The intent of this proposal was to come up with standards for front yards only. If there is a concern beyond that, it could be done, but the intent here is to develop setbacks and landscape standards for any front yard in these zoning districts. He agreed that there are some unique circumstances but there are no provisions in this legislation for anything other than the front yard.

Newman also pointed out that an auto dealer on East “O” Street has cars parked right up to the sidewalk with every single hood open. Does this legislation apply to all auto dealerships? Will explained that this legislation would apply to those dealerships within the H-2, H-3 and I-2 zoning districts. Austin suggested that it may be necessary to investigate whether or not any of those individuals have grandfather rights out on East “O” Street because the zoning was just changed in 1979. The grandfather rights continue unless the use is discontinued. Will further explained that this ordinance provides that those uses that are lawfully established will become nonconforming and will be allowed to continue to exist.

Austin believes they can resolve the fence issue at Popeye’s.

Opposition

1. Craig Groat testified in opposition. He recited from Standard & Poors indicating that economic development would be better off by focusing on improving quality of life, and aesthetics are the primary element of quality of life. Our zoning regulations were put in many years ago when we had business people that felt attached to our city and were concerned about our city. It seems now these days that too many of our business people are more concerned about their individual goals as opposed to the community. He referred to Mistle Chevrolet as a bad example. Our national economy is changing. The Educational Testing Service study shows change from light industrial to an office economy. We need to bring quality employers into our city. Because of some of things that have been done by our business community, we have come down to having a second class city. Something like this (parking autos for sale in the front yard) puts another nail in the coffin of our city becoming a quality city. Laws play a vital role in maintaining a social order. He does not believe that the laws should be allowed to be violated or changed because everyone else is violating them.

2. **Ron Sisel**, 1010 West "P" Street, testified in opposition. He wants to know the cost to purchase accessory right-of-way from the city. What most concerns him is the fact that this was such a back door sequence of events without public notice. Sisel purports that a sign must be posted for 30 days on every site that will be affected by this text amendment. This is the only way you are going to get any public input. You're trying to get this setback for some minimal landscaping. The waiver is still in place and they are all writing their application so that they don't have to do any landscaping. 60% landscaping is minimal, amounting to half a dozen bushes and a couple flower beds. What kind of precedent is being set when there is a mass violation? It is time to stop giving away public rights and safety to businesses with little or nothing in return.

Sisel submitted photographs of parking lot lights that are mounted on West "O" Street that are not properly installed and are not effective. He wants lighting concessions from these car lots. He suggested that we must trade setbacks for some type of lighting controls that will be an immediate positive effect for those who live near these sites.

These applications will have continued public hearing on March 6, 2002.

CHANGE OF ZONE NO. 3356
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT HOMESTEAD EXPRESSWAY (HIGHWAY 77)
AND BENNET ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 20, 2002

Members present: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

Planning staff recommendation: Denial.

Mike DeKalb of Planning staff submitted two letters in opposition with concerns about water supply, affect on water table, electrical source, traffic flow, access from the proposed area and not being in conformance with the Comprehensive Plan.

Proponents

1. **Twyla Lidolph**, 5010 Sugar Creek Road, the applicant and owner of this 140 acres between Bennet Road and Wittstruck Road, presented the application. She advised that the property has been in the CRP farm program for one 10-year period and last year she applied for another 10 years. Therefore, she has no immediate development plans for

another 9 years. The proposed South Bypass will come within 1.5 miles of the farm and Lidolph thought this would be a good time to get the property ready for residential use in the future.

Steward inquired about the reference to the bypass. Why does this make the applicant believe the AGR zoning is necessary? Lidolph suggested that there will be a lot of traffic out there with the bypass and she believes there will thus be a lot of new residential areas. There are already seven new homes along Hwy 77.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Steward moved to deny, seconded by Hunter.

Steward believes that this is a speculative condition, and the owner has admitted this. Steward questions both the timing and the necessity. And, in particular, relative to the new Comprehensive Plan work that is underway and being done, there doesn't seem to be any urgency. He believes this application should wait at least until that new Comprehensive Plan is in the public domain.

Carlson believes that the staff has done a good job of analyzing this application in the staff report. In addition, it is not in conformance with the Comprehensive Plan.

Motion to deny carried 6-1: Newman, Hunter, Steward, Taylor, Carlson and Schwinn voting 'yes'; Krieser voting 'no'; Bills and Duvall absent.

