

FACTSHEET

TITLE: ANNEXATION NO. 00005, requested by the Director of Planning, at the request of Livingston Investment, Inc., to annex approximately 37 acres, more or less, into the City of Lincoln, generally located south of Highway 2 between South 70th Street and Pine Lake Road.

STAFF RECOMMENDATION: Approval, subject to an Annexation Agreement.

ASSOCIATED REQUESTS: Change of Zone No. 3282 (00-215) and Use Permit No. 132 (00R-320).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/04/00
Administrative Action: 10/04/00

RECOMMENDATION: Approval, subject to Annexation Agreement (8-0: Duvall, Schwinn, Steward, Taylor, Carlson, Newman, Hunter and Bayer voting 'yes'; Krieser absent).

FINDINGS OF FACT:

1. This annexation request and the associated Change of Zone No. 3282 and Use Permit No. 132 were heard at the same time before the Planning Commission. The zoning map and aerial map showing the area of annexation are found on p.29-30.
2. The Planning staff recommendation to approve this Annexation request is based upon the "Analysis" as set forth on p.6-7, concluding that the annexation is in conformance with the Comprehensive Plan and specifically, that it meets the annexation policies of the plan and is within the future service limit. The proposed area to be annexed is contiguous to the city. Even though a proposal is in conformance and within the future service limit, the City should only approve an annexation when the infrastructure is in place or has been provided for in the City's CIP or by the applicant. In this case, the developer has agreed to an annexation agreement on the distribution of the cost of public improvements. Thus, it is appropriate to approve this annexation request at this time.
3. The applicant's testimony and testimony by the development team is found on p.8-14. The record consists of 4 letters in support which are listed and provided as Supplemental Information under separate cover.
4. Testimony in opposition is found on p.14-19, and the record consists of 12 letters/emails in opposition, a petition in opposition containing 20 signatures, and 21 postcards in opposition, all of which are listed and provided as Supplemental Information under separate cover. The main issue of the opposition is that the subject property should not be commercially developed.
5. The Planning Commission discussion with staff is found on p.20-21.
6. The applicant's response to the opposition and subsequent discussion with the Commission is found on p.21-24.
7. On October 4, 2000, a motion to defer failed 4-4 (Steward, Carlson, Newman and Hunter voting 'yes'; Duvall, Schwinn, Taylor and Bayer voting 'no') and the public hearing was closed. See Minutes, p.24-25.
8. On October 4, 2000, a motion to deny failed 3-5 (Steward, Carlson and Newman voting 'yes'; Duvall, Schwinn, Taylor, Hunter and Bayer voting 'no'). See Minutes, p.25-27.
9. On October 4, 2000, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend **approval**, subject to an Annexation Agreement.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\FSA00005

DATE: November 13, 2000

DATE: November 13, 2000

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

44

P.A.S.: Annexation 00005, 70th & HWY 2

DATE: September 25, 2000

PROPOSAL:

Application by the Director of Planning at the request of the land owner Livingston Investment, Inc. to annex land generally located at HWY#2 and 70th Street.

GENERAL INFORMATION:

APPLICANT:

Kathleen A Sellman, AICP
Director of Planning
555 S. 10th Street
Lincoln, NE 68508

CONTACT:

Ray Hill
Interim Assistant Director of Planning
555 S. 10th Street
Lincoln, NE 68508

LOCATION:

South of HWY#2 between S. 70th Street and Pine Lake Road.

REQUESTED ACTION:

Approval of annexation.

LEGAL DESCRIPTION:

Lot 75 I.T. and Pine Lake Road and S. 75th Street where the streets abut Lot 75 I.T., located in the SW 1/4 of Section 15, T9N, R7E, Lancaster County, Nebraska, generally located at Highway 2 and Pine Lake Road.

EXISTING ZONING:

AGR Agricultural Residential. Proposed Change of Zone #3282 is for B-2 Planned Neighborhood Business.

SIZE:

37 acres, more or less.

SURROUNDING LAND USE AND ZONING:

To the west across S. 70th Street, southwest across the intersection of 70th & Pine Lake Road, south, and southeast across Pine Lake Road are single family acreages zoned AGR.

To the north across HWY 2 is agricultural and a church zoned AGR.

EXISTING LAND USE:

Agricultural and Public Streets

COMPREHENSIVE PLAN SPECIFICATIONS:

IN CONFORMANCE. The 1994 Lincoln/ Lancaster County Comprehensive Plan designates this area as Phase I and as inside the "Anticipated Year 2015 Future Service Limit" according to Figure 65, "Anticipate 2015 Lincoln Service Limit and Phasing Plan", page 197.

HISTORY:

The Land Use Plan shows the area as Commercial.

The following goals and statements are included under **Chapter III Future Needs and Land Use Plan:**

The Comprehensive Plan must provide ... adequate choice of development sites while guiding both development and public investment decisions.(Page 36)

Land Use Planning and the Community Vision (page 36a)

The land use plan provides the foundation for guiding community growth and supporting public investments. Yet, the plan is not an arbitrary map of future land uses. Rather, it is guided by the basic principles articulated as the Community Vision. These provide direction for the community's land use policies.

MANAGED, CONTIGUOUS GROWTH: (page36a)

Growth is a characteristic of a dynamic, healthy community. Future growth will continue this traditional pattern and be linked to both the level of demand in the market and to the orderly extension of public improvements and services.

The following statements are included under **Chapter VIII Plan Maintenance and Implementation:**

A. Implementation Strategies

2. Capital Improvements (page190)

- a. **Public Improvements.** Public capital investments are a powerful influence in the growth and development of the community. An urbanizing area needs roads, water, sewer, parks, libraries, schools and other physical improvements which have traditionally been developed using public general or enterprise funds.

The development of the community and in particular the capital improvement needs of the community are fiscally constrained: there will always be more needs and desires for improvements than there are resources available to meet the needs and desires. Expectations for improving capital facilities by the community should be tempered by an understanding of this fiscal constraint.

B. Financing the Plan

- ! As projects are requested for faster implementation by a developer than are identified in the City's Capital Improvement Plan and the County 1 and 6 Program, the developer must be prepared to make financial contributions to improvements necessitated by a project if their project is moved to an earlier date. (Page 194)

CAPITAL IMPROVEMENT PROGRAM:

The improvement of Pine Lake Road from S. 56th Street to HWY2 is scheduled for fiscal year 2005-2006.

The extension of a trunk sanitary sewer from the existing trunk along Beal Slough to S. 74th Street and HWY2 is scheduled for fiscal year 2000-2001.

HISTORY:

September 1994 70th & Highway 2 Proposal

Mary Jo Livingston proposes a commercial center at 70th & Highway 2 as part of the new Comprehensive Plan.

September 7, 1994 Planning Commission Action on Draft Comp Plan: 70th & Hwy 2

Motion fails 7-2 at Planning Commission to add 70th & Highway 2 as a commercial site.

November 14, 1994 Adoption of the 1994 Comprehensive Plan

Approved plan designates large commercial center at 84th & Highway 2. Proposed site at 70th & Highway 2 is not included as commercial in the plan.

March 1998 Third Annual Review of the Comprehensive Plan - 70th & Highway 2
The City Council and County Board approve Amendment #26 of the Third Annual Review of the Comprehensive Plan. This amendment, at the request of the property owner Livingston Investments, changed 38 acres from Low Density Residential to Commercial on the south side of Highway 2, north of Pine Lake Road and east of 70th Street.

September 1999 Amendment to Comprehensive Plan (CPA#9448) - 70th & Highway 2
The Country Meadows Homeowners Association and Southeast Coalition of Homeowners proposed an amendment to change the land use designation in the Comprehensive Plan from Commercial to Low Density Residential on property east of S. 70th Street between Highway 2 and Pine Lake Road.

March 8, 2000,
The Planning Commission recommended denial to amendment CPA#9448.

March 27, 2000,
The City Council denied amendment CPA#9448.

SPECIFIC INFORMATION:

DESCRIPTION OF PROPERTY:

Farm land with native vegetation along a stream that flows through the site.

UTILITIES & SERVICES:

- A. **Sanitary Sewer:** City sanitary sewer must be extended approximately one mile to the site. The distribution of the cost of these improvements is to be included in the Annexation Agreement.
- B. **Water:** City water is available, however the developer has not paid for this water main and a connection fee will be required. The distribution of the cost of these improvements is to be included in the Annexation Agreement.
- C. **Roads:** S. 70th Street abutting the site has been widened to include 4 lanes and medians with left turn lanes.

Pine Lake Road abutting the site has 2 paved lanes.

