

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

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

MEMBERS IN ATTENDANCE: Steve Duvall, Barbara Hopkins, Gerry Krieser, Greg Schwinn, Cecil Steward and Rick Wallace (Russ Bayer, Ann Bleed and Joe Wilson absent); John Bradley, Mike DeKalb, Steve Henrichsen, 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 regular meeting held January 27, 1999. Motion to approve made by Steward, seconded by Krieser and carried 6-0: Duvall, Hopkins, Krieser, Schwinn, Steward and Wallace voting 'yes'; Bayer, Bleed and Wilson absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

February 10, 1999

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1200A; SPECIAL PERMIT NO. 1759; FINAL PLAT NO. 98032, WEST PARK ADDITION; FINAL PLAT NO. 98034, CRIPPLE CREEK SOUTH 13TH ADDITION; AND WAIVER OF DESIGN STANDARDS NO. 99001.**

Item No. 1.5, Waiver of Design Standards No. 99001 was removed from the consent agenda and scheduled for separate public hearing.

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

This is final action on Special Permit No. 1200A, Special Permit No. 1759, West Park Addition Final Plat No. 98032 and Cripple Creek South 13th Addition Final Plat, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**WAIVER OF DESIGN STANDARDS NO. 99001,
TO WAIVE THE REQUIRED MINIMUM LOT DEPTH
ON PROPERTY GENERALLY LOCATED AT THE
NORTHWEST CORNER OF SO. 40TH & CALVERT STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 10, 1999

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

Planning staff recommendation: Approval of waiver from 90 feet to an average lot depth of 72.5 feet for the western parcel and 72.43 feet for the eastern parcel.

This item was removed from Consent Agenda and scheduled for separate public hearing due to the receipt of letters in opposition.

Rick Houck of Planning staff submitted two letters in opposition to the waiver with concerns about density and safety, among other things.

Proponents

1. **John Cooper**, the applicant and seller of the subject property, testified in support. He has a contract to sell the property and it is anticipated to be a single family dwelling. He believes this will contribute to the neighborhood because it will be a nice house.
2. **Joe Kerr**, the developer/subdivider, testified in support.

Steward asked the applicant to verify the intent to replace the existing residence with a new single family residence. It was confirmed that they will maintain the existing house on the east lot and develop the other lot.

Opposition

1. **Jerre Bovett, President of Greater South Neighborhood Association**, testified in opposition to a “duplex” at the corner of So. 40th & Calvert. Safety is a concern. 40th & Calvert is a very busy intersection with a high accident rate. With the addition of another residence on that corner, on-street parking will increase about three-fold. School buses cannot negotiate the turn off of 40th onto Calvert at the present time. Mr. Bovett questions whether we are prepared to accept responsibility for more traffic accidents on this corner. The current home has off-street parking and the existing owner often parks on Calvert.

The lot size is another concern. The neighborhood believes a 72 x 72 lot is not appropriate for building anything. He understands the project can be built within 5' to the lot line, but he questions whether anyone would want a property built 5' to their existing lot line in a residential neighborhood. Traffic is another issue. So. 40th has faced pressure for the past few years as the city grows. This project will add fuel to the burning fires for widening. In addition, the information on this project was never sent to the neighborhood association and he has not seen any signage or indication on the premises with regard to this action.

Hopkins clarified that it is her understanding that the additional residential unit will be single family, not a duplex. Mr. Bovett still questions the size of the lot and the issue of safety at this intersection.

2. Forrest Critchfield testified in opposition. He has two lots that have not been developed in this area. The property adjacent is also a duplex zoned lot with a single family unit on it at this time. He requested these issues be considered along with the testimony of Mr. Bovett.

Schwinn believes they could tear down the existing house and build more than a duplex on the existing zoning. The zoning is R-4. Mr. Houck clarified that R-4 would be limited to single families and duplexes without a CUP.

Steward wants clarification regarding single family/duplex. Is it the intent of the developer to develop a duplex or single family? Mr. Cooper understands that the developer is building a house for his brother and he heard the taxes would be about \$2700. The purchaser is not present to confirm this information. Mr. Cooper does not park his car on Calvert Street. He parks in the garage. If people were to park on the new lot, he does not believe it would cause problems for the buses because it is about ½ block from the corner of Calvert and 40th Street.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: February 10, 1999

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

COUNTY CHANGE OF ZONE NO. 183
FROM AG AGRICULTURE TO B BUSINESS
ON PROPERTY GENERALLY LOCATED
SOUTH AND WEST OF N.W. 70TH AND AGNEW ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 10, 1999

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

Planning staff recommendation: Denial.

Mike DeKalb of Planning staff submitted three letters in opposition, with concerns about the precedence this will set; safety and increased traffic through Agnew by employees and for deliveries; Agnew Road is currently in poor condition; encouraging additional business zoning; infringement upon a quiet family area.

