

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 4, 2002, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Patte Newman, Greg Schwinn, Cecil Steward, Mary Bills-Strand and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Abigail Davis, Duncan Ross, 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 August 21, 2002. Larson moved to approve the minutes, seconded by Krieser and carried 8-0: Carlson, Duvall, Krieser, Larson, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'; Newman abstaining.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

September 4, 2002

Members present: Carlson, Duvall, Krieser, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor.

The Consent agenda consisted of the following items: **COUNTY SPECIAL PERMIT NO. 196, CITY SPECIAL PERMIT NO. 1976, and CITY/COUNTY PRELIMINARY PLAT NO. 02014, VIEW POINTE NORTH; FINAL PLAT NO. 02008, PINE LAKE HEIGHTS SOUTH 4TH ADDITION; COMPREHENSIVE PLAN CONFORMANCE NO. 02008; and STREET AND ALLEY VACATION NO. 02009.**

Item No. 1.1a, County Special Permit No. 196; Item No. 1.1b, City Special Permit No. 1976; Item No. 1.1c, City/County Preliminary Plat No. 02014; and Item No. 1.3, Comprehensive Plan Conformance No. 02008, were removed from the Consent Agenda and scheduled for separate public hearing.

Newman moved to approve the remaining Consent Agenda, seconded by Steward and carried 9-0: Carlson, Duvall, Krieser, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'.

Note: This is final action on the Pine Lake Heights South 4th Addition Final Plat No. 02008, 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.

COUNTY SPECIAL PERMIT NO. 196
AND CITY SPECIAL PERMIT NO. 1976,
VIEW POINTE NORTH COMMUNITY UNIT PLAN,
and
CITY/COUNTY PRELIMINARY PLAT NO. 02014,
VIEW POINTE NORTH,
ON PROPERTY GENERALLY LOCATED AT
NORTH 70TH STREET AND WAVERLY ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing.

Proponents

1. Lyle Loth of ESP appeared on behalf of the applicant, **Willard Giebenrath** and agreed with the staff recommendation and all conditions of approval. The owner is prepared to proceed with the project as soon as possible.

Opposition

1. Julie Burns, 12909 No. 70th, testified in opposition. Her property is located directly north and her home is approximately 100 yards north of the adjoining property line for the proposed development. She has reviewed all of the information and has serious concerns regarding groundwater contamination and lack of water quality and quantity in this area. It is well documented throughout the Comprehensive Plan and the numerous related studies that serious concerns revolve around the water quality and quantity in the northern and northwest portions of the County. Salt water intrusion and groundwater contamination have been documented in northern and northwestern Lancaster County. As indicated in the National Resources GIS report, the encroachment of salt water and fresh water supplies has become

cause for concern as the population has risen in this area. Salinity and irrigation water can be detrimental to agriculture by reducing yields and killing crops. Contaminated groundwater can cause serious health effects. Wildlife and agricultural crops can be poisoned by contaminated groundwater. It is important to consider the ramifications of polluted groundwater for growth patterns in this part of the county. Burns proceeded to read from the Marquardt report, which suggests that the steep slopes on these lots were indicative of presenting severe limitations for sewage lagoons. Outlot A was noted to be subject to flooding and should not have an on-site water system constructed in the soil. Burns further stated that the report from the University of Nebraska Institute of Agriculture and Natural Resources dated July 11, 2002, is less than sufficient to ease the concerns of the property owners abutting this site. The University report states clearly that the conditions in this aquifer can change within short distances based on the amount of sandstone present in the formation. Thus, Burns submitted that there are no guarantees provided in this report. It merely provides suggestions of likelihood and possibilities. The geologist noted several times that he could make no guarantees of the existence of adequate supply of groundwater. To resolve the uncertainty, the report recommends that the developer drill test holes and/or test wells on the properties to provide some assurance of adequate water supply.

Burns noted that within 6 months of living in her home, the water began tasting bad and had bad odor. More in-depth testing resulted in high levels of salinity and manganese, which is a health concern.

Burns also believes that there is a serious concern as to adaptability of the development site for adequate sewage containment. Given the steep slope of the land, much of the runoff of the underground septic systems will filter down to the pond, permeating the groundwater within the aquifer below. She is also concerned that the pond will become a large wastewater lagoon. Who will be responsible for the safety and well-being of the homeowners? She does not believe the groundwater contamination and health effects have been sufficiently studied. The core provisions in the Comprehensive Plan are to maintain the health, safety and welfare of our community. Water is the most important and precious commodity known. It is the duty of this Commission to insure that an individual's right to develop does not interfere with the health and safety of the landowners. Every study has shown that northern Lancaster County has had limited quantity and quality drinking water. At a very minimum, this Commission should temporarily deny this application until sufficient and verified information is provided that conforms to the recommendations of the University of Nebraska. This will require test wells on each of the properties proposed. Additional information also needs to be provided to verify how septic waste will be confined and what effect it will have.

Burns urged the Commission to please consider the serious problems this development could cause to the existing community. The health, safety and welfare of her family and neighbors could be dependent on this vote.

Krieser inquired as to whether there are any irrigation wells in the area. Burns does irrigate 5 acres of her property. Her well is 150-175' deep. Rural water is a very long ways away.