HWY 2 abutting the site has 4 paved lanes with medians and left turn lanes.

The Traffic Impact Study submitted by the applicant indicated the need to improve the following intersections:

Along Hwy2 @ 70th St., Pine Lake Road (west and east), Old Cheney Road, 56th Street, and 84th Street,
Pine Lake Road & 70th Street,

56th Street & Old Cheney Road
Along 70th Street for the three entrances into the site, and
Along Pine Lake Road for the two entrances.

The distribution of the cost of these improvements is to be included in the Annexation agreement.

- D. **Parks and Trails:** This annexation will not significantly impact the Parks and Recreation Department.
- E. **Fire Protection:** This area is currently served by the Southeast Rural Fire District. There do not appear to be any problems serving this area by the Lincoln Fire Department. The nearest City fire station is located at S. 48th Street & Claire Avenue.
- F. **Schools:** This area is outside the Lincoln Public School District. However the land will automatically come into the Lincoln School District at the time the City annexes the area.

ANALYSIS:

- 1. This annexation is in conformance with the Comprehensive Plan. Specifically, it is within the future "Lincoln Service Limit" and is in Phase I as shown on Figure 65, "Anticipated 2015 Lincoln Service Limit and Phasing Plan" on page 197 of the 1994 Lincoln/Lancaster County Comprehensive Plan.
- 2. This proposal is also in conformance with the annexation policies on page 191 of the Plan, specifically the policies that state:
 - ! Land which is remote from the limits of the City of Lincoln will not be annexed; land which is contiguous and generally urban in character may be annexed; and land which is engulfed by the City should be annexed.
 - ! Annexation generally implies the opportunity to access all City services (i.e., police, fire). Voluntary annexation agreements may limit or outline the phasing, timing or development of utility services (i.e., water, sewer) and may include specific or general plans for the financing of improvements to the infrastructure and the land uses of the area.
 - ! Plans for the provision of services within the areas considered for annexation should be carefully coordinated with the Capital Improvements Program of the city and the county."
- 3. This property is contiguous to the City Limits. Access to all City services are currently available or are planned to be extended to the site.
- 4. The Public Works and Utilities Department, Fire Department and Health Department have no objections to this annexation.

5. The Lincoln-Lancaster County Health Department has proposed the annexation of the Pine Lake Subdivisions and the extension of City utilities to serve the subdivisions. However the Pine Lake subdivisions are in Phase III on Figure 65, "Anticipated Lincoln Service Limit and Phasing Plan" on page 197 of the 1994 Lincoln/ Lancaster County Comprehensive Plan.

Phase III are areas designated for mid-term development, will be contiguous to existing or planned development, lack most infrastructure required to support development but might reasonably be expected to develop within the planning period.

The Lincoln Capital Improvement Program, 2000-2006, does not include the extension of the trunk sanitary sewer north of HWY#2 within the next 6 years.

CONCLUSION:

This annexation proposal is in conformance with the Comprehensive Plan. Specifically it meets the annexation policies of the plan and is within the future service limit.

This area is contiguous to the city.

Even though a proposal is in conformance within the future service limit, the City should only approve an annexation when the infrastructure is in place or has been provided for in the City's CIP or by the applicant. In this case the developer has agreed to an annexation agreement on the distribution of the cost of public improvements. Thus, it is appropriate to approve this annexation request at this time.

STAFF RECOMMENDATION:

Approval of the Annexation, subject to an Annexation Agreement

Prepared by:

Ray Hill
Interim Assistant Director of Planning

**ANNEXATION NO. 00005,
CHANGE OF ZONE NO. 3282,
and
USE PERMIT NO. 132**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 4, 2000

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

Planning staff recommendation: Approval of the Annexation and Change of Zone; and conditional approval of the Use Permit.

Ray Hill of Planning staff submitted a memo from the Director of Planning responding to the issue raised regarding the requirements for the Subarea Plan for 84th & Hwy 2 prior to approving a change of zone request. Hill also submitted two letters received in support, and 13 letters received in opposition.

Proponents

1. Mary Jo Livingston, 7420 Yankee Hill Road, the applicant, presented the applications. She stated that she is delivering on a promise—a promise made 2 ½ years ago and reiterated last March. A promise made when two Planning Commissions and two City Councils designated and reiterated the property at 70th & Hwy 2 as commercial. A promise made when then Mayor Johanns signed a resolution designating this property commercial. The promise made was to design an attractive, quality development and entryway to our City. She has had discussions with the neighborhoods, addressing their concerns about traffic, noise, lighting and litter. She has received a letter of support from the Edenton South Homeowners Association and Amber Hills. Edenton South believes that the proposal shows care and understanding for environmental factors, potential noise reduction, topographical considerations and physical spacing of structures. Edenton South believes this proposed development will be an example that other developers should use as a guide. Livingston is here to deliver on her promise.

She and her co-developer, Brian Hall, have an outstanding team of architects, engineers, landscape architects and designers. Willowbrook will lead the way in establishing entryway standards along the highway for the city. They have utilized the creativity of the team in designing a unique and pleasing entryway with increased setbacks along Hwy 2 from 50' to 100' for buildings and to 75' for driveways. Kim Todd has been requested to design a plan utilizing native trees, shrubs, grasses and wildflowers. They have widened the walkway on top of one of the berms along Hwy 2 from 4' to 5' at the request of a neighbor. They will be using the grade of the land to provide natural berms along Hwy 2 and part of 70th Street. In addition, at a neighbor's request, they added berming along Pine Lake Road. This proposal retains a majority of the mature tree mass line that exists except for the stone arch bridge and water enhancement pool. There will be a uniform architecture theme of cultured stone, accents on buildings, stone signs, stone bridge and landscape stone around the pool.

Livingston also advised that this proposal has a much lower floor-to-area (FAR) ratio than is allowed by the Comprehensive Plan –17%. The Comprehensive Plan allows 25%. She believes that by combining these factors she is providing a plan that has much less building area than allowed and greater green space and landscaping than is required.

2. Michael Bott, architect, 1540 South 70th Street, testified in support. He explained the design measures incorporated to deal with the challenges of this site. This is a triangular shaped piece of land of approximately 38 acres, bounded on three sides by four-lane highways. Pine Lake Road is 2-lane but will become 4-lane in the next few years. Some of the challenges were lack of access on Hwy 2—there is a main median break on 70th Street and there will be another on Pine Lake Road when it is four-laned—so they need circulation from the site accessing those highways. There will be three other curb cuts. The main anchor tenant needed visibility to 70th Street and yet they wanted to tuck the shipping and trucking of materials to this site in behind it. There are residential uses to the west and south, with the Pine Lake development off to the east. With Hwy 2 being an entryway corridor, they have been very sensitive to making that as soft and green as possible and yet have a viable project.

In terms of site planning, this proposal is meant to be as sensitive as possible to the incoming view. They went to great measures to do computer generated renderings showing the plant material – they are full grown trees, with 100' setback along Hwy 2, in addition to about 50' of green space currently in the highway right-of-way. They also got together with Kim Todd to work out the native plant material along Hwy 2. In response to some of the input from neighbors, they will be doing some raised 5' berms with plantings and increase the intensity of the planting all the way around the perimeter of the site with pine trees, purple ash and sunset maples to bring color and beauty to the site, all above and beyond the minimum requirements. The water feature was a drainageway coming from Pine Lake and the Berean Church. They took that trickle of water and created a pond and developed a stone bridge which will tie in with the rest of the architecture on the site. The shopping center signing and graphics will tie together with the architecture theme of the buildings.

They have attempted to be very careful with the lighting, meeting the city requirements and going beyond the allowable cutoff angles and recessing the lights up into the fixtures. The site is 30' below the highway so that the roof top is barely visible from the highway and the lights will be set down below the intersection.

In terms of building design measures, Bott stated that they wanted an architectural theme that ran through this project and tied the large anchor user with the other pad sites. Working with Home Depot and Planning staff, they have developed the architecture materials and designs, including the use of cultured stone at entrances, step coping and coordinated wall finishes, etc. There will be no concrete block. The canopies will be of compatible color. Home Depot can break away from the orange canopy and will be looking at a bronze canopy. The applicant believes that with the stone, bronze and the copings this will be far above the average large home improvement center. There are smaller structures closer to the residential areas on the pad sites. A material theme is required on these structures, with cultured stone. Every pad site user has their own program but will be required to conform to the architectural theme to tie this overall development together.

Carlson asked whether it is the intent to attach the renderings to the submittal as conditions of approval. Bott agreed that would be possible, if desired. What they are showing is what they are going to do. They are prepared to do it.

