

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, January 27, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

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

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

Chair, Barbara Hopkins called the meeting to order and requested a motion approving the minutes for the meeting held January 13, 1999. Motion to approve made by Krieser, seconded by Bayer and carried 6-0: Bayer, Hopkins, Krieser, Schwinn, Steward and Wallace voting 'yes'; Bleed, Duvall and Wilson absent.

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

January 27, 1999

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

The Consent Agenda consisted of the following items: **USE PERMIT NO. 103A; SPECIAL PERMIT NO. 1757; AND COUNTY FINAL PLAT NO. 98045, COUPE DeVILLE HEIGHTS.**

Schwinn moved to approve the Consent Agenda, seconded by Steward and carried 7-0: Bayer, Hopkins, Krieser, Schwinn, Steward, Wallace and Wilson voting 'yes'; Bleed and Duvall absent.

**COMPREHENSIVE PLAN AMENDMENT NO. 94-32**

**AND**

**ANNEXATION NO. 98016**

**ON PROPERTY GENERALLY LOCATED**

**AT N.W. 56<sup>TH</sup> & WEST "O" STREET.**

**REOPENED PUBLIC HEARING BEFORE PLANNING COMMISSION** January 27, 1999

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

Planning staff recommendation: Approval

John Bradley of Planning staff submitted a letter from Dave Shoemaker of Shoemaker's Truck Station asking that if West "O" is annexed, they would like their property on the south side of "O" to be included.

Mr. Bradley referred to the alternatives which staff has submitted: 1) annex only those properties north of "O" Street south of the Interstate; 2) annex all property on the north side of "O" Street, plus one tract right at 48<sup>th</sup> & "O" that is south of "O", owned by Shoemakers; or 3) annex all the properties on the north and south side of "O" Street as originally proposed.

Proponents

**1. Richard Peterson** testified on behalf of **Crete Carrier Corporation**, the applicant. The original proposal encompassed property on both the north and south sides of "O" generally from N.W. 40<sup>th</sup> to N.W. 56<sup>th</sup> Street, including both commercially zoned property, all located on the north side, as well as AG occupied by residents on the south side of "O" Street. There was considerable opposition, particularly from the residents who did not perceive any benefit accruing to them from the annexation. As a result of the opposition, he has met with the staff to determine if there was some alternative configuration of the annexation area that could address at least some of the concerns. As a result of that meeting with the staff, Mr. Peterson proposed an alternative annexation area which would eliminate from the annexation all of the land on the south side of "O" Street except for the parcel owned by Shoemaker and zoned H-3. The City Attorney's office believed that simply eliminating all of the property on the south side of "O" might be preferable, which would be the "north side alternative". The "commercial alternative" is the north side plus Shoemaker on the south. The original proposal is still supported by staff.

Mr. Peterson advised that any one of the three is acceptable to Crete Carrier; however, they do not desire to force anyone to be in the city. He believes the commercial alternative is the reasonable and appropriate one and would endorse Shoemaker's request.

Mr. Peterson noted, however, that the Planning Dept. continues to recommend approval of the original proposal. Public Works has stated that water service can be made available in the near term and sewer service in the longer term, in the next 5-6 years, through the CIP. Much of the area involved is already developed for commercial use, and more development is planned. Mr. Peterson submitted that annexation would further encourage the development of the West "O" corridor and is in conformance with the Comprehensive Plan.

Mr. Peterson pointed out that Crete Carrier and Nebraska Machinery own about 47% of the property involved on the north side of "O" Street. They have met again this week with the neighbors and discussed the alternatives. He believes the meeting was very positive in terms of addressing the concerns of some of the neighbors. He senses that many of the concerns heard in the past have been alleviated.

**2. Tom Ostergard, President of Crete Carrier** testified in support. He submitted that Crete Carrier represents one of the larger employers in the City and is proud to call Lincoln its home and wants the opportunity to continue to grow. Water and sewer are a vital part of that growth plan. They have 300+ associates at this facility today and it is only going to grow. Crete Carrier is sympathetic to the issues of the neighbors, but Crete Carrier also needs to consider the well-being of the employees that office at that facility daily. He believes they did have a very positive meeting on both occasions with the homeowners and other landowners. He believes that many of them are now favorable of the commercial alternative. Crete Carrier wants to be a good neighbor, but they do not want to have their growth restricted. Nebraska Machinery plans to build a facility in this area bringing more growth out west.

**3. Kent Seacrest** testified in support on behalf of **Land Construction, Inc.**, the property owner on the southwest corner of S.W. 56<sup>th</sup> & West "O", catty-corner to Crete Carrier, directly south of Nebraska Machinery. Land Construction, Nebraska Machinery and Crete Carrier are very large employers wanting to locate in West Lincoln. Is this good planning? Do we want to allow companies to go forward and expand? The Homebuilders have taken a position that property owners in between should not be able to block annexation. If we do not let these companies grow, then the question is, how do you get them services? The first choice is to take city water and sewer outside the City Limits, which was not allowed by the former Mayor. The second alternative is to annex the three companies, but don't make it contiguous. This presents all sorts of legal and infrastructure questions. The third alternative is what is being proposed today—annex the northern portion and leave the residences on the south side of "O" Street alone. This is the alternative which his client would support.

Opposition

**1. Randy Shoemaker, Cobbler Inn Motel**, testified in opposition to any annexation

whatsoever.

**2. Don Shoemaker**, owner of the **Cobbler Inn** and the property of **Shoemakers Truck Station**, testified in opposition. The annexation will be a financial burden to these businesses.

Staff questions

Bayer posed the question, if we go with the north side proposal and the water and sewer is put in, and later on someone on the south side wants to be annexed, are they charged for any of the expense in laying the water or sewer out to their property? Dennis Bartels of Public Works explained that if the sewer and water is built by assessment district, which we are proposing, there is provision in the Lincoln Municipal Code to determine a connection fee for those that want to hook up later. We can build it and if someone comes in after it was created as a district and they were not assessed, the City would have the ability to charge them the equivalent of the assessment that would have been levied had they been part of the district when it was created. However, all that could be charged is the assessment as of the day they are assessed and not any interest. They will get a bill for the connection fee and would not have the opportunity to pay it off over 20 years like the assessment.

Bayer then posed the question, if fewer property owners participate, do the property owners participating get charged more? Mr. Bartels does not anticipate that they would. They would be assessed the same whether the other side is annexed or not. The City carries the cost until those people come in.

Bayer inquired about the issue of jumping a piece of land. Rick Peo, Assistant City Attorney, explained that in order to annex it must be contiguous. The two boundaries must abut each other substantially. This is state law.

Steward referred to about 42<sup>nd</sup> Street (the City Limits) and inquired why we have not considered annexation of a more contiguous parcel. Mr. Bradley did not have an answer. He does not know how far we came out on the last annexation. Steward's point is that it seems that the transportation corridor and other service areas would have been a logical frame of reference for any future actions. Mr. Bartels explained that the annexation that occurred to get to S.W. 42<sup>nd</sup> was in conjunction with a water district between the railroad and "O" Street at the request of the city.

Bayer asked what criteria would be used to annex segments south of "O". Mr. Bradley explained that typically it would be done at the request of the property owners, making sure remote owners could not request annexation if they are not contiguous. If we started to see a pattern, we would probably recommend that a more continuous pattern be adopted.

Public hearing was closed.

**COMPREHENSIVE PLAN AMENDMENT NO. 94-32**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION**

January 27, 1999

Steward moved to approve the extension of the future service limit to only that property north of "O" Street, seconded by Bayer.

Steward believes we have a small, almost too small, area of contiguity, where we have a very small boundary north and south between these parcels and this is a concern to him; however, with "O" Street being the major thoroughfare and the industrial conditions for future expansion that that street serves, he can rationalize this as an appropriate action. Otherwise, he is concerned about such linear small connections in the Comprehensive Plan sense.

Steward also suggested that if we were going to take a north and south approach across "O" Street, we would be better to take more than what this represented in its original form. But, we have a specific request by a specific owner and yet it borders on not good planning, in his opinion.

Wilson inquired whether Mr. Steward was including the Shoemaker property on the south side. Steward excluded this property because it sets up the beginning of a key action. He is depending very much on the importance and physical nature of "O" Street to help him with this dilemma. Wilson would not have a problem extending it to the south side to include the Shoemaker property.