2. Wayne Nielsen, 13800 No. 70th, testified in opposition. His property is located ½ mile north from this development. He and his son are involved in a farming operation. Waverly Road is paved and attracts this type of housing, resulting in acreage housing from Raymond to Waverly along this road. Acreages make farming operations more difficult. This results in added costs and inconvenience. Nielsen and his son contract with the city to spread municipal sledge. They have already been denied on two parcels, one near Waverly and one near Hwy 77, because they are too close to acreages and housing developments. This has quite an economic impact on his operation.

As far as acreages are concerned in Lancaster County, Nielsen believes that the time has well passed when you can establish any kind of agricultural livestock enterprise in Lancaster County.

Nielsen acknowledged that this development may meet all the regulations and requirements, but there are other impacts in regard to acreage developments. The average farming enterprise (such as his) supports the Waverly District 145 school system. Even the city libraries are supported from his operation. An acreage may pay for \$1500 to \$2500 in support of schools. He can only think of 4 students in the entire North Bluff precinct that are children of full farming operations that go to the Waverly school. All of the rest of the students are from acreages or other locations. Mill and Rock Creek precincts are practically identical. The county maintains the private road at no expense to the acreage. After about 60% of the acreages are occupied, the county takes over the maintenance of that private road. This is not a business road or deeded county road. School bus service is provided at their doors—better than Lincoln. The four mile distance factor makes this mandatory.

Nielsen submitted that the so-called growth factor is not paying its way in Lincoln. Impact fees will put further pressure on acreages from people abandoning the city. There are numerous studies that support the concept that acreages receive a lot more in dollar benefits than they pay. If you keep subsidizing acreage housing in the county, everyone will want to move out there to get a free ride. The farmers support them and provide the schools.

Steward asked Nielsen to comment on his property's water quantity and quality. Nielsen stated that in that area it is "iffy". Some of this development being proposed is his uncle's old farm. There have always been some problems in that area in development of decent wells. His neighbors have had some problems in the past. His uncle had some problems when he lived there. Nielsen stated that he has a decent well ½ mile north, but on one of his farms the well is very poor.

Response by the Applicant

Loth responded to the opposition, stating that early on in the game, the Health Department requested that the developer provide some additional information in the form of water samples for submittal to the UNL Conservation and Survey Division. The report that came back from the SCS did seem to satisfy them for the most part. There were no guarantees, but in this endeavor he is not sure how anyone could guarantee something of this magnitude. This application is satisfactory to the Health Dept.

With regard to the wastewater system, if the soil does percolate, most individuals would much prefer to use underground septic systems and lateral fields, but in most of Lancaster County, that luxury is not enjoyed and most do have to have sewage lagoons. That is the primary reason acreage developments are restricted in size to three acres. It would take a 3-acre lot to adequately position the lagoon to serve a home. The County Health Department and State Health Department are in favor of sewage lagoons.

With regard to the depth of the groundwater table, seepage and contamination from these septic systems, Loth believes that the problem is essentially non-existent.

Loth clarified that it is a private road and the maintenance of that private road will be borne by the developer and eventually by the homeowners association that is created for this project. The County is not obligated to take over the maintenance once the development is 60% occupied.

Steward commented that this plat layout looks very much like it is intended to be expanded, yet the applicant is getting credit for clustering. He requested the applicant to describe the logic of the platting layout. Loth indicated that the layout is largely due to topography. As far as expansion, this development is obligated to provide roadways to adjoining properties to serve other landowners' property. Originally, the plan showed the north end of the private roadway terminating in a cul-de-sac because they did not want to go to the north limit, but the regulations for this type of development require that we do provide that street access. Likewise, to the west of the property from the road, there is a small sliver of Outlot C that connects with the roadway, the intent being to provide future access to the abutting properties to the west. Should the property to the west ever be desired for development, that could be a future road. The original intent was to cluster it and not provide any street access to any of the abutting properties.

Steward noted that the topography is quite sloping. He would have expected to see less straight line roadways.

Schwinn noted that the northeast corner of the section is subdivided into a series of flag lots. Are there existing homes on those lots? Mike DeKalb of Planning staff believes those lots are farmed today. They are pre-existing grandfathered buildable lots but do not have houses on them.

Schwinn assumes that the layout of this subdivision would allow for future sewerage. DeKalb stated that to have been part of the question put to the applicant as far as municipal sewer on this layout. We do not have build-through. If the city got there and did do sewerage, it would go up the drainageways and we would expect some reconfiguration of lots over a period of time. With regard to the street in the subdivision, DeKalb pointed out that the developer kept the two 80's in the western portion totally free. There is a new dam in existence on Outlot B.

Steward inquired whether they are at the maximum with this development under the clustering requirement. DeKalb indicated that they are at the maximum with no bonus.

Response by the Applicant

Loth pointed out that the access to Waverly Road is basically at the high point of Waverly Road. For the most part, the road traverses the ridgeline. The road where it curves to the east is passing just right below the dam of the pond. When we get into the net parcel, just to the east of the pond, again we are getting back up on the ridgeline with sloping to both sides. That is what dictated the street alignment. Loth has a problem calling 3- and 4-acre lots as clustering. His idea of clustering is putting them on ½ acre lots, but that requires a community sewer system. To satisfy the 3-acre requirement, keep the roads on the ridges and preserve as much farm ground as possible is what dictated the street pattern.

Loth pointed out that conceivably, with the amount of ground that this applicant has, they could create 13 other 20-acre lots and have 13 home sites by right without coming through the Planning Commission. With that, combined with the 14 5-acre lots in the northeast corner, there could be considerably more acreages and more potential for problems. That could all be done by right.