COUNTY CHANGE OF ZONE NO. 207
AND
CITY CHANGE OF ZONE NO. 3357
FROM AG AGRICULTURAL TO
AGR AGRICULTURAL RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT W. DENTON ROAD & S.W. 56TH STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION: February 20, 2002

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

Staff recommendation: Deferral until an associated preliminary plat is brought forward.

Proponents

1. **Twyla Lidolph** presented the application. She and her sister own the 235+ acres between S.W. 40th and S.W. 56th along Denton Road. The southwest 80 acres face the Denton Road. There are a lot of acreages to the south, east and west of the farm. They believe this is a good time to change the zoning from AG to AGR which would allow 3-5 acre lots rather than 20 acre lots in the future. The southwest 80 acres facing the Denton Road has possibilities for acreages as well as potential for a church and school in the next 5-10 years. They do not have a plat drawn up at this time.

Schwinn inquired as to why the applicants have not pursued platting the property. Lidolph indicated that she did not realize that would be necessary at this time. Schwinn explained that typically, the Planning Commission prefers to see a plat submitted along with the change of zone. We don't like to do speculative zoning changes. If the Planning Commission were to defer, Schwinn inquired whether the applicants would pursue getting this area platted. Lidolph stated that they would not have a definite plat at this time, but they would at least be able to provide an idea of the water situation and the access. They would only plat the 80 acres. Schwinn stated that the Commission will want assurance that the applicants will move forward with the platting if the change of zone is deferred. Lidolph stated that she would need a better understanding of how much detail is needed in order to make that commitment. Schwinn advised that they would need to show the roads, design, drainage, etc. Lidolph was not sure they wanted to pursue that much detail at this time.

There was no testimony in opposition.

Schwinn wondered whether the Planning Commission would be better off denying this application rather than placing it on the pending list. Mike DeKalb of the Planning staff pointed out, as stated in the staff report, that there are a lot of circumstances that support this change of zone. The issues raised by the County Engineer and how to treat the wooded area and floodplain are questions. If the Commission defers, it will remain on the Planning Commission's pending list until an associated preliminary plat is submitted and comes forward. If the Commission denies the application, the applicants cannot reapply for one year.

Carlson noted that the property is designated AG in the current Comprehensive Plan, but it is close to some low density residential. DeKalb concurred.

Carlson inquired whether the property is designated as low density residential in the draft new Comprehensive Plan. DeKalb explained that the proposed new Comprehensive Plan draft shows those areas that are platted or zoned as being within the 3-mile area. This particular property is neither shown, platted nor currently zoned, so it would be shown as AG and would be in Tier III. If this change of zone is approved, the property would be

reflected in the new Comprehensive Plan as low density residential, or the Commission could designate that it be shown in the new Comprehensive Plan.

Carlson moved to place these applications on pending until such time as an associated preliminary plat is submitted, seconded by Krieser.

Steward is opposed to this action. Again, this is speculative. Not only speculative in terms of the future transportation planning now, it is speculative against the prospect of the new Comprehensive Plan organizing a different strategy for acreages. If we pass this, it sets a very difficult precedent over the next two or three weeks of property owners rushing to protect themselves against what might happen with the new Comprehensive Plan. This is the wrong way to do Planning and he will vote against deferral.

Schwinn stated that he would ordinarily agree with Steward's comments, but since this property abuts acreages on three out of six sides, maybe it is something the Comprehensive Plan Committee should be looking at in terms of the Comprehensive Plan in this area.

Hunter agreed with Steward. She would rather see the change of zone come forward with a proposed preliminary plat.

Motion to defer failed 3-4: Krieser, Carlson and Schwinn voting 'yes'; Newman, Hunter, Steward and Taylor voting 'no'; Bills and Duvall absent.

Public hearing was closed.

COUNTY CHANGE OF ZONE NO. 207

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Steward moved to deny, seconded by Hunter and carried 5-2: Newman, Hunter, Steward, Taylor and Carlson voting 'yes'; Krieser and Schwinn voting 'no'; Bills and Duvall absent.

CHANGE OF ZONE NO. 3357

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Steward moved to deny, seconded by Newman and carried 5-2: Newman, Hunter, Steward, Taylor and Carlson voting 'yes'; Krieser and Schwinn voting 'no'; Bills and Duvall absent.

**SPECIAL PERMIT NO. 1939A,
AMENDMENT TO THE NEBRASKA HEART HOSPITAL
ON PROPERTY GENERALLY LOCATED
AT SOUTH 91ST STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 20, 2002

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

Staff recommendation: Conditional approval.