3. Kim Todd, landscape architect, 500 No. 66th Street, stated that she would like to take the Commissioners out the Interstate towards Seward and back to get a sense of the kind of landscape they are talking about here and as a part of the entryways project for the City of Lincoln. This entails a style that is naturalized. On a developed site it is difficult to use the native sumac and not have all sorts of maintenance problems. Nevertheless, what will happen on Hwy 2 is a very naturalized environment. This project will use evergreen component for screening and to meet the neighbors' concerns, but truly, a lot of the plants will be shrub masses with winter interest, and a lot of the uses of native grasses. Another encouraging factor is the applicant's willingness to take a look at the setback and go well beyond the maximum to naturalize even further and blur the edge between what is being developed and what is truly natural. The same or similar plant materials can be used within the development. The intent is to allow and encourage a very good transition of density plantings appropriate to the site. This will be a great example of the direction the city wants to move toward for the entryways.

Bayer wondered how long before the tree masses will appear as shown in the pictures. Todd acknowledged that it will be awhile, without question. However, the interesting thing about plant material is that it starts to make an impact as soon as it is in the ground. You are not necessarily better off planting humongous plants. It takes a year for them to regenerate growth. We can assume 1' to 3' growth in all directions initially for each of the ensuing years. Evergreens can go in a little bit bigger. Within a 5-year time period at the outside, people will have the impression that it has been well planted.

Steward inquired whether Todd had an opinion as to the signage as related to the entryway concept. Todd was not asked to review the signage and did not have an opinion at this point. The entryway concepts themselves are truly conceptual.

Carlson wondered if there is any element in design to stagger the tree planting. Todd suggested that just by choice of species a lot of that occurs. You are going to get a layered sort of appearance immediately. You won't get that on the spacing of street trees.

Carlson inquired whether it is the mission of the applicant to provide screening along the entire length and sight lines at the end, and Todd concurred.

Hunter noted that the subject property sits down from Highway 2 and in terms of commercial development, seeing landscaping like this is rare. She is on Hwy 2 frequently and the speed of traffic is pretty significant. Has there been any concern about the possibility of conceptually burying the Home Depot such that people don't even know they are passing it? Is this different than the normal Home Depot? Bott stated, "very much so". They have prototypes used around the country but Home Depot can adapt to planning requirements. They have worked with them to tie their design in with the whole development so that we have the stone, the copings and the bronze canopy rather than their typical orange metal roof. It's a destination business and they are willing to be a little more hidden because of this fact. Bott also pointed out that all the tree mass being shown by the pond is existing.

4. Mark Mainelli, 3534 So. 48th, Speece-Lewis Engineers, testified. Speece-Lewis was hired to do the civil engineering on this project for on-site utilities, paving, stormwater management, environmental work, etc. They are proud to have worked with Livingston Investments with the ability to do what is right without having to worry about budgets. One of the biggest issues is the Beal Slough Master Plan and this proposal utilizes Beal Slough. It is a long term process. The Berean Church on the other side of

Hwy 2 has an agreement with Livingston to detain any runoff caused by their massive use of the land on that corner. As far as Beal Slough goes, the architects and engineers realize they are going to maintain the Beal Slough integrity. We are not getting close to anybody else's property. The massive size of storage allows them to decrease the flooding potential downstream into Beal Slough. Two water quality features have been added. One is located near the bridge where they have delineated the wetlands and tried to re-enhance the wetlands, providing an opportunity for the water to slow down with the sediments dropping out. This area has been utilized for part of the stormwater running off the site.

The water cell to the southwest was not included in the drainage calculations for detention. It is there to collect the rest of the drainage from the parking lot before entering into Beal Slough. The Corps of Engineers was a part of this and they do have a Corps of Engineers permit.

Carlson wanted to know what grading will be done. Mainelli indicated that in coordination with the Berean Church there were wetlands disturbed and they were mitigated at the site. Anything north of the road was not disturbed. This was a natural valley so they raised the road and sized the pipe appropriately to retain the water long enough. Carlson sought confirmation that how it works in the north area today is how it will continue to flow. Mainelli concurred.

5. Tom Thoreson, Real Estate Manager for Home Depot for the Nebraska area, offered testimony in support. Home Depot been looking at Nebraska for a couple of years and has focused in on Lincoln. They have done extensive market research on Lincoln and have identified this community for potentially two to three stores. This particular site is one they have focused upon because it serves the southeast quadrant of the city most efficiently and most conveniently.

Thoreson advised that Home Depot is a home improvement retailer. Home Depot operates in excess of 1000 stores across 46 states, Canada, Puerto Rico, and Chile. It operates in a warehouse format. It is essentially all enclosed with the exception of a 16,500 sq. ft. garden center. The lumber yard is indoors. The store carries approximately 50,000 different items ranging from lawn and garden, to home improvement to general hardware items, and employs about 180-200 employees at an average wage in the Lincoln market of \$11.00/hour. They do not offer any minimum wage jobs. They have stock incentive programs. As a corporate company, Home Depot believes in its corporate responsibility to participate in the community and provides charitable contributions. Home Depot goes to great lengths to support at risk children, habitat for humanity and disaster relief services.

The headquarters for Home Depot is in Atlanta, Georgia. Home Depot opened its first doors in Nebraska in Omaha last Thursday. Steward inquired as to how many sites Home Depot has investigated in Lincoln. Thoreson indicated that they have looked at a lot of sites, probably more than twelve. They are starting to zero in on two sites in Lincoln for certain, and there may be a third.

Steward commented that contrary to some other "big box" developments, Home Depot is a destination retailer. He sought Thoreson's comments about that from his experience with other communities. Is it better to be within a neighborhood setting? Thoreson stated that they haven't seen anything dramatic in their operations related to being tied to any other retailer. He agrees that Home Depot is a destination retailer, although there can be cross-shopping experiences. There hasn't been any significant finding that says they do better tied to additional retail versus stand alone.

Steward inquired whether Home Depot has any particular marketing strategy for green products or recycled building materials, etc. Thoreson stated that they do; however, it is outside his area of expertise. He does know that the company has created a certification board by dealing with environmental manufacturers, retailers and suppliers to go out with a cognizant effort to determine what type of products to be developed, etc. It is a green certification.

6. Mark Hunzeker appeared on behalf of the applicant and developer. He submitted three proposed amendments to the conditions of approval, having to do with simple modifications to the site plan. The proposed amendments to Condition #1.1.3 and #1.1.4 have to do with moving the Home Depot building and the driveway on the east side of the drainageway further from the drainageway. The report requires that they relocate the building 25' farther away. They have determined that they can indeed meet the standard by moving 17' farther away from the wooded area and the stream without dramatically impacting the amount of parking that it takes up. It is Hunzeker's understanding that staff agrees.

Item #1.1.28 deals with not including any compact parking stalls. The applicant agrees that compact spaces don't work real well, but they do have a need for a few of those to use for employees. Hunzeker requested that Condition #1.1.28 be amended to allow for some compact stalls where they exceed the required parking. He believes staff is in agreement with this proposed amendment as well.

Hunzeker then discussed the history of this property. Some of that history is important as to why we are here. In 1994, the Planning Director was looking for commercial sites and designated nine or ten. This was one of those sites. As the Comprehensive Plan process wound down, several of those commercial sites were eliminated and this was one of them. The conditions that existed in 1994 were that Pine Lake Road had just been paved. Development of all the housing that you see south of Pine Lake Road had just begun. 70th Street was two-lane. There were no water lines serving this site. Highway 2 was beginning to be widened, so this site did not have the commercial feel that it has today. In 1998, this applicant requested that this site be designated commercial as part of the Annual Review of the Comprehensive Plan. This body and the City Council approved a commercial designation and also amended the phasing plan to move this into phase 1 of the Comprehensive Plan. At that time, this applicant was proposing an auto mall and there were many objections. At that time, Hwy 2 was more four-laned; the 70th Street widening was in the CIP; the widening of Pine Lake Road had been included in the Comprehensive Plan; the water lines were in or would soon be in; and it had become more obvious that this was not a residential site, but a site suited for commercial development. At that time, Mary Jo Livingston made commitments that this would be a very high quality site. The applicant listened to the objections about the auto mall and gave up that idea after the site was designated commercial.