Rick Peo, Assistant City Attorney, stated that this annexation is probably a grey area as to its legality and debatableness as to contiguity. It is a finger like annexation that has been impermissible in the past. If it encompasses a bigger contiguous area at the end, the distinguishing feature is that the northern boundary is I-80 so there is no real need to annex I-80 which would have provided a wider strip and not had the finger like look. This would be a justifiable distinguishment from prior case law. If the Commission wants to annex property to the south, it would be most desirable to go straight across and not piecemeal the property to avoid the narrowness. The opinion of the City Attorney is to annex just the north side, or both north and south totally, but not piecemeal on the south side.

Motion to approve extension of the future service limit along the north side of "O" Street from N.W. 40<sup>th</sup> to beyond N.W. 56<sup>th</sup> Street carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall absent.

**ANNEXATION NO. 98016**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 27, 1999

Steward moved approval of the annexation of that property north of "O" Street and bounded by I-80—the "north side alternate", seconded by Krieser, and carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall

absent.

**ANNEXATION NO. 99001,**  
**CHANGE OF ZONE NO. 3162,**  
**PRELIMINARY PLAT NO. 98023,**  
**VIEW POINTE WEST,**  
**AND**  
**SPECIAL PERMIT NO. 1740,**  
**VIEW POINTE COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED AT**  
**N.W. 56<sup>TH</sup> & W. ADAMS STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 27, 1999

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

Planning staff recommendation: DEFERRAL until water information has been provided to the satisfaction of the Public Works & Utilities Department.

Proponents

1. **Lyle Loth** appeared on behalf of the owners, Dave and Ellie Chambers. Staff is recommending deferral until the water information is provided and until an annexation agreement is prepared. Mr. Loth agrees with deferring the annexation and change of zone and stated that they are working on the additional water information. However, he requested that the plat and special permit be processed today, if possible, deferring the annexation and change of zone.

The applicant has received and reviewed some flow tests, which revealed that the static water pressure is higher than anticipated, which indicates that all of the lots proposed should have adequate water pressure; however, the rate of flow is only about half of what is recommended by the authorities. Mr. Loth advised that the fire flow really only has a bearing on the phasing of this project. They had originally included 16 single family lots and 34 multi-family units in the first phase in the extreme southeast corner. They had hoped to develop this part before any other water mains are provided in 56<sup>th</sup> & Adams, but the Fire Dept. has indicated some concern about the ability to adequately fight a fire even in this small area. Mr. Loth requested that they be allowed to have the phasing issue included in the annexation agreement, giving them more time to address this issue.

Mr. Loth disagrees with Condition #1.1.1 on the preliminary plat, which requires a street connection between Honeysuckle and Chambers Drive. Staff believes this to be in violation of the block length requirements of 1,320 ft. between intersections. According to Mr. Loth's calculations, he is not sure they are in violation of that design standard.

However, if it is concluded that they are in violation, they would continue to request a waiver of this design standard on the basis of the grade difference between the two streets and they cannot physically accommodate the grade difference without violating the design platform. The additional cost to put in the interconnecting street would be significant, involving an additional block of pavement and water main, and would probably reduce the number of lots on this block by two. Mr. Loth requested that Condition #1.1.1 be deleted as a condition of the preliminary plat.

Mr. Loth requested that Conditions #1.1.6 and #1.1.7, which deal with phasing and with development costs, be revised such that the development costs and the phasing of the project be a part of the annexation agreement. He requested that these two conditions be deleted from the plat and included in the annexation agreement, or that this project be approved subject to an acceptable annexation agreement prior to submittal to the City Council.

With regard to the community unit plan, Mr. Loth requested amendment to Condition #1.1.1, to indicate that the recreational plan would be submitted with the administrative amendment for Outlots E, F, and G, which are the multi-family lots.

Steward asked Mr. Loth to clarify the change of zone request. Mr. Loth referred to p.77 where there is a semi-circular line cutting through a portion. The zoning to the left is AG and to the right is R-3. There were portions of the R-3 zoning where the pressure issues of the water were in question, thus they are requesting to change the zoning of that area that cannot be developed into AG zoning. There is another area

in the center of the project that is zoned AG, but they believe they can serve it with adequate water pressure and it can be developed and thus needed to be changed to R-3. It was basically a swap between the AG and R-3.

**2. Robert Peterson**, 4326 Starr Street, testified on behalf of the absent owner and as a tattered survivor of the Goals and Policies regarding concentric growth. The revised Comprehensive Plan of that era is one that resulted in this semicircular line being run through Mr. Chambers' property, bringing about 65 acres into R-3 zoning. In 1993, the County Assessor took note of the R-3 and sent Mr. Chambers an application for Greenbelt treatment, which he filed but was refused. Mr. Chambers then met with the County Board and County Assessor and worked out an agreement that the property not be immediately taxed as developable land. In May 1997, the County Assessor came back to the issue and said the agreement, if it existed, was no longer valid and put it on the tax rolls and levied three years back taxes, resulting in \$7600 of back taxes, with \$2500 added to the annual tax. Mr. Peterson suggested that Mr. Chambers is somewhat of an unwilling developer trying to develop something that is said to be developable. Mr. Chambers wants to be able to proceed at least with this small corner and get some cash coming into the deal. Because this is the first property west of 56<sup>th</sup>, it appears that he will get the opportunity to pay an unusual share for paving. The developer to the east can fill out an existing

preliminary plat and not have to pay for any of 56<sup>th</sup> Street. This individual can't do anything until the street problem is resolved.

There was no testimony in opposition.

Staff questions

Steward inquired about the water issues and the applicant's request to move the plat and CUP ahead of the annexation and change of zone. Dennis Bartels of Public Works suggested that the water issues need to be answered before the Council proceeds with the final plat. The water pressure issue can probably be handled. There is a district proposal to extend that 12" main and he believes the fire flow problem will be answered. Mr. Bartels had no problem with the plat going forward, realizing that there will be no final plats approved until the water pressure issue has been answered.

Mike DeKalb of Planning staff urged that all four applications are associated and should be kept together in the process. You cannot approve platted lots if the zoning doesn't permit it. The change of zone needs to be approved before the plat and CUP. Staff suggested deferral in order to resolve some of the annexation issues. All four items could be approved, subject to the annexation agreement being agreed upon prior to scheduling on the City Council agenda.

With regard to the block length waiver, Mr. DeKalb suggested that could be a decision of the Commission. He agreed that it will be difficult to meet design standards to provide the connecting street in Condition #1.1.1 of the plat. There will need to be some reconfiguration of the street layout to meet the design standards.

Rick Peo, Assistant City Attorney, does not believe there is any advantage gained by splitting the applications. This body is making a decision on an incomplete package if they move the plat and CUP forward without the annexation and change of zone. In addition, he is not always in favor of approval subject to some type of agreement that no one knows what it says. Technically, everything is contingent on the change of zone.

Bayer moved to defer, seconded by Wallace.

Wilson stated that he will vote against the motion. It's a plat and it should be moved forward. He sees no reason to hold it up.

Schwinn stated that he will vote against the motion, also. They should be allowed to move ahead. We are taxing them on property that they are not getting any value for.

Steward will support the motion on the basis that the question is too large as to the actual real future value of the property. If the water issue cannot be satisfied, then there is less value, and until that question is resolved, he does not think the developer nor the city has anything to gain.

Motion to defer carried 5-2: Steward, Krieser, Bayer, Wallace and Hopkins voting 'yes'; Schwinn and Wilson voting 'no'; Bleed and Duvall absent.

**COUNTY CHANGE OF ZONE NO. 182**  
**FROM AG AGRICULTURE TO AGR AGRICULTURE RESIDENTIAL**  
**and**  
**COUNTY PRELIMINARY PLAT NO. 98032,**  
**WAPITI ESTATES,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S.W. 27<sup>TH</sup> & ROKEBY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 27, 1999

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

Planning staff recommendation: Denial.

Mike DeKalb of Planning staff submitted two letters in opposition with concerns about this not being on a paved road with increased cost of maintenance; area owners have abided by existing zoning; this would encourage nearby properties to request the same thing; 14 additional homes will accelerate deterioration of the road; groundwater quality; water runoff; affects on water table; drainage; existing acres are all 5-acres or larger in size; and this encourages purchase of land for development purposes.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Wapiti Enterprises**, the developer. Mr. Hunzeker observed that the staff recommendation of denial is not a surprise, but it seems that this question has been hanging over us all now for about 5 years relative to the issue of where in Lancaster County we are going to be able to do an acreage development. In 1994, when the Comprehensive Plan was adopted, it provided virtually no plan for the area outside the 3-mile limit. The Commission has asked, or directed, the staff to address this issue at various times over the past five years, and up to and including this report and the report on the Annual Review, the response has been to defer for more study for the last five years.