Proponents

1. **Mark Hunzeker** appeared on behalf of Nebraska Heart Hospital. This is a “tidy-up” of the previously approved special permit. In the process of negotiating the final agreement between Andermatt and the Heart Hospital, they have slightly modified the boundaries of the special permit and the legal description of the property. The waiver is to permit the platting and dedication of Heritage Lakes Drive along the north side of the property without all of the property north of Heritage Lakes Drive having to be brought in as part of the plat. The location of the buildings will not change from what was originally approved. They have made one somewhat substantive change to the previous drainage; that is, there is only one access point on 91st Street, which was the Public Works preference in the first place. In looking at the layout of the site, it seemed to make sense to have just the one access in rearranging the boundaries.

Hunzeker agreed with the conditions of approval set forth in the staff report.

Hunter inquired whether this is the location that was going to be doing transplant transports with a helicopter pad. Or, is it more than just a transplant location? Hunzeker suggested that the previous reference to a transplant location was Hunzeker’s error. There is a separate licensing provision that applies to being a transplant facility. This has never been simply that. It has always been a heart hospital. It is for catheter procedures, bypass procedures, and all manner of heart treatment. If it ever becomes licensed to do transplants, they would do them there, but it is not something that is going to be a large part of the operation. Hunter recalled a conversation from the neighbors about helicopters flying in there. Hunzeker agreed that there will be some helicopter traffic and that is why they have located the hospital away from the residential.

Steward asked Hunzeker to remind him of the adjacencies. What happens in the crescent shape parcel adjacent to 91st Street? Hunzeker explained that 91st Street runs along the west side of the property. Heritage Lakes Drive is on the north side of the hospital property and runs across 91st Street and into the shopping center. The area to the north of Heritage Lakes Drive is likely to become a multi-family complex on about 12 to 14 acres

immediately north of the hospital. East of that the Commission will soon be seeing a preliminary plat including some townhomes and single family east of the Heart Hospital itself, east of the boundaries of the special permit. Eider Court is going to be a residential street that will have single family homes fronting on it and backing up to the area that will likely have some short stay townhouse type facilities on the Heart Hospital property in the future. The area immediately south will have a detention cell which will be a permanent pool. It will be a real attractive setting for both the residential and the hospital.

Carlson inquired about the approved preliminary plat. Hunzeker clarified that there is not an approved preliminary plat for the property east of 91st Street. There is not a Heritage Lakes preliminary plat that has been approved. That is the purpose of the waiver—to be able to dedicate and construct Heritage Lakes Drive as part of this special permit rather than going through an entire plat process on the property immediately north. We have not designed the access points or circulation pattern on the north side of Heritage Lakes Drive. That would have been a considerable amount of engineering work that would have been wasted.

Hunzeker then explained the differences from the approved special permit. The eastern boundary of the site has changed by a few feet. Some of the angles along the east boundary have changed. There is a different alignment of the north and south boundary to reflect minor differences that came up as they were finalizing the transfer of the site from Andermatt to the Heart Hospital. Hunzeker explained the changes to access and a very slight adjustment to the parking lots.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Hunter moved to approve the staff recommendation of conditional approval, as set forth in the staff report dated February 4, 2002, seconded by Carlson and carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

PRELIMINARY PLAT NO. 01019,
EDENTON NORTH 6TH ADDITION,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 76TH STREET AND SHIRL DRIVE.

PUBLIC HEARING BEFORE PLANNING COMMISSION: February 20, 2002

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

Staff recommendation: Conditional approval.

Proponents

1. **Michael Rierden** appeared on behalf of the applicant and agreed with all conditions of approval as set forth in the staff report, except Condition #1.1.6, which requires a pedestrian way easement in Block 4. Rierden requested that Condition #1.1.6 be deleted. Staff believes this would provide better pedestrian access to the school to the south, to the open area, and to the bike path to the south. The applicant disagrees with that rationale. This pedestrian way easement does not improve a pedestrian access to the south to the school. Outlot B is not a park area—it is predominantly a drainage area and is maintained as a drainage area. Rierden purports that placing this pedestrian way easement would render Lots 22 and 23 unbuildable. Rierden further pointed out that through the years, the Planning Commission has heard about the problems with pedestrian right-of-way easements. People do not discover them until they've purchased the property and begin to build. The problem boils down to marketability. People don't like sidewalks going by their bedroom windows. Fences would not be attractive to the subdivision. It reduces the buildable size of the lot. Rierden pointed out that his client has provided the pedestrian way easements in circumstances where they are needed, but in this situation Rierden does not see where it improves the pedestrian access to the points in the south indicated in the staff report.

There was no testimony in opposition.