The developer has had a lot of interest from retailers, some wanting to do too much for this site and some didn't want to do enough to satisfy the commitment that Mary Jo Livingston had made. This proposal is for 116,000 sq. ft. Home Depot was willing to go the extra mile. When we came to the Planning Department to start this project, there were several things emphasized to Home Depot as being necessary in order to make this site what they promised. There was emphasis on the entryway corridor; large setbacks; an architectural theme; protection of Beal Slough; the need to provide infrastructure to serve this site; and the need to be sensitive to neighbors with respect to lighting and landscaping. Hunzeker believes this proposal meet those criteria. Modifications have been made to the plan in response to neighbors, including lighting, adding berms, changing the building design and

issues with respect to additional landscaping, additional fencing for additional screening on the back side of the building and widening out the sidewalk.

This proposal seeks B-2 zoning. The original application was for B-5 and Hunzeker agrees that B-2 is more appropriate. It does not permit theaters or automobile dealerships. This is more of a community shopping center rather than a regional shopping center. The proposal has very high architectural standards exceeding any other large retailer of this type in the community. There is a theme that will be carried throughout the entire site. The proposed setbacks and landscaping exceed the minimum requirements by a long way.

With respect to traffic, Hunzeker pointed out that their traffic study indicates that in 25 years, in the buildout scenario, Hwy 2 will need to be 6 lanes between 56th and 70th. He believes that is true whether we do this project or not. This applicant has agreed with the Public Works Department to provide all the improvements necessary to accommodate traffic created by this project; they have also entered into agreements to provide for extension of sewer to serve this project and upstream. Areas north and west of Pine Lake and areas south of Pine Lake are all in the future urban area and need that sewer. This project will save the city one-quarter million dollars in sewer expenses.

Hunzeker contends that this applicant has done more than any developer he has ever seen recently in terms of going the extra mile on landscaping, architecture and all manners of engineering.

Steward asked Hunzeker to be a little more explicit about the contributions to the infrastructure. By the applicant's calculations, Hunzeker stated that the costs to extend the Beal Slough sewer would be about a \$750,000 project. This applicant will be entering into agreements with the city to provide funding which essentially pays for the equivalent cost of an 8" line running all that distance and will be contributing a significant amount in terms of paying engineering design and inspection fees in addition to the construction costs. The list of street improvements include right turn lanes at each of the entrances; extending or building left turn lanes at both main entrances on 70th and Pine Lake Road; and a traffic signal at the main entrance on 70th. The applicant has agreed to phase the project so that the portion east of the drainageway will not be built until the year 2006, which is when Pine Lake Road is in the CIP for improvement. If the applicant comes in to build before that, the applicant has agreed to be responsible for two lanes plus a turn lane along this owner's entire boundary with Pine Lake Road.

Carlson inquired whether the applicant has any specific agreements for the other large pad tenants. Hunzeker stated that they do not have any specific commitment on any of the pad sites.

Hunter inquired about the signage. Hunzeker indicated that there would be no pole signs. They have proposed a monument sign at the corner of 70th & Hwy 2, one at each entrance on 70th and on Pine Lake Road and one on the east part of the site. The staff has objected to the sign on the main Pine Lake entrance. The applicant does not object to removing this sign.

Hunter inquired whether the signs will conform with the architecture of the building. Hunzeker answered in the affirmative. They will have bases and the stone will match the building.

Hunzeker offered that the drawings submitted may be added as conditions of approval or accepted as part of the application.

Opposition

1. Dr. Michael Eppel, spoke on behalf of the **Southeast Coalition of Homeowners** including the Country Meadows Homeowners Assn., Pine Lake Homeowners Assn., Southfork Homeowners Assn., Family Acres and Lee's Summit, in opposition. He is not speaking for Amber Hills or Edenton South.

The Southeast Coalition of Homeowners has major concerns about this development. The history is well-known to the Commissioners, suffice it to say that in the past this has not been considered a good commercial site and the Southeast Coalition of Homeowners believe that at the present it is not a good site for commercial development. "You can dress a pig in a wedding gown but it's still a pig." This is Home Depot whether it is cultured stone or cultured pearl. It is not the right place for Home Depot. We don't have a commitment from a grocery store for the other building and we have no assurance that will not become a K-Mart or Shopko, etc. We didn't hear about the pad sites. We didn't hear about the fast-food restaurants. This site is 8 blocks from 84th and Hwy 2. It is surrounded by low density residential on three sides and residential urban. 84th & Hwy 2 will be a shopping area bigger than Nebraska Crossing and bigger than Gateway. Why do we need a commercial center at 70th & Hwy 2 when there will be one at 84th? This will be in the middle of a residential neighborhood. It is incompatible with the neighborhood. When the rest of the country is moving away from this kind of development, the applicant proposes to put something in that is incompatible with the neighborhood and something other towns and cities are moving away from. This is also referred to in B-2 as a neighborhood shopping center--this is not a neighborhood shopping center. This is a regional shopping center. Home Depot is not a neighborhood hardware store. It's a regional hardware or regional lumber yard type store. So B-2 is a stretch to suggest it is going to be a neighborhood development, even with the grocery store.

With regard to the traffic issues, Eppel noted that we have heard this will not generate that much more traffic than otherwise on Hwy 2. The Commission did not hear that there are deliveries to the Home Depot store consisting of 8 to 10 semi's a day, which can be anywhere from the opening hours to one to two hours after they close, which is 11:00 p.m. on some days, so conceivably there could be deliveries up to and including 1:00 a.m. We don't know what the pad sites are going to be or the other store which will also generate more traffic. There is certainly going to be traffic delivering to and from those stores next to the neighborhoods. There will be lighting 24 hours a day with an outdoor garden center and lumber yard. There will be an outdoor PA system connected to the home and garden center. The traffic study does not take into account the effect of the regional shopping center at 84th & Hwy 2. That will generate its own traffic as well as the traffic for this center. There is no other site around Lincoln within a residential area where there is such a high density commercial use next to residential. Normally there would be some sort of step-down zoning or buffering such as office type development. But this is plopped right in the middle of residential with no transitioning. Where is the step-down?

Eppel then referred to Exhibit E of the Comprehensive Plan. The Southeast Coalition of Homeowners believe that this calls for a step-down type zoning within 1.5 miles of the regional shopping area and it calls for some studies to be done. He does not believe these studies have been completed; he does not believe this development meets the standards called for in that subarea plan. He believes there may be a legal challenge based on Exhibit E of the Comprehensive Plan.

Eppel is hopeful that Hunzeker wasn't saying that by contributing to the costs of the sewer, etc., this is a reason to do this project; in other words, to buy the zoning. We don't believe the fact that they are willing to contribute to these costs is a reason to approve something that is a bad plan for this neighborhood. The neighbors have been asked whether they are willing to compromise. Eppel believes that the neighbors have compromised a lot by compromising from AGR zoning initially. They had suggested residential. They are willing to go with some kind of office development. The applicant is not willing to compromise on that. They want the maximum return on the dollar. They want a regional type development with big box type stores and we do not believe this is appropriate for this neighborhood, particularly with what is being proposed at 84th & Hwy 2.

Dr. Eppel submitted a list of 20 names in opposition and approximately 40 people stood in the audience in opposition.

2. Christine Kiewra, 6400 So.66th, President of Country Meadows Homeowners Assn., representing approximately 55 homes, testified in opposition. Their first major concern is traffic. Country Meadows is a neighborhood that does not have sidewalks, curbs or street lights. Side street traffic brought on by this traffic would be a real hazard to this neighborhood. Turning from 66th onto Hwy 2 is already difficult, and this is close enough to 70th that there could not be a street light put in. The additional traffic by this project would be a severe safety issue. Hwy 2 is not six lanes at any point in this state. We need to hear more about that. In looking at their traffic study, there appear to be significant street improvements. She heard Hunzeker mention that they are willing to pay for this. Does he mean all of it or a percentage? We haven't seen an agreement yet.

The second major concern is the timing of this project. You've heard about 84th & Hwy 2, nine blocks away. It is interesting that they are doing this project in two phases. One of the developers mentioned that this area is too green to get a second anchor. Is that why they don't have other pad sites? There just are not enough homes to support commercial at this site and at 84th & Hwy 2.

Kiewra further testified that for 10 years this site was not okay as commercial. It was considered spot zoning; it would encourage strip development; there would be a negative impact on the Capitol View Corridor; Beal Slough was also an issue. There are several comments in the staff report about concerns of drainage, grading and environmental impacts. The planning staff will tell you that commercial development at this site still is not good planning, but you changed the rules when you changed the Comprehensive Plan so that is the parameters you have to work with. We need to recognize the fact that the lowest impact commercial development is the only acceptable compromise for the neighbors in this area.

Another issue is "regional vs. community". Kiewra agrees that Home Depot is an asset to the city. But this is only one anchor store of this entire project, which is 267,000 sq. ft., the upper limit of a neighborhood project is 300,000 sq. ft., and they are including more parking which leads her to wonder about the second anchor store.