Mr. Hunzeker suggested that this parcel is appropriate for acreage development. It is one mile from Yankee Hill Lake and State Recreation area; one mile from a paved road; acreage property owners do not necessarily want to be on a paved road; and 5.7 acres per dwelling unit is the density proposed because of the unpaved roads and because the surrounding area is developed with approximately 8 acreage type units and other acreages between 5-10 acres. This area has been and is continuing to develop in this fashion, with or without the blessing or permission of the staff, regardless of the amount of study that we put into it.

Mr. Hunzeker believes this is an appropriate use of this property. There has been interest from people willing to take 20 acres, but that spreads acreage development out even more and uses up farmland at an even more rapid pace. This property should be developed in this fashion. The density is consistent with that on the surrounding properties.

As to the conditions of approval on the plat, Mr. Hunzeker referred to Condition #1.2.1 of the plat, which requires dedication of 50' of right-of-way along both W. Rokeby and S.W. 27<sup>th</sup>. Mr. Hunzeker pointed out that 33' is required – 50' is being requested. This applicant is not opposed to the idea of dedicating this right-of-way

and 33' is acceptable. They would be willing to do 50' with the understanding that virtually none of the surrounding property has dedicated even the 33' and the likelihood of a need for 50' in this area is relatively small over the next planning period.

Item #5 of Condition #1.2.1 requires a street going west from S.W. 28<sup>th</sup> to provide connection to future development to the west. There is a line of trees along the entire west boundary and cutting through the property at approximately the location where a street would be required to go west is currently a fairly wide area that has mature trees on it. The owner of Wapiti Enterprises is an avid hunter and he has determined that this is an area where there are deer and a variety of other wildlife and it is an attractive amenity to this type of development. The developer would prefer not to cut a street through that grove of trees and separate that area, given the small likelihood of further development anytime in the immediate future. They are providing access to the south and to Rokeby Road and S.W. 27<sup>th</sup>. To the extent there is development on the property to the west, it will be able to get internal circulation and access to the south and west. Mr. Hunzeker requested that item #5 of Condition #1.2.1 be deleted and they would accept 50' of right-of-way if that item is deleted. Opposition

**1. Art Reddish**, owner of 200 acres of land in this same section, testified in opposition. 80 acres of this land has been in his family since 1865. Roads are one issue, along with sewer and water, especially water. Taxes will go up and for farmland, it would be tough to farm the place and be able to survive with the taxes going much higher.

Mr. Reddish's property is actively farmed by his cousin in beans, corn and milo. The distance from the nearest acreage would be one mile.

**2. Dennis Fiedler**, owner of the property adjoining to the south, 1101 S.W. 27<sup>th</sup> Street, testified in opposition. Selfishly, he could support the change since he owns property next to it and would no longer feel the need to farm, but he does farm the land and because of the farm economy he cannot make a living off the land, thus doing most of his farming at night and on weekends, which would not be pleasant to acreage owners with the noise, spraying activities, herbicide use, etc. Staff notes the road situation. This is very critical. Mr. Fiedler has lived there for 10 years and has noticed approximately four new acreages

coming in and the road condition has deteriorated. There are no proposed road improvements planned for this area.

Mr. Fiedler has spent over \$3,000 to get his water to the point where it is usable. He has had to go to osmosis devices which became plugged; finally, he went to a lead filter that did not work; he was told that he would have to go with chlorination or ozone machine. The ozone machine has resolved the problem. In his case, they had to go 238' to obtain adequate water. He has never had livestock on his farm because there is not enough water. He questions what will happen to the water table by adding 14-15 homes. He has a lagoon because his perc tests were on the borderline of being unacceptable for a regular sewer. He has problems in the summertime with the water overflowing out of the lagoon because of the slow percolation of the soil. He believes additional homes will result in a definite problem with odors from the lagoons and potential problems with the groundwater sources.

**3. Mark Osborn**, 10600 S.W. 27<sup>th</sup>, testified in opposition. It's more a matter of danger than people not wanting to live on paved streets, and he does not want the tax burden from the paving. With 14 more wells, and potential for 26 acreages, this would be 208 wells per section, which he believes could potentially set a precedence and encourage further development. The impact of these additional wells needs to be studied. He believes the new residents would be more urban type people and he believes there will be some clashes between the new owners and the existing farming operations.

Mr. Osborn owns 60 acres which he cash rents in AG uses.

**4. John McKeekan**(sp), 10800 S.W. 27<sup>th</sup>, testified in opposition. He owns 10 acres, locating there in 1971, and he did a considerable amount of research to be sure the property would not be developed. This development would be five miles from the nearest Fire Department. The roads are not in good condition. There has been increased traffic on S.W. 27<sup>th</sup> and the roads have deteriorated.

Responses by the Applicant

Mr. Hunzeker pointed out that the conditions of the plat require that the water and sewer questions must be addressed prior to scheduling on the County Board agenda. According to Condition #1.3, they must provide information on water quantity and quality to the satisfaction of the Health Department. They have had percolation tests done, resulting in 6 out of 7 tests done passing the percolation test. The one that did not pass was at the south end of the property and might be consistent with the testimony from the property owner to the south. They will not preclude lagoons.

Mr. Hunzeker suggested that this developer intends to live in this development. Therefore, in terms of water quality and quantity and sewer problems, the developer himself will be living with those, not just assuring that they meet some minimum standard.

Mr. Hunzeker noted that it is a fairly consistent theme when these acreage proposals are made, that those who live on acreages in the area now want there to be no more.

Mr. Hunzeker submitted that this is a location that makes some sense. It will not be in the way of urban development anytime in the current or extended planning period. It is outside the three-mile limit and outside the future urban limit. The roadways in the county are not going to be overburdened by an additional 14 homes. The development of the County is underway and the question becomes one of whether to spread it out with 20-acre parcels or begin to commit to more reasonable development on parcels that represent something that is somewhere between urban and small farm type development.

Mr. Hunzeker acknowledged that the developer has not had opportunity to have the test wells completed; however, they have indication from a driller that thinks it is likely that they will get water and they must do this prior to moving on to the County Board.

Public hearing was closed.

**COUNTY CHANGE OF ZONE NO. 182**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 27, 1999

Bayer moved approval, seconded by Wilson.

Bayer lives in the County; he loves living in the County on 6 acres surrounded by farmland that is farmed; he has none of the problems that have been brought up today; anyone wanting to live in an area like this should be given that right.

Steward will vote in opposition to the change of zone until we have a reflection in the Comprehensive Plan of designation of AG and acreages that we are prepared to live with. This application is not in conformance with the Comprehensive Plan. He is not willing to concede that the whole county is available for development. If we believe that agriculture is important, we have to find a way to place value on it and respect it and be prepared to defend it in the face of development pressures. If we don't believe it is important, then let's change the Comprehensive Plan.

Bayer agreed that there is a desire to keep some AG property, but we are requiring so much tax that the farming of the land cannot support the taxes. Steward suggested that one of the reasons the taxes are raised is because of the urbanization and pressures for development.

Wilson disagreed about the tax issue because the taxes are set by the state and by nothing that happens locally. There are a lot of economics why acreages are being developed today and part of it is the poor farm prices. Wilson stated that until we get an amendment to the Comprehensive Plan that deals with development in the county, he will

vote for every one of them.

Hopkins suggested that there be a discussion with staff again about a county plan.

Motion for approval carried 5-2: Krieser, Bayer, Schwinn, Wallace and Wilson voting 'yes'; Steward and Hopkins voting 'no'; Bleed and Duvall absent.

**PRELIMINARY PLAT NO. 98032**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 27, 1999

Bayer moved approval, with conditions, with amendment deleting item #5 of Condition #1.2.1, seconded by Wilson.

Schwinn appreciates the staff looking forward to the fact that we may be widening the streets in the future and he is in favor of widening the easement to 50'.

Motion for conditional approval, with amendment, carried 5-2: Krieser, Bayer, Schwinn, Wallace and Wilson voting 'yes'; Steward and Hopkins voting 'no'; Bleed and Duvall absent.