Staff questions

Carlson asked staff to respond to the request to delete the pedestrian way easement. Jason Reynolds of Planning staff explained that the block length exceeds 1,000 feet. The pedestrian way easement would provide better access to the trail running along the eastern side of the property to the open space devoted partially to drainage. This easement is a requirement of the subdivision ordinance due to the block length.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Newman moved to approve the staff recommendation of conditional approval, as set forth in the staff report dated February 6, 2002, seconded by Carlson.

Newman lives in a neighborhood where a pedestrian easement was not put in and children are like water—they will go through properties wherever they feel like it. She thinks the pedestrian easement is necessary.

Motion for conditional approval carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent. The Commission did not delete Condition #1.1.6.

ANNEXATION NO. 01008;
CHANGE OF ZONE NO. 3195;
CHANGE OF ZONE NO. 3253;
AND
USE PERMIT NO. 133,
ON PROPERTY GENERALLY LOCATED
AT SO. CODDINGTON AVENUE AND WEST VAN DORN STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 20, 2002

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

Jason Reynolds submitted a written request from Kent Seacrest requesting a two-week deferral to discuss some land use options with the staff.

Steward moved to defer, with continued public hearing and administrative action scheduled for March 6, 2002, seconded by Carlson and carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

ANNEXATION NO. 01007;
CHANGE OF ZONE NO. 3338;
CHANGE OF ZONE NO. 3339;
SPECIAL PERMIT NO. 1930, THOMPSON CREEK
COMMUNITY UNIT PLAN;
PRELIMINARY PLAT NO. 01015, THOMPSON CREEK;
and
USE PERMIT NO. 141,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 56TH STREET AND UNION HILL ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 20, 2002

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

Jason Reynolds of Planning staff submitted a revised conceptual layout for the live-work unit area and recommended additional conditions on the use permit and special permit accepting this conceptual layout. The special permit should have a new Condition #1.1.10: "Revise the street layout near the live-work units in accordance with Exhibit "A"

submitted on February 20, 2002, subject to review and approval by city departments.” The same language should be added as new Condition #1.1.14 on the use permit.

Proponents

1. Mark Hunzeker appeared on behalf of **Hampton Development Services**. He agreed with the new condition relative to revising the live-work area. He believes this is a design that was arrived at by the applicant in an effort to address the concerns of the staff of having these live-work units face one another and provide for the 90 degree parking in front of the units; and it resolves the issue of north/south access from the main road to the road running parallel to the north. This is a good solution. It ends up doing everything that the staff was attempting to accomplish with the previous conditions. It actually ends up costing a couple of units, but the net result is that we end up with more usable space to the west for the office uses.

Hunzeker addressed the conditions of approval dated 1/31/02. Condition #1.1.10 on the preliminary plat still requires revision to the sewer system so that it does not exceed the maximum depth. Hunzeker reiterated from the last hearing the need to retain the existing contours in the project to the extent possible. Hunzeker agreed that the project is in violation of the standard by “a little bit over a short distance”; however, he reiterated the request to delete this condition so that they do not have to grade down the hill to meet sewer depths. They are trying very hard to maintain the topography in this area to retain the drainageways. They need this flexibility.

Hunzeker also suggested that Condition #1.1.14 of the preliminary plat regarding the 90 degree parking may now be deleted based upon the revised layout of the live-work units submitted today.

Referring to the community unit plan special permit, Hunzeker noted that Condition #1.1.7 still requires a connection between Union Hill Road from Greycliff Drive to Garrison Drive. Union Hill Road comes into the site and it T’s into Greycliff. The requirement is to connect Greycliff and Garrison on the theory that between Thompson Creek Boulevard and someplace south of our property line is the 1320’ magic number that we can’t exceed for block length. “We are at 850’ and we think that is sufficient under the design standards”. The developer does not wish to make that connection. The city requires not more than a 3% platform grade as you make intersections with the street. To make that 3% platform grade between these two streets would be very difficult and would require a very significant revision to the grading plan. It would really flatten out what is now a significant grade. In addition, there is more than enough room from the south boundary of our property to a point where there would ever be a street to the south to make lots face north/south on a road that could be brought in from 56th. If LES does not declare their property surplus and allow the property to the south to be developed, then this discussion is moot because there is only 45’ from our south property line to the LES parcel.