We have heard about the need for compromise. We have heard that the applicant has met neighbors' concerns. Kiewra suggested that if the Commissioners had been at the neighborhood meeting, they would hear that the neighbors did not want a big box. In response, the applicant is giving us a higher berm and wildflowers. There is no landscaping that can be done to hide the pig. O-3 is the zoning that Country Meadows would request be considered for this site. It is a typical suburban buffer between high density and residential. There would be less total traffic and would be limited to business hours.

It would be less intrusive aesthetically; less environmental impact; more compatible with the surrounding homes and could be built in a way to enhance our entryway.

3. Steve Nickel, President of the **Family Acres Association**, from 56th to 84th from Old Cheney to Yankee Hill, consisting of about 100 family members. There are about 200 families that could belong to the association. Family Acres surrounds this property. We are not near it or over the hill. We surround it and we are opposed. The proposal is bad planning. First of all, it is contrary to the goals of the Comprehensive Plan. For example, on page 37 there is a land use goal to, "Preserve the rural quality of life assuring that changing rural residential land uses or growth is compatible with adjacent and surrounding land uses." Nickel contends that a "big box" is not compatible with low density housing. One of the commercial goals, on page 54, is to, "Discourage strip development and spot zoning and encourage more compact and higher quality retail and commercial development." Nickel believes that this proposal is in fact strip and spot development along Hwy 2. The transportation goal on page 81 states to, "Maintain zoning and traffic pattern compatible with existing land uses and retain the character of the rural and urban neighborhood." Nickel observed that most of the people in this area have been in their houses for anywhere from 10-30 years, and if that is not existing land use, he doesn't know what is. The Comprehensive Plan also states to, "...retain character of the rural and urban neighborhood." Family Acres has the concern that the location does not meet spacing requirements for shopping centers. Neighborhood centers are to be about two miles apart. It is two miles from 56th to 84th and Hwy 2. This proposal would continue strip zoning along Hwy 2 in a location where a shopping center should not be. This is not a little shopping center. It is essentially the same as Nebraska Crossing at I-80 near Gretna. It has already been decided that our neighborhood is going to live with a 500 pound gorilla (84th & Hwy 2). The current proposal puts an arm of that gorilla under our bedsheet in an area where there should be transition. Where is the transition going to occur? If this center is permitted, what will follow will be tremendous pressure on residences across 70th Street and across Pine Lake Road to sell out for major development. Where does it end? Our neighborhood will end up paying a social price for this proposed development. An acceptable solution would be an office park as a transition between our neighborhood and the intense development to come at 84th & Hwy 2. This would meet the goals of the Comprehensive Plan as well as the social goals of Family Acres.

Steward asked Nickel whether his group has had opportunity to express these concerns to the owner and developer. Nickel stated that he was not able to be in town when they had their neighborhood meetings, but someone else in the association has expressed their concerns within the last 4-6 weeks.

4. Jim Iwan, landowner, testified in opposition. He bought his acreage about seven years ago and has a lot of "sweat equity". He agrees that the proposed development is beautiful and nice, but it's a honey pot, like North 27th. If Home Depot gets in, it's a domino. You see what's coming. He is not against anyone making a profit. But as a nation we don't like to make profits on the backs of other people and when people get hurt for a profit. Let's make a reasonable profit—one that is harmless and not going to hurt anyone. As far as Home Depot, they invade communities. This is going to hurt many of the other businesses in Lincoln. There will be a lot of vacant store fronts.

5. Terry Beyer, 7300 Revere Lane, testified in opposition. He believes they have a neighbor that sold them out. She has no remorse or feelings--all she is looking for is the almighty dollar. We have plenty of businesses right there off Hwy 2. There is a Target Store at 56th & Hwy 2. We couldn't put a Walmart or Sam's on 84th & O; then they approved a car lot and Kohl's Dept. Store. Beyer stated that he is praying that the Commission will take a good hard look at this and throw it out the window.

6. Beverly Mosher, 6363 So. 70th, northwest corner of 70th & Hwy 2, testified in opposition. This proposal will impact the city and the area nearby. At present, there is only one beautiful entrance into our city, and that is Hwy 2 approaching from the east. We find a beautiful pastoral scene. Not until we reach 56th Street do we find commercialization. We can be proud of this beautiful entrance. Please consider the impact of a shopping center with increased traffic, noise, light pollution and eventual strip malls with all the attendant ugliness. These property owners built their homes in the 1960's for a modified rural lifestyle. Mosher stated that she had received generous offers to purchase some of her 6 acres, but she would not even consider such a decision which would adversely affect others and destroy their way of life and the beauty of the neighborhood. The proposed site would be perfect for residential dwellings and would adhere to the Comprehensive Plan. During the summer of 2000, 70th was widened to 4 lanes in front of her home. There were many months of inconvenience. For three days they could neither walk nor drive from their home. The needs of many exceed the needs of one. How can an individual be allowed to make such a disastrous impact on a beautiful area and a beautiful corridor into our city? The land in question was purchased by the acre rather than by the square foot. She has never heard a single person who lives in this area voice support of this unsightly project. At one meeting within the last six weeks, she said, "is there anyone in this room that supports the project?", and there was dead silence. She implored the Planning Commission to consider function and responsibility to the city. Please deny demands from one single individual whose only goal is making money at the cost to many. Why would the Planning Commission even consider a proposal for a shopping center in this beautiful residential area where no one wants it?

7. Harold Mosher, 6363 So. 70th, diagonally across the highway from the Livingston land, testified in opposition. He asked the Commission to please consider the issues that have been raised carefully as it will affect the quality of this neighborhood for years to come. To what extent should government use its power to classify property as commercial when it will result in damages to the adjacent property owners? In a democracy should a government ever do that? Should a government take your front yard away? Should the guy across the street? This is very real to him because his property is adjacent to Hwy 2 and adjacent to 70th Street. We all know that No. 27th Street north of Cornhusker Highway is at least six lanes. Hwy 2 was originally reconstructed from 2 to 4 lanes with a median. As a result, it carries a lot of traffic. Hwy 2 today carries more traffic than any state highway in the state of Nebraska. There is no money in the state treasury nor in the foreseeable future to widen Hwy 2. Is it important? Yes, it is very important. He attended a neighborhood meeting where a representative of Home Depot suggested that they fully expected 3500 customers a day if this site is redeveloped. Mrs. Livingston told us that she intends to have some other business activity such as a bank, a grocery store, fast food restaurants. She did not tell us how many customers they expect. Mosher believes it could easily attract 1000 customers a day. The question then becomes one of what you do with 5,000 more vehicles on Hwy 2. Remember K Street a few years ago? What happened when we changed it from one-way to two-way? Are we going to plug Hwy 2? Keeping in mind, too, that some of us have experienced the joy of the government's power of eminent domain. Mosher recognizes that the government can and should use it, but should it use it to benefit one property owner at the expense of another?

Mosher's home straddles Stevens Ridge. Hwy 2 does not go over Stevens Ridge, it goes through it. If Hwy 2 goes to 6 or 8 lanes, his property goes—not for the first time, but for the fifth time. Surely at some place along the line there is a place of decency when you say no, enough is enough. We were told about 70th being widened but we weren't told what kind of traffic would be put on 70th.

8. Bob Olson, 8001 Dougan Drive, **President of Pine Lake Homeowners Assn.**, testified in opposition on behalf of 132 households. He agreed with all the previous comments in opposition. This is a matter of good taste and consideration of your neighbors. It is a matter of what fits in the neighborhood and what blends in with the existing neighborhood. A “big box” and parking lot does not fit in. This is an encroachment. We would like to have something that is compatible with the neighborhood in this countryside and beautiful valley. We do not want more light and noise. Country Acres does not have street lights and sidewalks and there is not a lot of traffic. The neighborhoods have preferred the property to be residential, and this has been expressed to the applicant. The applicant also refuses to put in an office park. The Pine Lake Homeowners would agree to an office campus.

Olson also pointed out that there was a gentleman's agreement between the Mayor and some of the city officials that if the affected neighbors would go along with the mega mall at 84th & Hwy 2, they would see that there was no spot zoning or strip zoning. It appears to Olson that gentleman's agreement has gone out the window.

Olson noted that people build their homes and develop their property in regard to what's already there. Home Depot with its only access off 70th will cause traffic problems. If this property goes commercial and is developed, the neighbors believe the next step will be more commercial on the Livingston property across Highway 2, along the Pine Lake Homeowners' west fence line.