Public hearing was closed.

COUNTY SPECIAL PERMIT NO. 196
VIEW POINTE NORTH COMMUNITY UNIT PLAN
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 4, 2002

Steward moved to deny, seconded by Carlson.

Steward believes it is a technical stretch to say that this is in conformance with the Comprehensive Plan. We have an acreage study policy pending within the Comprehensive

Plan. Although he is not in favor of holding projects hostage, he believes there is ample evidence, much discussion, a lot of consideration and some previous action from this Commission on the scarce water resources and the unpredictability of water resources in this area. This Commission has denied other projects without much more evidence than this, and in the Comprehensive Plan process, our GIS showed that the northern part of the County is not the best place for acreage development. He believes that this one is pushing the point of community responsibility.

Carlson agreed with Steward. He noted that Mr. Nielsen's comments at the Comprehensive Plan hearing continue to be important. We are creating a future situation that is going to be very difficult to deal with. Carlson also pointed out that the soil conservation division at UNL is one of the divisions on the chopping block and that would be a tremendous loss.

Schwinn stated that most generally, he is concerned that the staff did not address build-through in the staff report and part of this development is within the 3-mile zoning limit. He believes the build-through should have been addressed. Secondly, as far as water quality, Schwinn believes that "first in" gets the rights and if there is no water left, there is no water left. He can't be too concerned about it. He is sure the septic systems can be handled. His main concern is the build-through.

Motion to deny carried 8-1: Steward, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'; Duvall voting 'no'.

CITY SPECIAL PERMIT NO. 1976

VIEW POINTE NORTH COMMUNITY UNIT PLAN

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 4, 2002

Steward moved to deny, seconded by Larson and carried 8-1: Steward, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'; Duvall voting 'no'.

CITY/COUNTY PRELIMINARY PLAT NO. 02014,

VIEW POINTE NORTH

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 4, 2002

Steward moved to deny, seconded by Krieser and carried 8-1: Steward, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'; Duvall voting 'no'.

**COMPREHENSIVE PLAN CONFORMANCE NO. 02008
TO REVIEW THE NORTH 27TH STREET CORRIDOR AND
ENVIRONS REDEVELOPMENT PLAN AS TO CONFORMANCE
WITH THE COMPREHENSIVE PLAN.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

This application was removed from the Consent Agenda and had separate public hearing.

Schwinn noted that some of the Commissioners did not receive their packets until yesterday and have not had an opportunity to review the Redevelopment Plan. Deferral has been suggested.

Bills-Strand moved to defer for four weeks, with continued public hearing and administrative action on October 2, 2002, seconded by Duvall and carried 9-0: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'.

Carlson requested that the staff provide a separate briefing for the Commission and that the Commissioners should submit questions to Urban Development in advance.

The staff briefing was scheduled for October 2, 2002, at 12:00 Noon in Room 113 of the County-City Building.

There was no public testimony.

**CHANGE OF ZONE NO. 3372
FROM R-3 RESIDENTIAL TO H-2 HIGHWAY BUSINESS
ON PROPERTY GENERALLY LOCATED
AT NORTH 40TH STREET AND SUPERIOR STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: Denial.

Proponents

1. Michael Rierden appeared on behalf of **Believers Fellowship Church**. He has had several conversations with some of the property owners by phone as a result of the notification letter. He clarified that when they first talked with the neighbors, the congregation had several options with regard to this property, but the congregation has now decided that they would like to build on this property and sell off the balance that they would not utilize.

As far as the staff analysis, it states that it is the staff's opinion that the area is predominantly residential in character. Rierden agreed that there is residential to the east and the south, but to the west we find the channel for Salt Creek and I-1 Industrial zoning and H-3 across Superior Street to the west. Therefore, Rierden believes it is arguable that this is predominantly residential in character. The staff indicates that this is encroaching into an existing neighborhood. Granted there is some residential housing across No. 40th to the east, and there is some to the south, but he does not believe that this is encroaching into an existing neighborhood. There is no language about spot zoning in the staff report. There is other highway commercial and industrial zoning in the immediate area. The staff indicates that the only developed property is residential in character, and Rierden agrees. The property to the east and south is developed on a residential basis, but for the most part, along Superior to the west it is vacant at this time. Given the improvements taking place in the area to the west along Superior, he believes a lot of this property will ultimately develop.

Rierden noted that the Public Works report indicates a concern about commercial at this location because of the desire to have ingress and egress off of Superior Street. They indicated that would not be desirable unless we come forward with a plan to substantiate that. Rierden pointed out that Public Works did not rule out having access at that location. The term they used was that access "is subordinate" to traffic flow. Rierden would like to have the opportunity to work with Public Works to see if an access point could take place on Superior Street.

As far as floodplain, Rierden assured that whether the property is developed residential or commercial, the applicant would have to comply with all state, federal and local floodplain regulations. Rierden does not believe the property is conducive to residential development—it is more conducive to the zoning that is being requested. In the old Comprehensive Plan, we used to look at some zoning criteria and Rierden submitted that this application complies with all of the zoning criteria, i.e. there is existing infrastructure; there is vehicle access from all directions; the ground is very flat in character; all city services are available; and the only environmental concern is that of the floodplain, and the applicant will comply with all regulations in that regard.