Hunzeker acknowledged that the developer does not have a signed annexation agreement; however, he requested that the Commission act on these applications today and move them forward to the City Council. Hunzeker believes the annexation agreement will be worked out between now and the time the rest of these applications are ready to be scheduled on the Council agenda. Hunzeker stated that they only received the Public Works memorandum yesterday regarding the annexation agreement and he does not believe they are that far apart in terms of reaching agreement. The Public Works memo is dated 2/11/02 and was not forwarded to Hunzeker until 2/19/02. Hunzeker urged the Commission to forward a recommendation of approval, subject to an annexation agreement prior to City Council action. Given the length of time it is presently taking to get approval of EO's and plans for construction of streets, sewer and water, Hunzeker believes they are virtually at the limit now in terms of getting streets in this summer. The redesign of the live-work units has to be reviewed and approved by staff before the application gets scheduled at Council anyway.

Hunter inquired about the office building design. Hunzeker stated that they do not have the office building design available at this time.

Carlson asked the applicant to talk about the permissible traffic turn motions at Thompson Creek and Union Hill. Hunzeker stated that there would be left turns in at Thompson Creek from 56th. Southbound traffic would be able to turn left in at Thompson Creek. Westbound traffic would not be able to turn left out onto 56th. In terms of getting into the eastern part of the subdivision, Thompson Creek will be the main access.

2. Kent Seacrest appeared on behalf of **Ridge Development Company** and **Southview, Inc.**, the property owners on the south edge of this tract, with four proposed roads coming into their site. They have been trying to resolve this. This is a unique situation with the real estate owned by LES that is no longer going to be a substation. There are streets coming right into the LES tract. Seacrest's clients have asked LES to declare that property surplus and he believes that declaration of surplus is in process. The dilemma is the LES tract and in order for the block length issue to work, his clients need to acquire the LES tract. If it is not surplus, Seacrest's clients would have a problem. Another dilemma is the LES easement (power line) which is right on the edge of the applicant's property and entirely on the Ridge Development property. Seacrest's clients get to pave four streets under that 80' wide LES easement. Because of "new urbanism", Seacrest understands the connectivity issue. But the dilemma for his clients is with the extra cost of the streets, they have to be sure those streets work.

Seacrest advised that he met with staff several months ago and has met with the applicant. They all discussed the block length issue as well as getting the proposed four roads underneath the power line. Seacrest has been informed that LES says they can get those roads to go underneath the power line. However, Seacrest submitted a proposed amendment to Condition #1.1.1 of the preliminary plat to make sure that happens:

- 1.0.1 Easements requested by L.E.S. The Preliminary Plat shows 6 roadways on the south edge of the Preliminary Plat with proposed roadway extensions through the L.E.S. transmission line easement. Revise the Preliminary Plat to include the cross sections of the road extension right-of-ways to show the road extensions and road right-of-ways in the L.E.S. transmission line easement to (i) be free of existing power poles and ground structures, (ii) meet transmission wire clearance standards and (iii) intersect the south edge of the L.E.S. transmission line easement at a ninety degree angle. Any construction or grade changes in the L.E.S. transmission line easement located along the south side of the Preliminary Plat are subject to L.E.S. and the abutting property owner approvals and must be in accordance with L.E.S. design and safety standards.

The issue is the location of the block length. His clients will need a waiver and if they don't get the waiver, they will have an unusual layout. Seacrest requested that the staff recommendation be approved as opposed to the request by the applicant to delete Condition #1.1.7 on the special permit. Seacrest also requested that the streets coming to LES be at 90 degrees because otherwise it creates insufficient lots for his client. Seacrest supports the connection of Union Hill Road from Greycliff Drive to Garrison Drive.

Steward was curious about the connectivity between this applicant's proposal and that of Seacrest's clients in terms of topography. If the angle streets work in a topographical circumstance with minimum cut and fill, why does the topography change that dramatically between the two? On a flat surface, Steward would agree that the angles are problematic. Mark Palmer of Olsson Associates stated that the topography for those streets was running with the channel. That channel dies out on his client's property and there is one existing pond. The topography seriously changes. The streets do not serve much purpose on the angle for where the storm drainage needs to go. Steward is not convinced that the two road patterns can't be worked out together so that the Thompson Creek pattern is determinant by reason of being first and the Seacrest clients then have some responsibility to adjust. Seacrest's response was that there are standards that say lot lines are supposed to be parallel to roads.

There was no testimony in opposition.

Staff questions

Steward commented that we have come back to the point of trade-off between extreme or relatively unreasonable sewer depth and unreasonable or undesirable grading conditions on the natural topography. Steward complimented the developer for being more sensitive than we often are in this community about topography changes. Are we in an impossible situation by withdrawing this condition on sewer depth? Dennis Bartels of Public Works

suggested that the other option that was not mentioned is the timing question. When the rest of the Campbell property is developed, the entire area could be served with normal depth sewer. Grading the hill off is not the only way to solve the problem.