Olson also pointed out that the majority of the 300 homeowners in the coalition are opposed. The Pine Lake Homeowners had their own neighborhood meeting. The applicant had promised to work with the neighbors, but it was just a show and tell meeting. We just don't trust what's going to happen. Olson pointed out that there is virtually no landscaping at the Home Depot site in Omaha.

9. Bevan Alvey, next door neighbor to Bob Olson in Pine Lake, testified in opposition. He attended a number of the meetings with the developer and at each one of those meetings there has been a vote taken of the people in attendance as to whether or not they support the project. He does not know how all the people in the entire area would vote, but at the meetings he attended, out of all the people there, only one person stood up in support of this project and he worked for one of the architecture firms involved in developing it. There are 1500 Nebraskans that live within 1.5 miles of this proposed project. They will be getting a petition together, but he thinks out of those 1500 people who will be affected, there will be unanimous opposition.

Alvey asked the Commission to keep in mind that we're not just talking about Home Depot. We're talking about 15-20 pad sites which will involve other types of commercial uses and they're all going down 70th Street. If those become retail and fast-food, the people across the street are not going to want to continue to live in that sort of environment and will sell out to something other than residential. When you put something in the middle like this, you will have a degradation of the entire surrounding area and the adjoining neighbors.

With regard to the subarea plan, Alvey understands it was intended to be part of the Comprehensive Plan and involves planning for the whole area. The planning of that whole area involves traffic studies, environmental impact and other types of studies in terms of development of that area that should be done in order to be able to determine the right uses for that subarea. He understands that is what planning is all about. Before putting a specific use right in the middle, this planning needs to be done. We need to withhold the decision on this property until the subarea plan is completed.

10. Kent Seacrest appeared on behalf of the “500 pound gorilla”, the proposed regional shopping center at 84th & Hwy 2 owned by Andermatt L.L.C., controlling about 550 acres which was designated in the Comprehensive Plan in 1994 as the next regional shopping center. He is not in opposition. He is not here to talk about the substance of the plan at all. He is here to talk about process dealing with Exhibit E of the 1994 Comprehensive Plan.

Exhibit E was put into the Comprehensive Plan at the same time as the 500 pound gorilla. It was put together by a committee of seven—the Mayor, Planning Director, attorney representing the Pine Lake area, Neal Westphal, representative of the Pine Lake Neighborhood Assn., Kelvin Korver and Michael Rierden. Seacrest noted that the Planning Commission received a memo from the Planning staff today indicating that Exhibit E does not apply to 70th And Hwy 2. This is disturbing because there is language about defining the scope and it was defined to be the 1.5 mile area. “Zoning of land in the sub-area plan will not occur until the completion of the following studies:...”. Seacrest reads that to say zoning of the land in the 1.5 mile area will not occur until completion of the studies. He has talked with some of the committee members and they agree that the purpose was to be sure there was no commercial type zoning within the whole 1.5 miles. The whole premise was that we would put all the key commercial in one big area and master plan it and not have it spread along Hwy 2. The subarea is to be sure we don’t have strip development up and down Hwy 2.

Seacrest advised that the subarea plan was submitted last month. The four studies required by Exhibit E have been submitted. They invited everybody in that subarea, a mailing list of 1200, and had a public meeting. The potential strip includes Shopko, which owns property at 66th Hwy 2, which was vetoed; the subject property; the sister triangle; the tract now owned by St. Elizabeth; and another piece of vacant property. We haven’t even talked about Stevens Creek which we are starting to master plan.

Seacrest urged that the Commission follow the Comprehensive Plan. The language is clear that you are not to zone in this 1.5 miles until the subarea is done. It is submitted and will take about three months to complete. Seacrest requested that the subarea plan be given an opportunity to work itself through.

Staff questions

Carlson asked staff to speak to the issue of Exhibit E. Ray Hill of Planning staff explained that at the time the city approved the Comprehensive Plan Amendment to show this land as commercial, they did not ask for any studies to be completed before the zoning is changed. Carlson wondered whether that position is in conflict from what happened at the time of 84th & Hwy 2. Hill did not believe so. The amendment to the Comprehensive Plan happened after the subarea plan was put into the Comprehensive Plan and asked for those additional studies. That language was in the Comprehensive Plan at the time the City Council chose to designate this area as commercial. But Carlson thinks the case could be made that we have one plan requesting additional studies prior to

change of zone, and a second plan that interprets that the studies are not required. Rick Peo of the City Law Department has not had a chance to read the memo or look at the matter specifically, but when we do a Comprehensive Plan Amendment, there is always a provision added in the resolution providing that any other inconsistencies in the plan are also being amended at the same time. Normally, a later amendment in time supersedes any contrary designations, but he was not prepared to make that conclusive statement today.

Steward did not recollect whether there was any discussion of a subarea plan preceding it when this item for change to commercial was heard. Peo did not have the details about that particular application at this time either.

Steward noted that there have been representations made of the city's role and the developer's role in infrastructure financing. Are there any specifics that the Planning Department expects this development to make in regard to extending infrastructure? Hill advised that the Comprehensive Plan indicates that the CIP and the City's limited funds are very important in the development of the city. It also points out that if the development occurs in advance of when the city can afford the infrastructure, the private development should be responsible for paying for those improvements. With this application including annexation, it allows the city to negotiate with the landowner on those costs for developing this property. At this time, the Public Works Department is responsible for those improvements and has been negotiating with the developer on who is paying for what and when, and that annexation agreement will be finalized before this project will be presented to the City Council.

Carlson wondered about the process of using Office zoning as transitional zoning. Is that common? Hill answered in the affirmative. There are areas where O-3 has been used as a transition. The neighbors do believe it does present a good transition because of the activities that occur in an office park. Carlson was suggesting that there be some transition even within the site. Is the site too small to offer that? Hill indicated that there has been discussion as to whether the strip along 70th could be something other than fast-food and drive thru's. In the conditions of approval on the use permit, the staff has asked that the drive thru's be limited to the area north of the main entrance away from the neighborhood closer to Hwy 2. The convenience store/service station is located at the corner of Pine Lake Road and Hwy 2, away from the neighborhood. The property across Pine Lake Road is also owned by this applicant, so we suggested that it be moved as far away from the neighbors as possible.

Carlson inquired about the condition not allowing fuel pumps. Hill explained that along 70th Street, the conditions require that there be no convenience store, with or without fuel pumps. They do have one at Pine Lake Road and Hwy 2.

Carlson wondered whether there are uses within the B-2 that would be more transitional and less intense. Hill advised that office buildings are also allowed in the B-2 district.

Response by the Applicant

Mark Hunzeker began with the process question. The amendment adopted by the Council two years ago, which designated this property as commercial, had quite a little discussion, and one of the reasons given not to amend the Comprehensive Plan in that fashion was the so-called Exhibit E. It was argued that there were promises made that there would be no commercial within some long distance of that intersection, and despite that, it was recommended that this is appropriately commercial

property. In addition to changing the land use designation, the amendment also changed the phasing plan. Interestingly, the Comprehensive Plan specifically addresses areas designated phase 1 to be areas where the community actively encourages growth.

“...All major infrastructure required to facilitate development in this area will generally be in place or included in the first year of the CIP, although some improvements may be developed in years 2-6 of the CIP if such phasing is concurrent with the development of the land. The community will generally approve development proposals in this area that are consistent with the land use portion of this plan if all the capital facility needs are met and if the proposal is consistent with the zoning criteria.”

Hunzeker pointed out that the staff report goes through the zoning criteria and recommends approval. There is nothing to be learned by waiting for the 84th & Hwy 2 process to take its course. The water is in place; the sewer line will be in place; the improvements in Pine Lake Road are in the CIP; this portion of the subarea plan is as complete as it can be. With respect to an office park, to use this property as an office park will mean a substantially higher floor area ratio—it would require more office space to make this project economically viable. That means higher, not lower, peak hour traffic volumes. General office will generate 640 peak hour trips versus 330 that the proposed project will generate. That rises to 1150 peak hour trips if a third of the office was medical. The a.m. peaks are dramatically higher because retail uses have notoriously low morning peak hour traffic.

With respect to lighting, this applicant has double-checked the lighting plan to make sure it meets the standards. The only places that it appears they might be exceeding the standards are within the halo of the street lights on 70th St. There is more light that will be visible from anywhere off this site on the streets abutting this site than there will be on this site. The applicant would not object to being required to turn off 2/3rds of the lights in the parking lot as soon as the employees are gone. They will do that anyway, except for security lighting.