2. Dan Thompson, 4926 Greenwood Street, Pastor of **Believers Fellowship Church**, testified in support. The church began in 1988 as nondenominational. They purchased the

land for a building which they purchased from the Four Square Church in Texas. As it turned out, they were not able to use the building because it would not withstand the Nebraska snow. The church then proceeded several years later to institute a bond program. They put the dirt in on the north half to get the building above the floodplain; they brought in electricity; they had architectural drawings done; they had a contractor; they had a groundbreaking ceremony, and the bond company went bankrupt. This congregation has been in 11 different places in 14 years. The last three years, the congregation has rented space from Belmont Elementary School and purchased a house across the street from the school to use for office, nursery, etc.

Thompson pointed out that since they purchased the property at 40th & Superior, there has been a lot of development in North Lincoln. The value of the property has increased so the church came up with a plan to sell three acres and build on the south three acres. The church is not a developer. The congregation is simply interested in building a building to have a church. They desire to enhance the neighborhood. If this change of zone is approved, whoever is on the north side will have to be compatible with the church and the neighborhood. The church has a preschool which they would like to have in the church building.

Steward commented that perseverance and persistence is two of the church's characteristics and that is a good thing. However, he is concerned with what may occur on this property. He asked whether the church has thoroughly investigated the uses that may be possible with the H-2 zoning. Thompson indicated that the church's desire would be a compatible use such as medical office, but not a convenience store. Steward noted that the H-2 category certainly allows a wide range of non-compatible uses. Does the church have any intent or any information about how much acreage the church facility will need? Thompson indicated that at this point, the plan is to sell three acres and build on six acres. Rierden suggested that the church may be willing to amend the zoning request to have the H-2 on just the three acres; however, he noted that the church use is allowed in most districts, except industrial.

Steward is also concerned about the floodplain condition. Does the church believe the property will be well enough protected? Thompson believes that the codes that the city has for building in the floodplain provide the protection.

Larson inquired about the applicant amending the application. Rierden suggested that the 6 acres could remain R-3 and they would request H-2 on the three acres abutting Superior Street.

3. Tracy Hernandez, 1214 So. 30th Street, member of Believers Fellowship Church, testified in support. The church will be a good neighbor and will act responsibly to see good things in the neighborhood.

Opposition

1. Rob Bengston, 4000 Ballard Circle, testified in opposition. There are only four houses with duplexes on the Circle. He has two small children and he is concerned about the amount of traffic a commercial development will put on 40th Street. His children walk to the bus right down 40th Street. It is almost impossible to turn left on Superior during peak hour traffic. He is not opposed to the church, but he is concerned about the 3 acres they are selling for business development. He agrees that the church is trying to do the best for the neighborhood, but once they sell the three acres, they will have no control over its use.

In addition, if they have to increase the ground level to become above floodplain, that pushes it up a few feet above street level and blocks the view of the whole area. He does not know what the water pattern might be down 40th Street. There are enough water issues in this area and he does not want more drainage onto 40th Street and into the canal behind the homes on Ballard Circle.

2. Bob Schmieding, 4101 No. 40th, owner of the apartment complex directly to the east of the proposed development, testified in opposition. This residential area which is bounded by Colfax and Superior, 44th to 40th, is an area that his father has developed since the mid-60's. The property owned by the church is one little piece that his father did not want to buy because he did not want to be stuck with the paving assessments. He would like to see the integrity of the neighborhood maintained as residential. He has 51 apartments on the east side, with 100% occupancy. It concerns him that the church has had this ground for 14 years and they have yet to do anything with it. He is concerned about what could go on the corner. He would not want to see a body shop, convenience store, or storage sheds. It is encroaching upon a residential neighborhood because Salt Creek is kind of the boundary line between the H zoning and the residential. Schmieding is not in favor of the zone change at this time.

3. Kirk Nelson, 4010 Jersey Circle, testified in opposition. He is concerned that the proposal is a little bit "half baked". The Commission is hearing conflicting information that says they don't want to build in the neighborhood, but now they do want to build in the neighborhood. He is sympathetic to their difficulties in this effort for 14 years, but his property values are a major concern. Neighborhoods determine the property value and he does not believe H-2 would do anything to help the area at all. He is opposed to any zone change at this time.

4. Diane Hurst, 4001 Ballard Circle, testified in opposition. This is residential development. She sits on her back deck where she can see 40th Street and traffic is not controlled. She would hate to see more traffic coming into this neighborhood off Superior Street. Where are you going to put another curb cut? It's going to be close to the bridge or close to 40th Street. Salt Creek is a great divide from the commercial businesses. They will have access to 33rd whenever they bring it across. She is also concerned with the conflict of what they are really

going to do. What is going to happen if they don't come up with the money? She does not need any commercial traffic coming into the neighborhood. There are only four homes down 40th Street, and it is difficult to turn west on Superior Street. She agrees with the staff recommendation. She believes there are standards to keep the property residential in character if the church owns residentially zoned property. If they go commercial and build a church, there are no residential character restrictions.

Response by the Applicant

As far as the usage of the property, Rierden stated that it is anticipated that any commercial use would be controlled by covenants and restrictions. The church is going to be there. They don't want to have anything that would be detrimental to the church nor the neighborhood. The floodplain concern exists whether it is commercial or residential. The church has already brought in enough fill to raise it above the floodplain regulations.