Bartels further suggested that if the depth standard is waived, the problem is that it is immediately adjacent to a street. If we have to get to the sanitary sewer pipe, we would probably lose the pavement and might get into the yards to get down to that depth. Federal law requires us to have an engineer trench for repairs when we get below 20' deep for safety. It is difficult for Public Works to get below 20' with the equipment that they have. He acknowledged that we do have sewers that are at that depth so he's not saying we can't work with that situation, but his recommendation is coming from the fact that he doesn't believe it is necessary in this situation.

Steward inquired about a general estimate of the availability of the other sewer service. Bartels suggested that in the normal course of events, it would wait until the development of the Campbell property. There is also a piece from Pine Lake Road north through some acreage property that would have to be built. In theory, it could be built right now but we'd have to go through other people's property and either buy it or condemn easements to make it happen.

With regard to the platforms of the streets, Schwinn inquired as to the angle of the grade of that street. Bartels stated that he has not seen a profile and he has not tried to compute it himself.

Schwinn asked staff to discuss the annexation agreement. Jason Reynolds advised that there is no annexation agreement at this time. The memo referred to by the applicant dated 2/11/02 was received by the Planning Department on 2/19/02 as well. There are a number of requirements by Public Works as to the developer's contribution and the City subsidy. This area is in Phase II of the Comprehensive Plan where development should be neither encouraged nor discouraged. The developer had some disagreements with the conditions that Public Works is laying out for the annexation agreement. The staff continues to recommend that the annexation be deferred until such time as there is an annexation agreement. Schwinn wondered about proceeding with the rest of the applications without the annexation. Reynolds pointed out that a condition of approval on most of the other applications is approval of the annexation. Based upon the applicant's testimony, Reynolds concurred that they are close to reaching an agreement.

Rick Peo, Law Department, believes that if the other items go forward to Council prior to the annexation, they would not be adopted or passed by City Council until an annexation can be approved. Upon further discussion, Reynolds was confident that the annexation will catch up with the rest of the applications. It depends on how quickly the plans are revised and submitted to staff for review.

At the request of Carlson, Bartels further explained the sewer issue and how it would be built. It is not a question of transferring sewage out of a drainage basin.

If the sewer depth is not waived, Schwinn wanted to know what portion of this development would have to wait until the other sewer comes through. Based on the topography and the street grades as submitted, Bartels stated that the high point of Thompson Creek is approximately at the intersection of Greycliff Drive and Thompson Creek. In general, everything west of that point would have to wait, including the commercial lot and a couple of office lots. The work-live units would probably also not be able to served; however, Bartels was not sure where the limit might be with the new work-live layout as submitted today.

With regard to the connection of Union Hill Road from Greycliff Drive, Steward wondered whether some sort of caveat could be placed on this condition based upon the LES property decision. Reynolds believes if the LES property continues to be in LES ownership, it is actually more problematic. Steward believes that this property owner has a real problem if it continues to be held by LES. Reynolds agreed that the Commission could put some sort of contingency on that condition if they so desired.

Again, with regard to the sewer depth, Schwinn wondered about granting the waiver now, but when the other sewer line is available, the 30' gets abandoned at that point and they then are required to connect to the new sewer line. Bartel's response was that if the deeper sewer is allowed, then the sewer from the Campbell property won't have to be built any further south. There is nothing south of the Thompson Creek plat or west of 56th that will require the Campbell sewer. The last property that will need it is this plat.

Further discussing the street connection of Union Hill Road from Greycliff Drive to Garrison Drive, Bartels stated that the grade difference is at the south property line. Looking at the projected street grades, Greycliff and Garrison would be approximately 300 feet apart with about a 14' grade, which would be a 4.5% slope as compared to the 3% standard. The grades could be adjusted and might be different as you move further north. Bartels acknowledged that there are some 5, 6, 7 and 8 percent street grades in the community; however, the design standard is 3%. In order to accomplish this, it might take a combination of some adjustment of the street grades and a waiver of that 3%.

Response by the Applicant

Hunzeker further discussed the sewer depth waiver on the map. This project cannot be done without this waiver because we do not know when the Campbell property is going to develop. Hunzeker pointed out that this plan was put together with Campbells and the property owner to the south through a long series of meetings with a new urbanism planner. The street layouts and everything that is shown were part of that overall plan and we thought it had been agreed upon by both other participants in this process. If we don't

have the ability to waive the sewer depth, we will have to regrade the property. This is really counterproductive. The only other alternative would be to leave out one of the things we were excited about in the initial phase—the dance studio, gym school facility that we thought was a nice addition to the new urbanism feel of this entire project. We really need that sewer depth waiver. We think it is justified. He could name two dozen locations where there are sewers much deeper for much longer distance. Here we are trying to respect the topography and he does not understand the logic of not allowing this waiver.