**SPECIAL PERMIT NO. 1758**

**TO CONSTRUCT AND OPERATE A**

**CLUB FOR RECREATIONAL PURPOSES,**

**ON PROPERTY GENERALLY LOCATED**

**AT SOUTH 14<sup>TH</sup> STREET AND MOCKINGBIRD LANE.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 27, 1999

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

Planning staff recommendation: Conditional approval.

Proponents

**1. Tom Huston** appeared on behalf of the **YMCA** in support of this application. He agreed with the staff report. The YMCA has worked with the neighbors in Lazy Acres and Thunderbird Estates. This started back in the spring of 1997. In August, of 1998, this Commission determined that the sale of 10.1 acres from the City to the YMCA would be consistent with the Comprehensive Plan. They met with the neighbors in April, 1998 and January, 1999. The YMCA has made modifications to the site plan in response to those meetings with the neighbors. The YMCA is trying to incorporate its building into the neighborhood and minimize any adverse effects. They have recessed the building into the hill and increased the screening.

Mr. Huston pointed out that Conditions #2.1.5 and #2.1.6 address a bigger picture which this applicant does not control. The YMCA is developing 10.1 acres; the city will be developing the library and park site. The YMCA is working with the city on the creation of a master plan for the transportation system and the drainage system.

Mr. Huston stated that they have also discussed the location of the security fence on the north edge of the property with the neighbors to keep people from parking on Mockingbird Lane when going to the ball fields. They also talked to the neighbors about the location of the berm and preserving the existing trees.

With regard to parking lot lighting, Mr. Huston assured that they will be turned off at 10:00 p.m. every night.

The neighbors have suggested moving the gate closer to 14<sup>th</sup> Street and the applicant is attempting to address this issue.

**2. John Sinclair** of Sinclair Hille Architects, testified in support and discussed some of the key design elements of the project. The site has a great deal of contour with a swale moving through the property. The building will be nestled into the hillside. The building elevation of the first floor will be 130. The highest part of the site is at elevation 142. The parking lot elevation is at 128. The tops of the parking lot lights will actually be below the top of the berm.

In terms of the building alignment, they have tried to be respectful of the residential character of the property to the south and will skew the building 45 degrees to the northeast to hopefully begin to develop a dialog with the future library directly to the northeast.

They are proposing a security fence along the entire south edge as well as heavy landscape screening, maintaining existing trees and adding approximately 67 new Scotch Pine trees. They will also be relocating some of the pine trees.

**3. Kathy Morrissey**, 6933 So. 52<sup>nd</sup> Street, first Vice-Chair of the YMCA, testified in support. In April of 1995, the Y commissioned research to evaluate the need for a family recreation facility in south Lincoln, indicating that more than 4,000 households in the area were participating in Y programming and 6,000 households would consider joining if there were a south location. A community assessment study interviewed approximately 35 community leaders to help identify the current and future needs of the community and how the Y might respond to those needs. The findings of this study pointed toward a family recreation facility in south Lincoln, with the emphasis on family. This study also suggested that they explore additional ways to reach inner-city youth. A strong and clear message was that efforts should be made to collaborate with another organization or public entity when considering expansion. The recommendation of these studies resulted in contact with Parks & Recreation and the Libraries. The YMCA position statement is: We build strong kids, strong families and strong communities. They do this through providing safe facilities and quality programming to reach youth of this community. The YMCA's desire

to have a presence in south Lincoln is based upon this commitment and the south facility will be youth and family focused. The YMCA has also been expanding outreach programs in the inner-city neighborhood of Elliott. A YMCA facility and programming in south Lincoln will meet important family needs. This will result in improved services to our community without taxpayer burden; this project demonstrates the kind of collaboration that communities are expecting from their government and community service providers. The YMCA appreciates the good dialog with their future neighbors and looks forward to being a vital part of this neighborhood.

**4. Jolene Clymer, President of YMCA**, testified in support. In her experience as CEO of the Y, she has learned a lot about collaboration and partnerships. Compatible missions, trust and clear expectations result in the win-win. The YMCA is excited that this collaboration meets those three tests. They have worked really hard on the land coalition agreements; the bond issue has been passed; the Y has raised over 55% of its goal for the building; and building design is now moving forward. The Densmore family was contacted when the Y looked at land acquisition possibilities and they were very pleased with the potential use of the property.

**5. Lynn Johnson of the Parks & Recreation Department** testified in support. He reiterated that this plan is in conformance with the adopted City plans. The Comprehensive Plan identifies the need for recreation in the vicinity of 14<sup>th</sup> and Pine Lake Road; the Parks & Recreation strategic plan suggests that this center needs to be developed either privately or through a public/private venture; this project is part of the master plan with a community park and library. The conditions will be addressed as part of that master plan. He believes this project should be handled in the same manner as any other private project. There has been and will continue to be ongoing dialog with the neighbors in an attempt to address their concerns.

Opposition

**1. Cliff Lant, General Manager, of Lincoln Memorial Park and Funeral Home**, directly across the street to the east, testified in opposition of the project in and of itself. For the past two years, they have met with HWS Engineering regarding widening of 14<sup>th</sup> Street, which is to occur sometime between now and 2004. Lincoln Memorial is a very large neighbor to this project. Studies indicate that with the widening of South 14<sup>th</sup> Street, Lincoln Memorial will lose two of its three access routes. The one remaining will be Mockingbird Lane. The distance between Mockingbird Lane and the drive into the Y is approx 450', which is far short of the accepted safe 750' distance. Within that 450' there are two left turn cuts in that median. Picture Memorial Day weekend with all of the recreational games and the automobiles going through the cemetery on that weekend. From a safety and traffic concern, it is his opinion that a little more study needs to be done

with regard to possibly moving the entrance to the YMCA further to the north.

Mr. Lant requested a two-week deferral so that the parties involved can discuss the road situation.

**2. Keith Herbster**, 1201 No. Mockingbird Lane, testified in opposition. Yesterday was the first notification that he had received in writing about this hearing. He is opposed to any construction in Densmore Park. This is an established neighborhood. He is concerned that what started out as a neighborhood park is becoming a sports complex moving into the residential neighborhood.

Mr. Herbster questioned the definition of a “club” as set forth in Analysis #2 of the staff report. A club with more than 20 parking spaces is required to be located on a major street. This project is not on any major street – the YMCA facility is not adjacent to 14<sup>th</sup> Street. He does not believe South 14<sup>th</sup> Street is adequate to handle the traffic generated by this use until it is four-lane in the year 2004. What plans are being made to take care of the traffic between now and 2004?

With regard to Analysis #11 regarding the detention cell, Mr. Herbster believes they are building in a hazard for young people with the detention cell. It will be adjacent to the parking lot of the YMCA. They are talking about 6 feet of water. He has a concern about mosquitoes. The cemetery has a built-in detention cell which he believes would manage a lot of this runoff. When all this runoff goes into this one detention cell with chemicals and fertilizer, he is concerned about the contamination of the wells of the 15 residences. It appears that if a detention cell is needed, it should be relocated so that it would take in both of the drainage areas. To the north there is another drainage area coming through the park.

As far as no adverse effect on the adjacent neighborhood, Mr. Herbster suggested that to be in each person’s opinion because he believes there will be an adverse impact on his property. Most of the foot traffic will be inside the building but there will also be vehicles going in and out of the parking areas and there will certainly be more traffic than there is now.

Mr. Herbster had a question about Condition #2.1.8, which suggests that accessory buildings of less than 1,000 sq. ft. may be built within the building envelope. He wants to know where this is located. The very southernmost point of the YMCA will be 120' from his house and he is concerned where the accessory buildings will be located and what they will be used for.

Staff questions

With regard to the streets, Dennis Bartels of Public Works stated that, from a traffic point of view, he believes they are valid questions and he had similar questions set forth in his comments. From the design of 14th Street, the extra median where the Y driveway is

located is not where a traffic engineer would have located it. There is only one entrance in and out of the facility. The ideal location of the main entrance would be to design the entrance around the Mockingbird Lane area and this obviously was not the choice. Public Works had raised questions about what might happen in the interim. They need to address left turn and right turn access into this site. Public Works will have to address how the left and right turn might fit into the future South 14<sup>th</sup> Street project.

With regard to the detention and water questions, Mr. Bartels believes there is some disadvantage with a detention pond with standing water, but providing some standing water does improve the water quality. He does not know what affect it might have on future groundwater.

Wilson believes it a mistake to leave just one entrance. Mr. Bartels explained that the City's intention would be to provide left turn access into the cemetery, but when we start putting them back to back, they may not be ideal. He thinks there are ways to work around it and it would be the city's intention not to limit left turn access into the cemetery.