Rierden stressed that the church has been forthright. This would help them finally get their congregation a permanent home. At the same time, he believes this would be an appropriate use (whether on the 3 acres or 6 acres) for commercial development, but it would be restrained and maintained by private covenants on the property.

Larson wondered whether the church would build on the south six acres if this change of zone is denied. Rierden did not know whether they would be able to. Pastor Thompson indicated that "they would try".

Schwinn wondered why they did not attempt a community unit plan. Rierden acknowledged that a community unit plan was considered and discussed, but for a number of reasons they wanted to go with the zone change.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 4, 2002

Newman moved denial, seconded by Steward.

Newman believes the change of zone would be a drastic change. She might be able to accept something like office, but it is a big jump from R-3 to H-2.

In addition, Steward suggested that there be a little more planning with the patience and persistence. He believes the neighbors would welcome a church structure on the north part of the property. There are three really serious questions: 1) distance from the intersection to the bridge. If that becomes commercial, it will be more traffic and hazardous; and 2) there may be some other housing options. Perhaps the church needs to make a pact with a developer or become a developer to make the best use of this amount of property. He urged

that the church explore building the church to the north and residential to the south to really become a good neighbor for the city in the process. It is a difficult piece of property and located in a difficult circumstance but he does not believe H-2 and all the potential it brings is best for the church property or for the neighbors.

Taylor stated that he finds it very difficult to make a decision on this. He likes the idea and the concept of the church, so it is difficult to vote no on this.

Schwinn does not believe he has ever supported speculative zoning. He sees some potential here and he sees an architect with great potential and great talent, but he thinks this property can create a very good CUP that would be very acceptable to the neighborhood. Youth ball fields could be done to mitigate the floodplain. He totally agrees with Steward.

Motion to deny carried 9-0: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'.

(Please Note: This application was withdrawn by the applicant on September 10, 2002. jlw)

USE PERMIT NO. 43B

TO MODIFY SIGN REGULATIONS AND UPDATE THE SITE PLAN,

ON PROPERTY GENERALLY LOCATED

AT SO. 13TH STREET AND STOCKWELL STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: Approval of the sign area decrease on 14th Street; denial of the sign area increase and height increase on 13th Street.

Proponents

1. Dennis Plachy of Nebraska Sign Co. requested to correct the record, referring to the picture of ground sign on page 78 of the agenda. Stockwell Park is going to occupy 1/4 of the sign and First Educators will occupy 3/4 of the sign.

Plachy explained the purpose of this request. They are allowed a sign of 32 sq. ft. at entrances and a sign of 15 sq. ft. to identify each business and building. The way this plot is laid out, the vehicular entrances are on 14th Street, which is on residential, and 13th Street will

identify the building. This request will allow him to do the smaller sign in the residential area and put the larger sign on 13th Street side where there is more traffic flow. It is an existing building that was recently built.

Schwinn clarified that the request is to reduce the size of 14th Street sign and increase the size of the 13th Street sign, flip-flopping what is allowed.

Carlson thought that was a bank building. Plachy confirmed that First Educators is a Credit Union.

Carlson recalled that there was considerable discussion when this came before the Commission last year about the location of signs, green space and screening. What is different now than then? Plachy indicated that he was not involved previously. Whoever came up with the plan did not really think through the size of signs that were allowed. He could not speak for the applicant at that time. He represents First Educators.

Schwinn believes the discussion was about getting the signage off the very point of Highway 2 as part of the corridor considerations.

There was no testimony in opposition.

Staff questions

Carlson again recalled that there was considerable discussion during the original application about sign location and sign envelopes. Where are we in sign locations and what has been changed administratively? Abigail Davis of the Planning staff stated that nothing has been changed administratively. They currently have a waiver of the front yard setback along 13th Street, so the sign envelope is located in the front yard. Her rationale in the staff recommendation pertains to a review of the Comprehensive Plan and the compatibility with the entryway corridors and the residential district on the opposite side. According to the zoning ordinance, each envelope is separate and cannot be switched.

Schwinn noted that this involves one sign split between two businesses. Does each pad site get a sign? Davis responded that each business is allowed a sign. There are sign envelopes located in the front yard setback for the other two businesses along 13th Street.

Schwinn again clarified that the applicant is requesting an increase in sign area and an increase in height. Now they can have a 15 sq. ft. sign 5' in height located in the front yard setback, and the desire is for a 32 sq. ft. sign that is 8' high.

Response by the Applicant

Plachy stated that the sign code for O-3 zoning allows the 32 sq. ft. sign at every vehicular entrance. There are sign envelopes for each vehicular entrance, but the entrances are on the residential side as opposed to on the street side.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 4, 2002

Duvall moved approval of applicant's request, seconded by Bills-Strand.

Duvall believes it is a tradeoff from residential to the arterial street and he believes it is keeping in character with the area.

Newman will vote against the motion. The very first page of the staff report suggests that approving this sets a precedent for future sign modifications and this is a concern to her.

Schwinn believes that putting the larger signs on 14th Street was a mistake and everyone should have the right to have the 32 sq. ft. sign on the 13th Street side. He does not believe it will be that obtrusive. He agrees that others may come in and ask for the same waiver.

Motion for approval of the applicant's request, with conditions, carried 6-3: Steward, Duvall, Bills-Strand, Larson, Taylor, and Schwinn voting 'yes'; Krieser, Carlson and Newman voting 'no'.