With respect to the road and block length issue, this applicant's block from Thompson Creek Blvd. to the south end of our property is 850'. The maximum block length is 1320'. You don't get to 1320' until you get 120' south of the south line of the LES property. It is very possible to bring in streets that run east and west. The road will never be built if LES doesn't sell that property. At what point do you make up a new rule just because somebody asks you to? We are 850', not 1320'. Besides that, there is pedestrian access along the power line easement that runs parallel to the south line. There will be a new bike trail in that LES easement.

With respect to Seacrest's proposed amendment, Hunzeker commented that this developer is required to project grades and they have done that. The Thompson Creek grades go under the LES power line just fine. The standards as proposed by Seacrest's amendment do not exist anywhere. This developer is willing to work with the property owner to the south, but this is not a standard this developer is willing to adhere to nor does it exist in any city ordinance or design standard. Hunzeker requested that the Seacrest amendment not be adopted. He is confident that the Thompson Creek grades are going to be fine. Yes, they can stop their grading north of the property line and stop their plat north of the property line, but that is not a helpful thing to do because those streets need to be extended and there needs to be grading that happens right on the property line where both property owners need to cooperate.

Steward suggested that in a perfect world, because Hunzeker has acknowledged cooperation with the property owners to the north and to the south, all three of these would have come to the Commission together because they have been conceived as a related concept. It would seem that this is one of the problems with the mixed use so-called "new urbanism" approach--it will tend always to be bigger than a single developer is prepared to match. It seems like we're faced with a couple of distinct strategies. One is to do certain things that imply if conditions go in one way north of you and south of you, then your response will be thus and so (some contingency conditions). Another response would be to say, if this really is a coordinated plan, then we ought to coordinate it at this level. That's not fair to the first one who is up here. The third response is to say, you're here first and you've met all the reasonable existing design standards and therefore everybody is going to have to respond to your pattern. Are there any other options? Hunzeker does not disagree that it would be nice if this kind of project could all be in a

neat tidy package that came in all at once. That's almost always the case. One of the problems you always run into is that when you are trying to implement a good plan you have to deal with multiple ownerships and existing uses and existing topography. In this case, the primary user of land other than just for agriculture, happens to also be the owner who has closest access to the sewer, and they are not prepared to move forward with reuse of their property at this time. We're not talking about taking sewer outside of a natural drainage basin. We're all in the same drainage basin.

As to the property to the south, Hunzeker stated that this developer really has no control over the LES property—that's a decision that LES has to make, although we understand that they are in the process of declaring that property surplus and will put it out for public bid when that process is complete. Hunzeker's client has no interest in the LES property. We don't know who will own it, but if you look at the ownership pattern, it has 56th on the west and is then surrounded by property owned by Seacrest's client and his client is the logical buyer. Nobody has a better ability to incorporate that parcel into a project than Seacrest's client. If LES decides not to declare it surplus and retain ownership, then the issue of the block length goes away because the street never gets extended. There would be a similar block length issue then on the two streets to the east. It's either solved by the sale and development of the LES property, or it's not.

Hunzeker believes the annexation will catch up with the rest of the project. There are ways to accomplish it if there is a will to do so.

Carlson asked the City Attorney to clarify on the abnormality of approving the application without the annexation agreement. Rick Peo of the City Law Department stated that the annexation agreement will be the basis of the city recommending approval or denial of the annexation itself. If we reach agreement, then the city will be recommend approval of the annexation. If we cannot resolve how to pay for the infrastructure improvements, the staff would recommend denial of the annexation and it would be the decision of the City Council to determine who should pay for what. The Planning Commission does not have a role on the annexation agreement itself. It becomes attached to the annexation at Council level. The other applications are contingent upon the annexation being approved. They won't be adopted without the annexation. The only basis for deferral of the annexation is really for the city staff to be able to make a recommendation based on the agreement between the parties. If we don't agree, the staff would recommend denial of the annexation.

Carlson moved to defer the annexation for two weeks, with continued public hearing and administrative action on March 6, 2002, seconded by Newman and carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

Public hearing was closed on the remainder of the Thompson Creek applications.