With regard to the "club" definition, Nicole Fleck-Tooze of Planning staff agreed that the language is a little unclear but it has been interpreted to mean located off of the major street rather than abutting or adjacent to a major street. In other words, it is interpreted to mean more taking access off or access from.

In response to a question by Steward, Mr. Johnson of Parks and Recreation explained the general organization of the site. The access to the site is a singular entrance off of 14<sup>th</sup> Street. The YMCA will take access off the primary access road and the master plan shows two entrances to the library off the north side of the roadway. Steward inquired whether there is a maximum peak potential for the number of cars that might be on the property coming out on 14<sup>th</sup> Street. Mr. Johnson stated that there are approximately 275 parking spaces for the park and between 275 and 300 parking spaces for the library. In the coalition agreement there was a study looking a Mahoney Park, YMCA and Gere library, which showed when the peak volumes of traffic occurred. The park has low traffic during the weekday; peak is evenings or weekends. The YMCA peak volumes tend to be morning or late afternoon; library peak volumes tended to be off-peak from the rest. The Y is more winter than summer; and the parks are more summer than winter.

**Response by the Applicant**

Mr. Huston stated that he has enjoyed working with Mr. Herbster and he believes they have addressed some of his questions. The Y had the option of buying frontage on 14<sup>th</sup> Street, but the language of the ordinance does not require frontage--but location on 14<sup>th</sup> Street. They will be constructing a temporary turn lane--deceleration lane--into the area before the 14<sup>th</sup> Street project is complete.

The detention cell addresses the drainage concerns, including that of Thunderbird Estates. Lincoln Memorial does only one application of fertilizer a year.

As far as shutting the lights off in the parking lot, Huston explained that the neighbors were concerned about the parking lot lights, but they do have security lights.

With regard to Lincoln Memorial, Mr. Huston stated that this applicant does not have a lot of control over the South 14<sup>th</sup> road construction project.

Steward commented that in the face of the lack of control, we have city projects and cooperative projects, and yet it's the city and the traffic planning and improvements that seem to create the greatest concern. He asked Mr. Huston whether he sees any advantage to the YMCA and Lincoln Memorial working for a bit more to get a better definition of the solution to the traffic issues. Or is the Y not concerned with the traffic issues? Mr. Huston responded, stating that as part of the coalition process, the YMCA feels the need to proceed; they believe they can adequately address the concerns; they are not as concerned about the South 14<sup>th</sup> Street traffic; they believe the future widening will address those concerns.

Lynn Johnson advised that the functional plans for South 14<sup>th</sup> are complete. They did investigate creating a four-legged intersection at the proposed intersection into the park, but there were grade problems. The city has not precluded additional connections, but at this point they are not showing a connection to the residential areas.

With regard to the accessory buildings, Mr. Huston indicated that they are not that far in the design but he believes the staff comments are intended to provide for some type of storage, etc.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 27, 1999

Schwinn moved approval, with conditions, seconded by Wallace.

Wallace commended the Y, the neighborhood, Parks and Recreation and the architects for working together to come up with the best design.

Schwinn understands why the neighbors would lament the loss of tax-supported green space; as far as the water damage to the wells, he observed that it won't be long before they will be annexed because of our contiguous policies; South 14th will be improved before 2004, he believes, and he is sure Public Works will work with Lincoln Memorial Park because of their longstanding relationship to our community. As far as traffic, none of the facilities use the traffic all at the same time except maybe on Memorial Day weekend. He

believes this is an excellent project. Everybody wants youth facilities within 6 blocks of their house but not within 2. This is a perfect place. This property was platted for townhouses in the early 80's and the city could have declared this land surplus and any developer could have moved ahead and built townhouses. This is the best possible option for everybody.

Steward agrees that it is a model of cooperation, except that there is a breakdown on the transportation planning. We are adding a huge potential volume of traffic and yet we do not have clear answers as to the result of the traffic impact. He is just concerned about a huge load and demand without an obvious response. He wants to caution to get our transportation planning to catch up with our physical plan.

Motion for conditional approval carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall absent.

**COMPREHENSIVE PLAN CONFORMITY NO. 98008**

**DECLARATION OF SURPLUS PROPERTY**

**AT S. 9<sup>TH</sup> STREET & VAN DORN.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 27, 1999

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

Planning staff recommendation: A finding of conformance with the Comprehensive Plan.

There was no public testimony in support or in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION**

January 27, 1999

Bayer moved to find the declaration of surplus property to be in conformance with the Comprehensive Plan, seconded by Wilson and carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall absent.

**WAIVER OF DESIGN STANDARDS NO. 98011**

**TO WAIVE SIDEWALKS, STREET TREES AND PAVING**

**ON PROPERTY GENERALLY LOCATED**

**AT NO. 68<sup>TH</sup> & STARR STREETS.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 27, 1999

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

Planning staff recommendation: Denial.

Proponents

**1. Mark Hunzeker** appeared on behalf of the owner of the property and the applicant for a two-lot subdivision, Bill Bauer. This property has had two houses on it since about 1940. They were small and in various states of disrepair when Mr. Bauer acquired the property about three years ago. Mr. Bauer is constructing a new single family home and has a permit in hand to demolish the second house with the intent to build a second home. This property was sold to Mr. Bauer under a description that led Mr. Bauer to believe it had been subdivided into the two parcels; and, in fact, the property has been in two parcels for at least 40 years, but it has not been quite long enough. The property has been sold in those two parcels since at least 1955. Had it been 1953, this application would not be necessary. Needless to say, there is a title problem and Mr. Bauer needs to subdivide this property.

As to the street trees and sidewalks, Mr. Hunzeker withdrew any application for waiver of those improvements. Mr. Bauer intends to install sidewalks and to do the street trees. He is only requesting a waiver of the street paving. There has been a request for a gap paving district and they have been told that it is being processed and will go forward to the City Council shortly. He believes it is clear that it is unfair for these two lots to be required to pave both sides of the residential street where they would only benefit on one side. Mr. Bauer is not opposed to paving and paying his share, but he is opposed to having to pay for the entire street.

Mr. Hunzeker requested approval of the waiver of the street paving and allow the City Council to decide if the street paving is something that is desirable for a gap paving district.

**2. Leona Engler**, owner of property at 1321 No. 68<sup>th</sup>, which is across the street, testified in favor of the waiver of the paving. She has lived there for 30 years and they have never had any problem with the street and she thinks she could live with it not being paved a little longer. She is opposed to paving the street if she has to bear any of the expense. She is not opposed to the two houses being built.

Bayer does not understand the gap paving and how it impacts the residents on both sides of the street. Dennis Bartels of Public Works explained that gap paving is a paving district under state law that allows the City Council to create a district to close a one block gap of paving without a majority of the property owners fronting it signing the petition. It is a discretionary action by the City Council. It would be paved the same as if a traditional paving district. The residents do pay for the gap paving.

Rick Houck of Planning staff advised that when gap paving is forwarded to City Council, the applicant can also request CDBG money along with that and then Urban Development will review the application to see if they qualify and if money is available. However, his conversations with Urban Development indicated that this area would not qualify on a preliminary consideration so the property owners could not have the street improved without paying for it.

Bayer clarified that if the Planning Commission recommends approval of the waiver of the paving, that means it does not have to be paved. Mr. Houck stated that would be correct if the Council agrees.

If the Council does not agree, Wallace inquired whether the property owner individually can apply for release of the assessments based on hardship. Mr. Houck stated that Urban Development uses locational criteria along with the actual income of the abutting property owners.

Response by the Applicant

Mr. Hunzeker submitted that if the Planning Commission grants this waiver, all it means is that the subdivision can be approved without the requirement that this owner bond for that paving. The City Council will still get an opportunity to approve or disapprove a gap paving district, which may or may not bring with it some CDBG funds for individuals needing help with the assessments. The contact by his client to the City was through Urban Development, so he believes it is going that direction. The point here is that if the waiver is approved, then Mr. Bauer can proceed with the subdivision without having to guarantee that this owner is going to bear the entire cost of that street.

Wilson wonders what the chances are that the paving will occur. Mr. Hunzeker explained that under a gap paving district, he believes that it will be at the discretion of the City Council. He would guess that they will want to pave it if they are not creating any hardships by doing so. They have been wanting to get some of these gaps closed. Wilson requested that the applicant work with Mrs. Engler along the way.