With respect to noise, Hunzeker suggested that if it is possible to over-engineer a project, this one may be it. They had a physicist from UNL do a study of the noise potential for the outdoor speakers for the garden center. There are three little speakers that serve as a paging system and it was concluded that by designing them to point downward, they will be inaudible at the property line. It is also possible to design those systems so that they have an automatic cutback at certain hours.

With regard to not submitting a market study, Hunzeker believes that Home Depot would take strong exception to that. There has been a market study and this is the site they want to be on.

As far as the east building becoming a K-mart, etc., Hunzeker observed that it is only 65,000 sq. ft. It's a grocery store or maybe something small but not big enough for a big box use. The proposal is for a grocery store. Home Depot generates less traffic than most general retail uses. It generates considerably less traffic. So, when they talk about this property not having a big box, we're not talking about reducing traffic by doing that. This project is a relatively low impact project the way it is designed. This is a 116,000 sq. ft. building—it's not a big box. It is smaller than any of the discount stores. This applicant has put a lot of work into this project in keeping the size of this anchor tenant down to keep the big setbacks and protect the drainageway. This project represents a standard which the Commission should feel is excellent compared to almost any other commercial property of its type anywhere in Lincoln. This area, whether it looked that way 10 or 15 years ago or not, is part of the city, will be part of the city, and will be ever more so as time goes on. Just think back once again to where

we were seven years ago—Pine Lake Road was gravel; no development whatsoever south of Pine Lake Road, and look where we are today with the amount of additional traffic and additional development that has taken place and what is likely to take place. It is easy to say this property was shown as AG or AGR at some point in the past, but for 25 years we have looked at Stevens Creek and it has been shown as AG. Does anyone in this room think that 25 years from now it will be AG? Change is something the Comprehensive Plan is supposed to accommodate.

Hunter is pretty concerned about a proposal which talks about office buildings, banks, financial companies, restaurants, dry cleaners and on- and off-sale alcoholic beverages. In terms of looking at development sites, she is surprised the public didn't shout to high heaven about the concept of on- and off-sale of alcohol because that brings in a whole other concept. The applicant did not mention this as a potential user, either. Hunzeker explained that to be a list of potential uses that were included in the original application. The use permit ordinance requires that they list potential uses. It is not at all out of the ordinary to have on- and off-sale at the same establishment. He believes that restaurants like Lazlo's sell their own product off-sale. A stand-alone bar or the possibility of a neighborhood type bar is not the kind of tenant this applicant is anticipating. They are thinking more in terms of sit-down restaurants, i.e. Applebee's, the Chili's type, etc. Hunter realizes that grocery stores sell alcoholic beverages. Hunzeker then stated that sort of use is restricted by Home Depot policies. Thoreson, the Home Depot representative, stated that Home Depot tries to stay away from locating in shopping centers that would have a liquor store or perhaps some sort of facility that all they do is serve or sell liquor on- or off-premise. A grocery store selling liquor could potentially be in conflict with the Home Depot policies. Their biggest concern is having a facility that sells liquor for sit-down purposes with that being their only source of business. If tied to a food element, it is more acceptable. This will have to be addressed by Home Depot. Company-wide, they try to restrict that type of use within the shopping center in which they operate. That is a restriction that falls in the form of a document recorded against the land and can only be changed if the consenting parties agree to change it.

Carlson inquired whether the traffic calculations take into consideration the design limitations of the site. Hunzeker responded, stating that it is easier to put more office space on the site than retail. Setbacks in the O-3 zoning are 20' versus 50' in B-2.

Carlson inquired of Hunzeker as to the potential for office transition within the site. Hunzeker agreed that it is possible to build office space in the B-2 district. If people come along who want one of those seven pad sites for an office building, that is certainly a possibility.

Carlson noted restrictions in the conditions as to the pad sites on 70th Street. Hunzeker confirmed that the applicant has agreed to those restrictions.

Carlson inquired about the delivery trucks. Thoreson confirmed that when they got together with the neighbors they did say that on an average the store receives 8-10 truck deliveries a day, and it is extremely difficult to control those delivery schedules. However, their deliveries usually occur within their business hours. Occasionally those trucks do show up an hour before or an hour after, but there wouldn't be staff to receive that merchandise so the truck will be turned away. They could potentially receive merchandise after-hours, but in most cases they do not. He guaranteed, however, that it would be within the margin of error and would not be at all hours of the night.

Steward asked whether Home Depot delivers its merchandise. Thoreson answered in the affirmative. Steward wondered whether they depend upon a significant volume of their business being to

commercial builders. Thoreson answered, “no”. There is a portion dedicated to commercial/pro-business, but the majority of the business is the do-it-yourselfer. Their own trucks could be delivering any hour throughout the day.

Bayer inquired about the compatibility of other buildings on the pad sites. Hunzeker indicated that they will include the architecture elements. They will not all be identical but they will all include the architecture elements, i.e. stone materials, etc.

Bayer recalled years ago talking about Edgewood. We had this issue about delivery and he believes the delivery hours were limited. Hunzeker does not think it was Edgewood. He thinks deliveries might have become an issue at the HyVee in Williamsburg. The loading docks at Home Depot are behind the building, so trucks will go in behind the store away from 70th Street abutting the creek and the mature trees along the creek to unload. Bayer suggested that the only real issue is that the trucks are going to come down 70th or Pine Lake Road and turn into the far south driveway to go behind the building.

As to staff’s position in regard to the applicant’s request for amendments to the conditions of approval, Hill stated that the staff would prefer that the Home Depot building be relocated the 25’ distance farther away from the wooded area and the stream, but 17’ is an improvement over what was originally submitted.

Carlson moved to defer with continued public hearing and action on October 18th, seconded by Newman.

Carlson is interested in doing some further exploration on office transition within the site; he is interested in the City Attorney reviewing the applicability of the Exhibit E; he is interested in seeing a landscape plan on paper that can be attached to the use permit; and he is interested in the landscaping in general, but he does not know that they have gone to the I-80 entryway standard. In this particular instance, there is a possibility that this site could work but there are a lot of mitigating issues that he wants to see it in writing; and he wants to find out whether it is appropriate to add a condition listing uses that are not to be included on this site.

Steward stated that he will vote in favor of the deferral only on one single process issue and that is the relevance and the history of the subarea plan as related to the earlier Commission approval and discussion. Once that is clarified, he thinks it is the only mitigating circumstance which would call for a deferral. Otherwise he thinks we have enough information to make a decision. There is some history that could be relevant.

Schwinn will vote against deferral because typically when we have a big project like this there is still a lot of negotiating and he did not hear that much between staff and the developer, which indicates to him that they have gone above and beyond what we would ordinarily expect. It seems like everything that has been asked for has been given. He agrees with Steward about the overlapping issue. But it keeps coming back to this “gentleman’s agreement” in 1994 and he thinks that is kind of a ludicrous concept that they would decide not to zone within a 1.5 mile radius. How can you make that promise? It does not make any sense to him.

Taylor will vote against deferral because it looks like the arguments that have been raised have all been answered very thoroughly and he is really pleased with the Home Depot operation in that they are

taking some very strident measures to uphold some very good and wholesome standards. He believes all the questions have been answered. Anything more will just lead to redundancy. It is clear in his mind that we have enough information to make a decision.

As far as having all the information, Carlson pointed out that he does not have the landscape plan in his materials. What's important on this is landscaping. He does trust Kim Todd and her professional ability but he wants to see it. Hill referred to page 9 of the staff report, Analysis #5, which indicates that the proposed landscape plan generally exceeds the design standards, except the number of shade trees proposed in the parking lot located west of the home improvement store and in the parking lot for the east development. The applicant has provided the staff with a landscape plan that the staff has reviewed and determined that it exceeds the minimum design standards of the city, except that they chose flowering trees in the parking lot rather than shade trees.

Carlson's response was that while he relies almost all the time on the expertise of the staff, he believes it is appropriate to have the information in front of the Commissioners to make the decision. This site can work if it has mitigating design features and he needs to be satisfied that those exist. If not, he cannot vote in favor of the project.

Hunter stated that she will vote in favor of the deferral for only one reason. One of the disadvantages of being new on the Planning Commission is that a lot of the history of what happened with this property happened before a good portion of these Commissioners were on the Planning Commission, and it leaves them at a great disadvantage to fully understand what happened. This is one of the most passionate things upon which she has seen the neighborhood come forward and she does not want to vote on something without the comfort of knowing the history. Her biggest concern is that this was a residential area that was changed in the Comprehensive Plan to reflect commercial. She thinks she needs to understand why that happened to begin with. She needs time to do some research.

Bayer stated that he will vote against deferral because he believes the information is available and the applicant is willing to attach the renderings as part of the plan.