At this point in the meeting, Commissioner Duvall left.

Chair Schwinn introduced and welcomed the new Planning Director, Marvin Krout.

USE PERMIT NO. 89B
TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES
FOR CONSUMPTION ON THE PREMISES
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2002

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

Staff recommendation: Denial

Proponents

1. **DaNay Kalkowski** appeared on behalf of **Northern Lights, L.L.C.**, the owner of the property at the southeast corner of 14th and Pine Lake Road, currently zoned B-2, with an approved use permit in September of 1996. The use permit allows construction of an approximately 36,000 sq. ft. retail building along the south portion of the site and three pad sites on Pine Lake Road.

The sale of alcoholic beverages for consumption both on and off the premises is a permitted use in the B-2 zoning district, provided you meet the locational requirements of the special permit sections. The ordinance requires that such uses be 100' from a residential district and any residential use. But the ordinance also indicates that if the distance is less, the effects can be mitigated by landscaping, screening or other means. Northern Lights is requesting the waiver of the locational requirements so that the 36,000 sq. ft. building could be leased for uses permitted in B-2, such as restaurants that also serve alcohol for consumption on the premises (not off-sale).

This application would require a waiver of two distance requirements – proximity to a residence and proximity to a residential district. The Police Department measurements show 60' from a residence, which is a duplex on So. 16th Street, and the distance between the building and south edge of the apartment building is 145'. Northern Lights is willing to limit its waiver to only apply to the 100' distance between the building and the residential district—not the residential use. The waiver would not apply to the east end of the building anywhere that is within 100' of the duplex building.

Because the retail building is built and cannot be moved, Northern Lights is proposing mitigation measures. The staff is recommending denial based entirely on the Police Department report simply because they are within the 100'. It does not address any mitigation measures. The applicant believes there are ways to mitigate this effect and this application is much different from others that have been before the Commission. Kalkowski clarified that the waiver is limited to sales for on-site consumption only—they are not requesting a waiver that would apply to off-site consumption sales. The corner of the site already has a convenience store approved so any off-site sales for the entire corner can happen there.

Kalkowski submitted that the existing topography south of the building, along with the landscaping, provides an effective screen between the building and the residential district to the south. There is a big grade differential between the back of the building and the property line. There is also a good stand of mature trees. This applicant has proposed to add trees to the landscaping plan and add a lot of additional landscaping in the corner to buffer the single family residence.

Kalkowski reiterated that Northern Lights is willing to limit the waiver so that it only permits sale of beverages on the premises in conjunction with the sale of food for consumption on the premises. The tenant is a restaurant/bar type use. The primary business is food. It is not the intent to have a lounge that is for bar services only. Kalkowski submitted proposed amendments to the conditions of approval covering these limitations.

Kalkowski suggested that the applicant would be willing to limit the time frame for deliveries, if that is a concern. The doors are on the north side of the building, facing totally away from the residence, giving more of a sense of separation from the use.

After the Planning Commission notice was mailed, Kalkowski received three calls from neighbors with questions about the use. She sent out an informational letter and scheduled a neighborhood meeting at the new YMCA. For some reason, the neighbors did not receive the notices. Therefore, she does not believe the neighbors have had opportunity to dialogue with the applicant and she would agree to set up another meeting with the neighborhood.

Kalkowski stated that it is the applicant's intention to put together a neighborhood center at this location serving the surrounding neighborhoods. A restaurant/bar type use in the retail building would be a good addition to the neighborhood.

Kalkowski requested that the Planning Commission recommend approval, with the amended conditions as submitted by the applicant.

It was clarified that the duplex and apartments are built and Kalkowski assumes that they are occupied.

Opposition

1. JoAnn Bredthauer, 7441 So. 19th Street, in the Vavrina Meadows neighborhood and director on the Board of Directors for the Vavrina Meadows Homeowners Association, testified in opposition. She received a phone call on August 25th from a property owner who lives at 1641 Marlene, who had received a letter from the Planning Department. She wanted to know what the neighborhood association was going to do about a drinking establishment being located so close to her home, Southwest High School and Scott Middle School. Bredthauer did not receive the letter because her residence is further away. The notification letter was not specific about what sort of establishment was going to be put in this area. Bredthauer made phone calls to some of the neighbors. None of the responses were of a negative nature, but there was a lot of concern, mostly because of the non-specific nature of the letter of notification. The entrance to the establishment being on the north side is acceptable. The method of waste removal from that mall is on the south side and that faces the residential areas and that is one of the reasons she is here.

Bredthauer has learned that this permit will allow mall owners the option of leasing their space to a “drinking only” establishment and not necessarily a restaurant once the amendment is approved. It would be up to the Liquor Commission and licensing board as to whether this sort of business would be allowed.

Bredthauer acknowledged that the homeowners did not receive notice of the neighborhood meeting. She does not want her neighbors to be treated with indifference. It is a neighborhood with hard working middle class people who cater to the Lincoln Bicycle Shop that is in that mall right now. They are concerned with the promotion of crime rate which would devalue their properties. She submitted a list from the Police website of the crimes that have been committed in the Vavrina Meadows area even without a bar in the neighborhood.