Schwinn confirmed with Mr. Hunzeker that these properties have always had access onto No. 68<sup>th</sup>. Mr. Hunzeker concurred. He thinks it is a shared driveway with a shared garage. Mr. Bauer never had any intention to pave the street. He thought he was buying two lots which faced No. 68<sup>th</sup> Street, not two lots which were north/south narrow rectangular lots. There were two addresses on the property and two legal descriptions, seeming to indicate that they were separate lots.

Steward asked how much of No. 68<sup>th</sup> is not paved. Mr. Hunzeker believes it is just this one block. He believes even that fact was overlooked in the initial staff report on the administrative subdivision.

There was no testified in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 27, 1999

Bayer moved to approve the waiver of paving, seconded by Wilson.

Steward is not sure it is good planning principle for this body to waive paving in a gap condition. He is terribly moved by the situation that it would cause an individual hardship and by the fact that the developer was hit with something unanticipated, but when it is the policy of the city to close the gaps in the city for paving, he believes it is the Planning Commission's role to support the principle of paved streets. It is not our role to deal with hardships.

Motion to approve carried 6-1: Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Steward voting 'no'; Bleed and Duvall absent.

**COUNTY CHANGE OF ZONE NO. 181  
FROM AG AGRICULTURE TO AGR AGRICULTURE RESIDENTIAL  
ON PROPERTY GENERALLY LOCATED  
NORTH AND WEST OF THE CORNER OF  
NORTH 98<sup>TH</sup> STREET AND RAYMOND ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** January 27, 1999

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

**1. Robert O'Gara** appeared on behalf of the applicant. His clients have 17.6 acres on the northwest corner of 98<sup>th</sup> & Raymond Road with a contract to sell 7 acres to a long-time friend of theirs who wants to live there and retire. The entrance to the 7 acres would be off of No. 98<sup>th</sup> Street. There is already a culvert off of No. 98<sup>th</sup>, so there would be no big expense for a drive to come in.

The main difference between this application and the previous application on today's agenda is that there is already 11 acres out here. The staff report shows the location of the lots; 23 acres to the west are owned by Mr. Finigan and he is not opposed. To the west of that are 7 acreages already in existence. There is one north and two east.

Mr. O'Gara referred to the supplemental report from the Health Dept. which indicates that there is no public or environmental health reasons at this time to deny this zoning change.

His client did contact the UNL Conservation and Survey Division to review the water quality and quantity. They indicated that this land is sitting over a pool of water that services that area. The 7 acreages to the west have another pool of water down there. So a well here will not affect the water at those other acreages. He also stated that the well as such does not cause a depletion problem. The problem comes about when you start drawing water rapidly for irrigation purposes. He does not believe this will be the case with another household well.

With regard to drainage going to the west from this property, Mr. O’Gara referred to the Planning staff report which reports that this topography is draining to the north and east. The drainage is the opposite way, away from those 7 acreages. Everything drains to the north and east. Mr. O’Gara does not believe that this will have any affect on the body of water that is out there now, nor on any sanitary sewer because it is going to flow to the east.

Opposition

**1. Sharon Duis**, 15401 No. 98<sup>th</sup>, testified in opposition. She moved to her acreage in the fall of 1985 and their house was the only one in the section. It was a place where she felt comfortable and safe because she is alone a lot of the time. She was comfortable there from day one and she felt it would be her final home for retirement. If this proposed zoning is approved and split, they could build four more homes on this property . She believes that it is irresponsible to construct more homes in an area where there is already a serious water problem. Kevin Wynegar cannot get one drop of water in his house when they are filling their horse tank.

The access off of 98<sup>th</sup> Street is right across the fence line from her property. Where is her water going to come from when her well goes dry? Will someone pump water to her and at what cost? What recourse does she have when her water is depleted? She believes the wishes of the neighbors need to be taken into consideration. Let’s keep some of this ground the way it was intended—in a rural setting.

Schwinn suggested that Mr. Wynegar’s problem is that he does not have a big enough pump. It doesn’t mean there isn’t enough water down there. Ms. Duis cited another situation—there is another man that bought a strip, planted trees and put up a shed. He has drilled three different wells and one time he hit salt. He has not gotten a workable well.

**2. Mike Beeson**, 9820 Raymond Road, directly east, testified in opposition. It is his property that it all drains on and through his place until it reaches a small pond on his place and across Raymond Road. He also drains the 80 acres behind him. He is opposed to this change of zone because there is already a drainage problem. He is working on putting in a dam and flood control on his property. If a precedent is set

by changing the zoning to the west of his property, what is going to stop the 80 acres behind him from developing into AGR, with the possibility of 20 houses being developed behind him? He did not buy his property to see the town move out on top of him ahead of the natural pace of development.

Mr. Beeson owns just shy of 8 acres. It was a pre-existing lot going way back into the 1970's. Mr. Beeson has been on the property for three years and his well is still pulling sedimentary dirt, meaning it is on a very unstable aquifer. He is concerned about disturbing an already fragile aquifer. Yet, he is more concerned about setting a precedent with the zone change.

**3. Jerry Minchow**, 8301 Davey Road, testified in opposition. He farms the section immediately to the northwest. He was born in this area and there is a problem with water. It took him a long time and a lot of money to find a good enough well. He is also concerned about traffic safety. He lost his mother on 98<sup>th</sup> Street, and his son on 70<sup>th</sup> Street. If you keep adding enough traffic, there will be more tragedies.

He realizes that "food" is not talked about much in America because we have plenty of it. But, this country is losing farmland at the rate of 2 acres a minute. In 1982 to 1992 research, the state of Nebraska lost 38,000 acres of farmland to development. That's 59.4 square miles, and he believes it could probably have doubled again in the last 7 years. He does not know how long we can sustain that. There are a lot of people in this world that don't have any food. He does not know how many acres we can keep losing and sustain and feed this country. If we should get back to a long term environmental problem such as in the 1930's, and you couple that with the loss of farmland at 2 acres a minute, he is not sure the word "surplus" is going to appear for awhile.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 27, 1999

Bayer moved to approve, seconded by Schwinn.

Bayer observed that a lot of what we are hearing is not about this piece of land but everything else around this piece of land. These property owners in opposition appear to be more concerned about the property around them than the impact upon their own property. These are things that we have to watch. He respects the idea that maybe we are chewing up our land too much and we do need to address this issue, but this one particular 7 acres is not going to impact the big picture. The issues he has heard are that we need to address the big picture, i.e., acreages in the county.

Steward commended the comments about where we are going to get our food supply in the future. This is something we need to pay attention to. Again, it is a matter of principle. Yes, this 7.5 acres is going to impact the big picture. Yes, one crime impacts the crime on

the whole city. One wrong action leads to another. Somewhere this group--the Planning, Commission, County Commissioners, City Council--has to stop the unsustainable approach that we are using. We cannot sustain our quality of life by piecemealing our property away.

Motion for approval failed 3-4: Bayer, Schwinn and Wilson voting 'yes'; Steward, Krieser, Schwinn and Bayer voting 'no'; Bleed and Duvall absent.

Steward moved to deny, seconded by Wallace and carried 5-2: Steward, Krieser, Schwinn, Wallace and Hopkins voting 'yes'; Wilson and Bayer voting 'no'; Bleed and Duvall absent.

**CHANGE OF ZONE NO. 3161  
FROM 0-3 OFFICE PARK TO H-4 GENERAL COMMERCIAL**

**and  
SPECIAL PERMIT NO. 1629A,  
FOR A 32,000 SQ. FT. AUTOMOTIVE DEALERSHIP,  
ON PROPERTY GENERALLY LOCATED AT  
SOUTH 27<sup>TH</sup> STREET AND PORTER RIDGE.**

**CONT'D PUBLIC HEARING AND ADMINISTRATIVE ACTION:** January 27, 1999

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

Mike DeKalb of Planning staff submitted a letter in opposition and a letter from Mark Hunzeker requesting to change the special permit from a 32,000 sq. ft. facility to a 40,000 sq. ft. facility. This would require readvertising and a continued public hearing on February 10, 1999.

**Proponents**

**1. Mark Hunzeker** appeared on behalf of **DuTeau Chevrolet** acknowledging that he has requested this application be readvertised as a 40,000 sq. ft. facility. As the architectural drawings took shape, it was discovered that the GM consulting firm requires a floor area exceeding 32,000 sq. ft. It will probably not reach 40,000. The net change as far as this application is concerned is virtually nil. They will not be changing the site plan or the size of the building plan. The change is the result of a lack of definition early on as to exactly what was going to be in the central core of the building which has a two-story element to it. There will be some offices on the second level, a portion of which will be stacked parts storage. They have told the neighborhood representatives about this change. The intent is to simply defer the entire public hearing to February 10<sup>th</sup>.