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

Public hearing was closed.

ANNEXATION NO. 00005

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 4, 2000

Steward moved to deny, seconded by Carlson.

Steward complimented the development team on a superb job of architecture, landscape architecture and visual presentation of materials, giving him some considerable confidence that parts of this community know how to make a presentation that is environmentally conscious and friendly. This does not, however, cover up the fact that it is the wrong project in the wrong place. This is an entryway corridor that is very important. Whether it's almost out of sight, it isn't out of sight. Whether it's almost affiliated more with a major thoroughfare than with neighborhoods around it, it isn't detached and unaffiliated with the neighborhoods around it. He strongly believes that this Commission made an error of judgment when it was proposed to be commercial in the first place. He thinks there is some history

that is relevant that should be explored to be sure that we did not aggregate the process when that decision was made. The key to this is some words which Mr. Hunzeker used and that is “economically viable”. Those are pre-conditions in which the surrounding neighbors have no input; those are pre-conditions which only the property owner and developers control; and also, when one says it’s ever more so to become more and more part of the city, those are code words for “there will be more and more commercial on this thoroughfare”. He does not believe the big box strategy in this location is appropriate. He understands the economic pressure. He regrets that philosophically. He thinks it takes money out of the community that would never work for the community, although among the big box developers it would appear that Home Depot strives to do a more community conscious job. He believes it is a very attractive looking project but he cannot support what he believes to be not very “cultured” planning (playing off of the cultured stone we’ve been presented with), and he would suggest that this project should not be approved.

Carlson reiterated his previous comments. He will not vote for this project until he has the information he is requesting.

Schwinn commented that this is one of the things that he and Steward have fundamentally disagreed upon. Schwinn believes the major corridor is where you put the big box because you don’t want everyone to drive through the neighborhoods to get to it. He also understands the concerns about the entry corridors into the City. He has heard some talk about the concerns about environmental impacts in the staff report. With the staff recommending approval, he believes that all of those concerns have been answered. This is not the only place in town like this. 27th and Pine Lake Road has residential abutting right up to commercial on three corners. There is only office on one corner. If we don’t need any more shopping centers, we don’t need any more jobs and we don’t need any more tax revenues. He is bothered—there have been many times that this developer has been referred to as greedy. There is a developer that created the acreages and there was probably a farmer there before the acreage owners that didn’t want acreages there either. We made the decision to turn this property into commercial and it was because of the fact that it was on Hwy 2; it’s a very hard edge and not a place that people would want to live. That is what happens when you live on a major highway. As a city grows, sometimes that has to happen. He believes this developer has gone above and beyond the call of duty. He has seen projects like this that are completely masked. This is a destination business. They don’t need the signage. They can camouflage the project very well. This is a good fit for the site.

Taylor commented that he was particularly stricken by the gentlemen that said letting Home Depot in will kill some of the smaller businesses. He has noticed this to be true. For example, Sutherland Lumber, Ace Hardware, etc. But it appears that this is just what is happening with the passage of time. None of those small retailers such as a paint store, etc., testified today, so it did not seem to be that important. He believes the developer has taken tremendous effort to develop this property. As traffic increases we are going to be looking for more lanes on Hwy 2. We can’t hold back the future by preventing or stopping this commercial development. There will be a commercial development at that site. The question is what kind and who the developer will be. If we prevent this developer from doing an outstanding job, he does not know that we’ll get this caliber of a developer later on. We all hope for progress and greater income coming into our community and this is part of it. We need to learn how to adapt to it, especially with this being done in such an outstanding fashion.

Since the motion to defer failed, Hunter observed that she will not have the opportunity to gather all the information. There are a couple of points that have bothered her about this area of Hwy 2. If you look at acreage developments that exist all around this property, the question that comes to her is why this particular property was not developed as acreages. How did all the acreages develop with this section being left out in the middle? An overbearing thought for her is that this is Hwy 2 and it is the access highway between Lincoln and Kansas City. She lives very close to this area and she drives Hwy 2, and there are 18-wheel trucks on that highway all day and all night. This is not like a local roadway that is suddenly to be used by delivery trucks. As far as fear of large trucks, she can guarantee that when 84th is developed, it is going to get bigger and more. This development is something that a Planning Commission should drool over in terms of what this developer is proposing to make fit nicely in the community. Whoever comes in to develop 84th should know that she will be looking for the same thing so that we don't wind up with another North 27th entrance to the City. Without having the benefit of knowing why that land was turned commercial, she will have to lean on the fact that those that preceded her must have known what they were doing.

Steward commented further that there is nothing inevitable about change. That's what planning is about. We do not have to accept anything that has already been decided until there is a building there. We do not have to accept the fact that because it is commercial it takes precedence over residential interests. We don't have to accept the fact that we drive this highway. Have we driven the neighborhoods? Have we put ourselves in the position of the 1500 people around this who have demonstrated that they do not want this project in their neighborhood? Where do we balance commercial interest with quality of life if we don't do a Comprehensive Plan and stick to it? We have an excellent Comprehensive Plan but we've not had the will or political courage to stick to it until the community decides that it should be changed. He thinks this is a watershed decision that this Commission is about to make and he thinks the Commission has heard some significant residential voices.

Newman agrees with everything that everyone has says. She does not think it is a residential area and she agrees that the developer has gone the extra mile. But the broad brush stroke of commercial is a wide, wide stroke and she is not sure seven building pads, which could include fast food, is the right thing for this area. She is concerned about the subarea study. She would have rather had the opportunity to review that information further. She will vote to deny based on the subarea study issue.

Taylor agreed with Hunter. It is commercial for a reason and evidently the area is not really residential. He understands Steward. He lives in the Highlands and did not like the idea when they took up the farm land in his back yard so that he can't see the Capitol or hear the Cornhuskers anymore. So things do change.

Bayer reminded the Commissioners that this is a vote on the annexation of this property into the City. Based on the staff report, this annexation is in conformance with the Comprehensive Plan. Win or lose, let's bring some more property into Lincoln and put it on our tax roles.

Motion to deny failed 3-5: Steward, Carlson and Newman voting 'yes'; Duvall, Schwinn, Taylor, Hunter and Bayer voting 'no'.

Schwinn moved approval, seconded by Taylor and carried 8-0: Duvall, Schwinn, Steward, Taylor, Carlson, Newman, Hunter and Bayer voting 'yes'; Krieser absent.

CHANGE OF ZONE NO. 3282

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 4, 2000

Steward moved to deny, seconded by Carlson.

Steward stated that his comments on the annexation also apply to this motion. He is not in favor of the total project.

Hunter confirmed that if the B-2 zoning is approved, there could be office uses.

Carlson still took the position that he wants further information before voting for this proposal.

Motion to deny failed 3-5: Steward, Carlson and Newman voting 'yes'; Duvall, Schwinn, Taylor, Hunter and Bayer voting 'no'.

Taylor moved approval, seconded by Schwinn and carried 5-3: Duvall, Schwinn, Taylor, Hunter and Bayer voting 'yes'; Steward, Carlson and Newman voting 'no'; Krieser absent.

USE PERMIT NO. 132

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 4, 2000

Schwinn moved approval, with the amendments as requested by the applicant, with amendment to require that the images as portrayed in the booklet submitted by the applicant become part of the use permit, and with amendment to require that 2/3rds of the parking lot lights be turned off after business hours, seconded by Duvall.

Hunter would like to place a restriction on alcohol beverages for on-premise consumption. The concept of that in the context of an Applebee's or something like that is a different environment. A bar is a whole other matter. Rick Peo of the City Law Department was reluctant to agree that the Commission could limit the specific uses. The applicant is required to designate the proposed uses, but that does not mean they can't come back and ask for additional uses. He was not certain whether the Commission has the ability in the B-2 zoning district to exclude and not allow certain uses. Peo was not prepared to answer that question today. That question could be handled between now and the City Council if it goes forward.

Hunter moved to amend to require that no on-sale alcohol facilities that primarily sell alcohol be allowed, seconded by Taylor. Steward suggested that if this motion is an attempt to make this a residential neighborhood, the opportunity has been missed by the choice of zoning.

Motion to amend carried 5-3: Schwinn, Taylor, Carlson, Hunter and Bayer voting 'yes'; Duvall, Steward and Newman voting 'no'.

Carlson stated that he voted for the amendment because it adds to the package but it's not enough.

Motion for approval, with conditions, as amended, carried 5-3: Duvall, Schwinn, Taylor, Hunter and Bayer voting 'yes'; Steward, Carlson and Newman voting 'no'; Krieser absent.