Bredthauer questions that adequate screening would be used. There are existing Scotch Pines, but she personally does not believe that Scotch Pines planted 10 feet apart would be adequate screening to take care of litter, trespass, vagrancy, and noise. If the Planning Commission approves this application, the neighborhood would ask that something be included that would require Northern Lights to put up effective, adequate screening that would enhance the neighborhood properties as well as the outlying properties behind this mall. This mall is not readily seen from the streets. She requested that the landscaping treat the mall as though facing the property and that the landscaping be adequate to keep trespassers off these properties.

Bredthauer suggested that the Commission look at the Police website to see the great number of domestic problems as a result of alcohol related abuse, vagrancy, vandalism, trespass and noise in areas that are behind bars. The neighborhood would ask that this permit be denied. Northern Lights should be given the opportunity to move their establishment to a different location away from a proposed elementary school to the east, and away from a heavily populated neighborhood.

Bills-Strand suggested that if it was a small café for a plate of spaghetti and glass of wine, would the neighbors mind? Bredthauer does not believe they would mind that at all. Their concern is that they are being treated indifferently and that their properties are not being respected because they are not high-end residences.

Bills-Strand wondered whether there should be a deferral for a neighborhood meeting. Bredthauer believes that would be appreciated by the neighbors. She would like the Commission to consider the efforts that these people have put into establishing their first time homes.

Larson moved to defer four weeks, with continued public hearing and administrative action scheduled for October 2, 2002, seconded by Newman and carried 8-0: Steward, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting ‘yes’; Duvall absent.

Response by the Applicant

Kalkowski believes the applicant has addressed the concerns in the letter that was mailed, but they will be happy to meet with the neighbors and will send out another notice.

**SPECIAL PERMIT NO. 1691C,
AN AMENDMENT TO THE
SHADOW PINES 1ST ADDITION COMMUNITY UNIT PLAN
ON PROPERTY GENERALLY LOCATED
AT SO. 56TH STREET AND SHADOW PINES DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 4, 2002

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

Staff recommendation: Deferral, to allow proper advertising of additional waiver requests.

The Clerk announced that the applicant has requested a waiver of lot width and lot area which were not advertised.

Steward moved to defer four weeks, with continued public hearing and administrative action on October 2, 2002, seconded by Bills-Strand and carried 8-0: Steward, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'; Duvall absent.

There was no public testimony.

**SPECIAL PERMIT NO. 1984
FOR A PAVED PARKING LOT
ON PROPERTY GENERALLY LOCATED
AT SOUTH 17TH STREET AND GARFIELD STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 4, 2002

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

Staff recommendation: Conditional approval.

The Clerk announced that the applicant and the Near South Neighborhood Association have requested a two-week deferral.

Taylor moved to defer four weeks, with continued public hearing and administrative action on October 2, 2002, seconded by Bills-Strand. Carlson suggested a friendly amendment to the

motion to defer for two weeks, with continued public hearing and administrative action scheduled on September 18, 2002. This was accepted by the maker of the motion. There was no public testimony.

Motion to defer two weeks carried 6-2: Krieser, Bills-Strand, Larson, Taylor, Carlson and Newman voting 'yes'; Steward and Schwinn voting 'no'; Duvall absent.

SPECIAL PERMIT NO. 1985
TO EXPAND AND RECONSTRUCT A NONCONFORMING USE
ON PROPERTY GENERALLY LOCATED
AT SOUTH 94TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2002

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

Staff recommendation: Denial.

Abigail Davis of the Planning staff submitted four additional letters for the record: one in support, one in support without expansion, and two in opposition.

Proponents

1. Brian Carstens testified on behalf of the applicant, **Athey Painting**. On July 26, 2002, the Athey Painting existing structure was hit by lightning. Currently, it is a nonconforming use which the applicant has occupied for six years. It had been a bus terminal and excavating company prior to that time. He is requesting a special permit to reconstruct and expand the nonconforming use. It has been a nonconforming use since the early 1970's. The existing building was about 6,000 sq. ft. and the applicant is now requesting 10,800 sq. ft. The increase would allow him to park more vans inside the building as well as allow for deliveries. Athey Painting does a lot of finishing of cabinetry, doors and some trim. With the larger building, they can bring the trucks inside to unload to get them out of the weather.

The applicant is requesting to waive paving of the parking lot. It is a gravel parking lot and has been forever. Yankee Hill Road is currently graveled. With regard to the screening waiver, Carstens advised that the east and west property lines have some screening in the fence line today--volunteer trees--which is adequate during the summer time. The applicant has been there for over six years.

The applicant had a community meeting with about 50 people in attendance with overwhelming support for him to rebuild, but there was some concern about the expansion. The original application by the applicant suggested a condition that the building only be used for contractor, sales and storage yards, but the City Attorney is not allowing this type of condition on a special permit.

Carstens submitted a petition signed by 72 residents of Cheney in support.

There is a single family house to the east and a small detached garage, and then the ground to the west is vacant because the house was condemned and removed. The Catholic Church is to the west, with Spanel Engines (zoned I-1) further west, then three residences and residences on the west side of 91st. There is single family immediately across the street. The owner directly south has signed the petition in support.

Carlson asked the applicant to respond to the letters with concern about the expansion. Carstens indicated that the applicant would consider not expanding as an option as opposed to a denial. He would rather have a larger building but would rather have the smaller building than no building.

Steward confirmed that the proposed expansion is basically to the north. Carstens indicated that it is to the north and 12' to the west. There is no one in that direction. Steward asked whether the old building was totally razed. Carstens advised that the perimeter walls had to be pulled down during the fire. It was a tilt-up concrete building. They will be constructing a steel building.