CHANGE OF ZONE NO. 3338

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Carlson moved approval, subject to a revised legal description as recommended by staff, seconded by Steward and carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

CHANGE OF ZONE NO. 3339

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Carlson moved approval, subject to a revised legal description as recommended by staff, seconded by Steward and carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

SPECIAL PERMIT NO. 1930,
THOMPSON CREEK COMMUNITY UNIT PLAN.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Steward moved to approve the staff recommendation of conditional approval, as revised on January 31, 2002, adding new Condition #1.1.10 as recommended by staff during today's hearing, seconded by Newman.

Schwinn moved to amend to delete Condition #1.1.7, the street connection, seconded by Steward.

Schwinn stated that he sees the problems with the grades on the streets and he believes that in the southern area they will have to have a cross-section there before the 1320' occurs, so he thinks we can live without that.

Steward believes we are left in a situation to deal with what's in front of us. Because we don't have plats for the other two properties, we don't have any control over the LES property which may create a block length problem. Steward believes the Commission must deal with the condition that is in front of them. He has rationalized that the grade conditions are such that it makes a difficult engineering situation in addition to the who came first question.

Newman does not know where to draw the line. If someone plats something and the block length is 1000', here is the line? She agrees with Schwinn as far as the grading goes, but her problem is that she would like to see all of this come forward together.

Carlson noted that this plat does not exceed the standard. Is the circumstance such that it will be unusual or impossible or a hardship to join up with this? He is not sure the circumstances are unusual enough to ask them to do something above and beyond the rule. If the rule is insufficient, then maybe the rule needs to be adjusted.

Motion to delete Condition #1.1.7 carried 4-3: Steward, Krieser, Carlson and Schwinn voting 'yes'; Newman, Hunter and Taylor voting 'no'; Bills and Duvall absent.

Main motion for conditional approval, with revisions and with amendment deleting Condition #1.1.7, failed 4-3: Steward, Krieser, Carlson and Schwinn voting 'yes'; Newman, Hunter and Taylor voting 'no'; Bills and Duvall absent.

Hunter moved to approve the staff recommendation of conditional approval, as revised on January 31, 2002, adding Condition #1.1.10 as presented by staff at today's hearing, seconded by Newman and carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

PRELIMINARY PLAT NO. 01015, THOMPSON CREEK

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 20, 2002

Steward moved to approve the staff recommendation of conditional approval, as revised on January 31, 2002, and deleting Condition #1.1.14, seconded by Hunter.

Schwinn moved to amend to delete Condition #1.1.10 to allow the sewer to exceed the maximum depth, seconded by Carlson.

Schwinn commented that Lincoln does have 30' deep sewers and we've approved such within the last year. The commercial property will more than likely pay to do the improvements at 56th & Pine Lake Road. He believes that not allowing this waiver could blow any kind of affordable housing component out of the water. To create the balance we've become used to, he believes we should allow the sewer to go below the standardized depth.

Carlson noted that the alternative is that they will grade the hill down. The sewer is going to flow that direction. He believes this is new urbanism—it's interesting, but a little different and there is going to have to be some give and take on this kind of development. It should be easier to bring in things that fit in the future. He believes this represents that give and take.

Steward stated that he will reluctantly support the amendment because he believes it is one of the give and take. If we legitimately want these kinds of coordinated projects there have to be some new standards and guidelines discussed along with the new Comprehensive Plan. This is probably a small risk to take. He agrees with the points that

Pubic Works makes about the exception of the depth of the sewer and the safety conditions, but the fact that we have worked that out in other places gives him the confidence that we can do it. It won't be a huge risk.

Motion to amend to delete Condition #1.1.10 carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

Main motion, as amended, deleting condition #1.1.10, carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

USE PERMIT NO. 141

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 20, 2002

Steward moved to approve the staff recommendation of conditional approval, adding new Condition #1.1.14 as recommended by staff at today's hearing, seconded by Hunter and carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

Schwinn expressed appreciation to the applicant and the patience of the Commission for taking the time to understand what we were trying to do here.

**WAIVER OF DESIGN STANDARDS NO. 02001
TO WAIVE STREET PAVING, SIDEWALKS, STORM
SEWERS AND STREET TREES ON PROPERTY
GENERALLY LOCATED**

**AT WEST M STREET AND SOUTH CODDINGTON AVENUE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** February 20, 2002

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

The Clerk submitted a written request from the applicant for an additional two-week deferral.

Carlson moved to defer, with continued public hearing and administrative action scheduled for March 6, 2002, seconded by Newman and carried 7-0: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn voting 'yes'; Bills and Duvall absent.

There was no public testimony.

There being no further business, the meeting was adjourned at 3:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 6, 2002.