**2. Rick Krueger**, the selling entity, testified in support. He referred to a study done independently back in 1993 by John Layman as to the impact of shopping centers on adjacent residential property values. This study was done for the Edgewood Shopping

Center. The residential property adjacent to Edgewood Shopping Center had not been negatively impacted in terms of value. This was done when Target located in Edgewood. Mr. Krueger brought this forward because it is the only independent study as to the effect of major commercial districts on residential values.

Some people have suggested that developers are somehow diminishing or destroying the property values, but the goal is to increase values across the board in the Porter Ridge development. They want to increase values for everyone. He has provided this information to the neighborhood representatives.

Schwinn inquired about development of the residential property directly abutting. Mr. Krueger indicated that they have not sold any lots directly abutting this site on the west side of 28<sup>th</sup> Street. Krueger still maintains the ownership.

Although Mr. Layman's comments do not allude to the characteristics of the commercial development, Steward asked Mr. Krueger if he would agree that proximity, screening, landscaping, and architecture have some impact on what the values may or may not be. Mr. Krueger concurred. This application changes the setback from 20' under the O-3 to 50', so from a land use standpoint, he believes it is less intrusive development than what could be built under the O-3 zoning.

Opposition

**1. Erik Andry**, testified in opposition on behalf of the **Porter Ridge Neighborhood**. The neighbors did not know about the revision until Monday and he would support a motion to delay for two weeks. Mr. Andry also submitted the original of a petition in opposition, copies of which had already been provided to the Commissioners.

Wilson asked Mr. Andry to respond to the more intrusive uses such as a Target or Walmart, or other uses that could come in that are much more onerous than a car dealership. Mr. Andry stated that he has never held the position that it is specifically DuTeau to which the neighbors are opposed. The issue is rezoning the buffer area. If we were just talking about the H-4 property, the neighborhood would probably not be here. The rezoning brings DuTeau close to the residences. The rezoning of the O-3 to H-4 is the main concern of the neighborhood.

Wilson disagrees. He sees the voting sheet from the neighborhood meeting as being opposed to DuTeau specifically. Mr. Andry's response was that the more they have met with the applicant, it's become isolated to the true nature of the objection.

Wilson observed that the 150' of O-3 rezoned to H-4 will be used for a parking lot. He wondered whether the neighborhood does not believe that to be a buffer from what could be an office, etc. Mr. Andry believes that the difference between an office park and DuTeau is that there will be peak times for the traffic if it is an office park. Offices in an office park are not usually open on weekends. With the automobile dealership, there are people coming and going at various intervals during the day and especially on weekends.

The neighborhood takes the position that denial of this request is a better chance for the neighborhood to get an office park. Wilson cautioned that the neighbors need to be careful for what they wish.

Schwinn noted that Mr. Andry lives on South 32<sup>nd</sup>. Mr. Andry concurred, stating that he is the Chairman of the Porter Ridge Zoning Committee. Schwinn posed the question to Mr. Andry--had DuTeau been there before, would that have made a difference to him in the purchase of his house? Mr. Andry stated "no". Schwinn asked whether the convenience to the schools, with DuTeau in existence, would make a difference. Mr. Andry agreed that kids being able to walk to school would override.

Hopkins invited the neighbors to go sit by a dental office that has extended hours, or go sit by McDonald's and see what kind of trip generation that is. Please look at some of the office zoning and realize what might occur in that strip.

Wilson moved to continue public hearing and administrative action on February 10, 1999, seconded by Schwinn and carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall absent.

**COUNTY SPECIAL PERMIT NO. 167**  
**FOR A GARDEN CENTER**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 68<sup>TH</sup> STREET & BENNET ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**     January 27, 1999

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

**Proponents**

**1. Mike Rierden** appeared on behalf of R&R Partners, d/b/a 2K Outdoor Living. A garden center is a special permitted use in this zoning district. The mobile home on the property was at one time a legal use when it was a residence. His clients purchased the property thinking they could use it as an office and found that not to be the case and found out that they had to make application for the use of the property as a garden center.

Mr. Rierden submitted amendment to Condition #3 such that the mobile home will be removed on or before December 31, 1999. This is acceptable to the staff and his client is willing to move the mobile home.

Then the issue becomes whether this operation fits the garden center definition. Mr. Rierden believes that it does. The key in the staff report is under Analysis #3, which talks about the “current” use being an operation that is not allowed. Planning is even saying that this is a close call. When his clients came to him two weeks ago, the purpose for the continuance was to meet with Building & Safety. Out of that meeting, it was agreed that this is a tough one. Building & Safety asked for a letter from the applicant regarding their operation and that letter has been submitted.

Mr. Rierden circulated fliers and information which his client shows to customers, which vividly show that they get involved in landscaping and retaining walls. They are planning to make a substantial monetary investment in the property by replacing the mobile home with a large building to house their indoor retail sales and their equipment. Mr. Rierden suggested that they will have the smaller retail type of operations in the next six months. This is a request to give his client a chance. Mr. Rierden offered an additional condition stating that this permit may be subject to review six months from the effective date. This shows his client’s good faith that they will place themselves within the definition of a garden center.

Mr. Rierden is not aware of any opposition to this request.

There is one letter in support in the record.

Steward asked whether the applicant intends to have plant stock. Mr. Rierden indicated that they do have plant stock now, and 98% will be on the site for this special permit; however, more is in open air than greenhouse. However, that is where they are headed with the new building—to have the greenhouse effect. They are in the retaining wall, landscaping, decoration type of work, as is Campbells and most of the larger nurseries and garden centers. Wallace was concerned about building materials being located on the site.

**2. Lois Weaver**, testified in support. They have lived ½ mile up the road for 29 years. She would be against any other kind of commercial use for this corner, but they believe this use is appropriate for the corner and will enhance the corner. She believes it would be an attractive addition to the corner and it will not impact any of the residential neighbors adversely in any way.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 27, 1999

Steward moved to approve, with conditions, with amendment to Condition #3 as requested by the applicant, seconded by Krieser. This motion does not include the additional condition for a six-month review of the permit. Motion carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting ‘yes’; Bleed and Duvall absent.

**ANNEXATION NO. 98012,**  
**CHANGE OF ZONE NO. 3144,**  
**and CHANGE OF ZONE NO. 3156,**  
**FROM R-3 RESIDENTIAL TO H-3 HIGHWAY COMMERCIAL,**  
**and**  
**PRELIMINARY PLAT NO. 98021, NORTH CREEK,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NO. 27<sup>TH</sup> & FLETCHER AVENUE.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**      January 27, 1999

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

Proponents

1. **Mark Hunzeker** appeared on behalf of **Lincoln North Creek, L.L.C.**, the primary developer within this subdivision. This is an area that will be developed for a variety of business uses as well as residential uses. Mr. Hunzeker pointed out that there are no issues with the staff report except for the O-3 zoning along 27<sup>th</sup> recommended by the staff. Mr. Hunzeker requested that the Commission approve a change of zone to H-3 on Change of Zone No. 3156.

Mr. Hunzeker addressed the conditions of approval on the plat. Condition #1.1.1 is the street block length waiver being requested and the condition would require them to place a street between Breckenridge and Manitou Drive from No. 23<sup>rd</sup> Street down to No. 21<sup>st</sup> Street. The grade between those streets is very significant and for them to place a street in that area would probably exceed an 8% grade, so they have requested the waiver of the block length to configure it in this way to avoid an 8% grade street, which also violates design standards. The applicant is also requesting that there not be a requirement for a sidewalk because, for reasons of ADA and other concerns that relate to the same issue, he believes a sidewalk would require them to put sides on it and curves, resulting in a possibility for some injuries.

Condition #1.1.16 relates to providing access to Lots 4 and 5 of Block 7 to have access and frontage on Telluride Drive. They are providing for an easement to access the back side of those lots. As to that request for waiver, rather than delete the condition, Mr. Hunzeker requested to modify or move that condition over to the General Conditions under #3 so that it is a condition of the final plat. It was pointed out that the application did not specifically request that waiver and thus it was not advertised. They have the identical situation for the lot with the LES substation on it at 27<sup>th</sup> & Fletcher. There is an easement running over to Telluride which is the only access for the LES substation.