2. Gayle Hanshaw, President of **Cheney Community Improvement Program**, submitted a letter from the CIP stating that the majority of the members of the community are in support. They did voice the potential concerns, but after further review they are still in support. The property has been in commercial use for quite some time. There was a salvage yard to the west for 50 years.

3. Lonnie Athey of Athey Painting, the applicant, testified, stating that he purchased the property six years ago as a commercial building for \$268,000. He can't afford to buy property to build upon in the city. He walked the Cheney community and there were only four people who had objections. Athey assured that the new building will be much better looking than what burned down.

Staff questions

Carlson asked staff whether conditions could be crafted to allow rebuilding on the existing footprint. Ray Hill of Planning staff believes the conditions could be worded such that the building be limited to 6,000 sq. ft. The applicant is requesting an expansion plus a special

permit to reconstruct a nonconforming use. The Commission could limit the approval to reconstruct a nonconforming use. Steward does not believe that 6,000 sq. ft. would guarantee reconstruction of the footprint. Hill stated that if there is any change to this site plan it would have to be amended and could be amended administratively if it is limited to 6,000 sq. ft. This special permit approves a specific site plan.

Schwinn wondered whether there was any consideration given to rezoning this area to make it a conforming use. Hill suggested that the Commission had that opportunity during the update of the Comprehensive Plan. The staff does believe that it is an entryway into the community. If you do approve this particular special permit, it does leave the question as to whether the community should consider rezoning. The staff believes it will have some impact on whether the rest of the land will be developed as residential.

Schwinn noted a large lot to the west. Have we considered a subarea study for the Cheney area? Davis advised that Cheney is included in the Southeast Lincoln Highway 2 Subarea Plan; however, it recognizes the existing uses. The site is shown as Urban Residential on the subarea plan.

Response by the Applicant

Carstens explained that a few of the Cheney property owners had hired him during the time of the Comprehensive Plan amendment for the shopping center to attempt to come up with a mixed use project and just could not get community consensus. That is why it was left alone in the subarea plan.

Carstens requested that Condition #1.1.3 be deleted and that the waiver of paving be allowed. They will agree to pave the handicap spot.

Carstens also requested that Condition #1.2.1 be deleted to allow the waiver of screening as previously discussed.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 4, 2002

Larson moved approval, with conditions, with the amendments as requested by the applicant, seconded by Bills-Strand.

Carlson moved to amend to require the reconstruction on the existing footprint, with the amendments to allow the waivers, seconded by Steward.

Carlson is sympathetic to the idea of rebuilding what was already there and he knows it may not be in the same context, but it is analogous to an older area that burned down that is nonconforming and the neighbors think it could work. He worries about the precedence by approving the expansion.

Bills-Strand commented that if the majority of the people signed the petition in support, she will vote for the people that live there.

Motion to amend failed 4-4: Steward, Taylor, Carlson and Newman voting 'yes'; Krieser, Bills-Strand, Larson and Schwinn voting 'no'; Duvall absent.

Larson believes Athey has been a great support to the community and he believes it is a modest expansion that is being requested.

Main motion for conditional approval, with amendments as requested by the applicant, carried 7-1: Steward, Krieser, Bills-Strand, Larson, Taylor, Newman and Schwinn voting 'yes'; Carlson voting 'no'; Duvall absent,

**WAIVER OF DESIGN STANDARDS NO. 02016
TO WAIVE STREET TREES AND SIDEWALKS,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 58TH STREET AND PIONEERS BLVD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 4, 2002

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

Staff recommendation: Approval of the waiver of street trees and denial of the waiver of sidewalks.

Proponents

1. Bob Schoenleber appeared on behalf of the applicant. Schoenleber assured that there is no additional development being proposed with this request for waiver of the design standards. The current situation exists on Lot 3, i.e. residential property adjacent to The Legacy Retirement Center. The residential property has a detached garage in the rear yard with the access to that garage being off of The Legacy project driveway. There is a common access easement for that driveway.

By replatting this property, the property line will be taken from the west side of the garage and moved to the east so that the garage is part of Lots 1 and 2 instead of Lot 3. This will eliminate the common access agreement and would allow the applicant to sell that property

as a single family residential property. The applicant has met with the neighbors. The neighbors to the north oppose a sidewalk coming up the length of Lot 3 and stopping at the edge of their property.

Newman inquired as to the location of the sidewalks now and where they are required. Schoenleber advised that there is a sidewalk along 58th Street on Lots 1 and 2 which stops at the edge of Lot 3. There are no sidewalks continuing on the rest of 58th Street on the west side. There are sidewalks on the east side of 58th Street. The applicant is attempting to replat Lot 3, which requires a sidewalk just the distance of Lot 3. Bills-Strand sought clarification that the intent is to divide this off and resell as single family. Schoenleber agreed that to be the intent—to have that ability. The house exists and the two houses to the north exist.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 4, 2002

Steward moved to approve the staff recommendation, which approves the waiver of street trees and denies the waiver of sidewalk, seconded by Carlson.

Carlson thinks perhaps there was a mistake made in 1994 by the City Council when the sidewalk was previously waived.

Motion recommending approval of the staff recommendation carried 7-1: Steward, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'; Krieser voting 'no'; Duvall absent.

There being no further business, the meeting was adjourned at 3:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 18, 2002.