Condition #1.1.17 relates to Lots 8 and 9, Block 7, which are abutting Whitehead Drive at the north end of the plat. The requirement is that these be combined into one lot. They

have access and frontage along Whitehead Drive and Telluride to these two lots. They would strongly prefer to have the ability to have two lots and to have access to both. Mr. Hunzeker requested that Condition #1.1.17 be deleted.

With regard to Condition #3, general conditions for final platting, Mr. Hunzeker requested that that language be amended so that it reads, ..."Final plats shall not be approved until after..." , because one of the items is a traffic impact analysis and agreement concerning off-site improvements being submitted and approved. If this developer is to have any sort of reasonable bargaining and negotiating position, they need to be able to have a hearing if they disagree with the city. If they cannot get onto the Planning Commission agenda until those things are approved and agreed upon, then it is difficult to negotiate. This amended language allows the final plats to be scheduled but not approved until they reach an agreement.

Condition #3.1.2 relates to some residential lots which are along North 23<sup>rd</sup> Street, which is a half right-of-way. The developer does not own the entire street. The staff is requiring that they plat the three lots that abut that half right-of-way as outlots so that they are nonbuildable. Ordinarily this would be reasonable, except that each one of these three has a full street in front of it and they have full access to the full street. It is not reasonable not to be able to build when there is a full street and full access. Mr. Hunzeker requested that Condition #3.1.2 be deleted.

Condition #3.1.3 also relates to the lots along Whitehead Drive. Mr. Hunzeker requested that this condition be deleted because they have access to a full street at the corner of 27<sup>th</sup> & Whitehead Drive and access to a full street on Telluride for the other lot.

Condition #3.1.4 requires that final plats for those lots south of Manitou Drive and certain other lots not be approved until North 21<sup>st</sup> and Folkways Drive are completed from Folkways to Breckenridge. Mr. Hunzeker received alternate language on a different plat two weeks ago which allowed for Executive Orders or districts to be created, so that they would not be prohibited from platting those lots until the streets are in. This developer does not want to have a requirement that they can't go forward with the final plat until those things are completed. They want the ability to go forward if the Executive Orders have been issued or districts created for those streets. Mr. Hunzeker would prefer to have Condition #3.1.4 deleted.

Condition #3.2.9 requires relinquishment of access from Lot 8 to Whitehead Drive. Again, they do have access. There is access on the north side at the same point, pursuant to an annexation agreement with the property owner to the north. Mr. Hunzeker requested that Condition #3.2.9 be deleted.

Mr. Hunzeker clarified that Lots 8 and 9, Block 7, are at the corner of Whitehead and 27<sup>th</sup> Street, located on Whitehead Drive. Lot 8 is the one at the corner and Lot 9 is the one on Telluride.

Steward acknowledged that it is not a part of this plat, but he wondered whether streets are shown all the way up to the Interstate—the two areas to the north of this platted area with R-3 being shown all the way to the Interstate. Mr. Hunzeker stated that everything north of this plat is zoned H-3. This plat does not ask for any change to the employment center zoned property. Mr. Hunzeker advised that they have talked with staff about the wetlands. Steward's concern is commercial at the edge of the Interstate but that land is not a part of this application.

Steward is concerned for our entire Interstate community entrance—the visual corridor—and that there needs to be a development scheme that gives us more green and more office rather than industrial conditions along our Interstate. Mr. Hunzeker advised that the Comprehensive Plan amendments which are part of the Annual Review do move from some of the property from industrial to commercial. They do not anticipate industrial use in that area, but more of a “trade center” type use. The trade-off is always those uses that need major access to major thoroughfares and major highways, and most people don't want these in their neighborhood.

**2. Kent Seacrest** appeared on behalf of **Home Realty, Inc.**, the prospective owner of a 3-acre parcel of this plat. Home Realty is coordinating with Mr. Hunzeker's client, Hampton Development Services, on this development. Mr. Seacrest submitted a motion to amend conditions in the plat. The original submittal showed the relocation of a creek, and therefore probably relocating some wetlands. They have now determined that they need not do this. The proposed amendments indicate that they will go back and leave mother nature alone and leave the creek where it is located today. Secondly, because Mr. Seacrest's client has a small parcel, access is very difficult. They are showing a proposed access road to Fletcher Avenue and Mr. Seacrest would request to add proposed Condition #1.1.22 to allow some movement to get in and out of the property. He is also proposing to add a Condition #1.1.23 to allow them to preserve a North 27<sup>th</sup> Street access curbcut that already exists according to the records. Public Works is not sure it does exist. So proposed Condition #1.1.23 allows them to keep it if it exists, but not to have it if it doesn't exist. The proposed amendments to Condition #3.2.8 and Condition #3.2.10 have to do with vehicular access.

With regard to Change of Zone No. 3156, Mr. Seacrest stated that the applicant had originally requested H-3 because everything else along the corridor is zoned H-3, but staff disagrees and is recommending O-3. Mr. Seacrest requested that the Commission approve the H-3. In support of this request, Mr. Seacrest referred to the North 27<sup>th</sup> Street Subarea Plan. This parcel is shown as commercial on that plan, which is compatible with the H-3 zoning being requested. There is 100' of green space at the south border, providing good transition. Across the street to the north is an LES power plant and retail is more compatible with this than office. On one occasion staff recommended H-3 right across the street; then the property catty-corner across the street was recently zoned H-3, so for consistency, Mr. Seacrest submits that this parcel could and should be zoned H-3.

Neutral

**1. Mike Morosin, past president of Malone Neighborhood Association** testified at this time; however, he stated that he is not truly in support nor truly in opposition. This community is starting to build all the way up to the Interstate and he suggests that we are starting to get the Omaha sprawl look. He is concerned about the waterway and wetlands because this is one of the last inland salt marshes in the United States. We need to be real careful as we take a look from an ecology standpoint where we are disrupting flight patterns of a lot of the birds and species that come to this area. He is not opposed to building if it is done properly, but we need to look at what we are doing in our floodways.

Response by Staff

Ray Hill of Planning staff addressed the proposed amendments to conditions requested by Mr. Hunzeker. With regard to the Condition #3, Mr. Hill believes Mr. Hunzeker would agree to create a new Section #4 with his new language, "Final plats shall not be approved until after a traffic impact analysis and agreement concerning offsite improvements has been submitted and approved." The remainder of Condition #3 should be left intact, with the language from Condition #3.1.1 being moved to Condition #4 as set forth above. Mr. Hill does not want to change the policy that we have for sidewalks, etc., being bonded before the final plat is scheduled on the Planning Commission agenda.

Mr. Hill stated, however, that the staff would prefer the conditions of approval as set forth in the staff report.

Response by the Applicant

Mr. Hunzeker agreed with Mr. Seacrest's request for the H-3 zoning on the 3-acre parcel. They want the property zoned consistently with the rest of this property. Mr. Hunzeker is working with Mr. Seacrest and his client to arrange for some land trading in that area.

Mr. Hunzeker agreed with Mr. Seacrest's proposed amendments to the conditions.

Public hearing was closed.

**ANNEXATION NO. 98012**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 27, 1999

Bayer moved approval, seconded by Wilson and carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall absent.

**CHANGE OF ZONE NO. 3144**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** January 27, 1999

Bayer moved approval, seconded by Krieser and carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall absent.

**CHANGE OF ZONE NO. 3156**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** January 27, 1999

Bayer moved approval of the change of zone to H-3, seconded by Wilson and carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall absent.

**PRELIMINARY PLAT NO. 98021**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** January 27, 1999

Bayer moved to approve the Planning staff recommendation of conditional approval, with amendments as requested by Kent Seacrest; deleting Condition #1.1.1, #1.1.17, #3.1.2, #3.1.3, #3.1.4, and #3.2.9; moving Condition #1.1.16 to General Conditions #3; and creating a new paragraph 4, with the language requested by Mr. Hunzeker and moving Condition #3.1.1 to that new paragraph #4, seconded by Schwinn and carried 7-0: Steward, Krieser, Bayer, Schwinn, Wallace, Wilson and Hopkins voting 'yes'; Bleed and Duvall absent.

The next meeting of the Planning Commission is a Special Public Hearing on the 1999 Comprehensive Plan Annual Review on Wednesday, February 3, 1999, at 1:00 p.m.

There being no further business, the meeting was adjourned at 5:45 p.m.

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