Proponents

1. **Mary Benes** testified in support on behalf of **Eugene Benes, President of Benes Heating & Air**, the applicant. They are requesting to expand their business. They realize that this is on the edge of Agnew, but this is their only option at this time. The proposed shop area is located back away from the road with sufficient parking on the site itself. The Health Dept suggests they purchase a minimum of 3 acres and they agree. Ms. Benes submitted written information regarding the other sites they have investigated and the reasons they were unable to purchase property at another location. This is an air conditioning installation and service company and they need to find a new place for commercial zoned property in order to expand their business. Agnew is a central site for their service area. They want to be able to stock air conditioners and other equipment on-site to provide better service. The Lincoln companies normally charge an excessive service charge to serve this rural area.

Ms. Benes submitted 16 signatures of residents that are in favor of this application. The Benes are aware of the residents' concern about increasing the traffic, etc., and they will take every precaution necessary to maintain a safe environment for the children and the residents. There would be 2-3 employees on-site. The remainder of the employees will report to the job site where they will be working. They would pick up parts and equipment around 8:00 a.m., which is after the school buses are in operation. UPS makes frequent deliveries as well as RPS, but semi-truck trailers are rare. All deliveries are currently routed through the town of Agnew via Agnew Road at this time, so the truck traffic would not increase.

The Benes are working with the Isaacsons, who submitted a letter in opposition, and they hope to be able to work amiably with them.

Wallace asked whether the applicant looked at any other options, other than in Agnew. Ms. Benes stated there would not be opportunities to expand in Valparaiso. They have had overwhelming growth because of their existing location.

There was no testimony in opposition.

Steward observed that the proponent suggests that there are limited options and this is their last choice if they wish to be in or near Agnew, yet the staff report suggests that other options are available. Mike DeKalb of Planning staff agreed that this is not a simple one. The County Plan does support location of businesses in unincorporated towns. He has worked a lot with the Benes, attempting to give them options that might work better. He was hoping they could find a location in some existing "I" zoning or land abutting the "I" zoning to the north or south, or to locate in the "B" zoning. Excluding those, he had suggested across the highway to the east, either southeast or northeast. It is not a good planning principle to put businesses next to residential. The County B zoning is somewhat like the City's I-3, where there are no special conditions. It could have a heavy impact. Mr. DeKalb does not believe it fits this location. They are trying hard but can't get it to fit.

Response by the Applicant

Ms. Benes stated that they have investigated Mr. DeKalb's options and they are not available or the owners does not want to sell.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 10, 1999

Schwinn moved approval, seconded by Krieser.

Schwinn applauds the Benes family for trying to build a family-owned business within the community. He is a firm believer in the free enterprise system. It seems that there is more support from the people in Agnew than opposition. He believes they will be careful with the use of the property. The other land is just not for sale and if they want to stay there this has to happen.

Steward agrees with staff that this is a tough call. He is not sure all of the options have been explored. It is a spot within a larger zoning and runs the risk of a loss of protection for the residential adjacencies. He believes there are a large number of reasons for not approving this—soil percolation is difficult; water quality is questionable. There are probably good reasons why this area hasn't developed more than it has. He does not believe it is good planning principle.

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

This application is held over for administrative action on February 24, 1999.

CHANGE OF ZONE NO. 3163
FROM AG AGRICULTURE TO H-3 HIGHWAY COMMERCIAL
ON PROPERTY GENERALLY LOCATED AT
NORTH 27TH STREET AND INTERSTATE 80.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 10, 1999

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

Planning staff recommendation: Approval to that portion of the site that has been delineated as outside the wetlands, including a buffer area, by a wetland delineation consultant. The applicant must submit the metes and bounds description of such area before this application is scheduled on the City Council agenda.

Proponents

1. **Mark Hunzeker** testified on behalf of the owner of the property. This property is designated commercial in the Comprehensive Plan. There is a notation in the staff report to the effect that some of it is designated natural or environmentally sensitive, but that does not correspond to any zoning district that we have in our ordinance. We have wetlands that are zoned in virtually every zoning district all over town and he is disappointed that, as many times as we have talked about this, we continue to have recommendations which bring to bear standards which do not find any support anywhere in our zoning ordinance. Within a mile of this property is the Hansen property on the east side of 27th Street. Directly across the street, this issue arose in the Dial application; the Whitehead property immediately south had wetlands on it and was zoned H-3; moving further south, the Schleich property where the large apartment complex is located is zoned residential and has substantial wetlands; going further south of Fletcher, there is a substantial amount of highway commercial and industrial zoning, recently zoned, which also has substantial wetlands on it; on the west side, just two weeks ago, the Planning Commission approved a rezoning of property also owned by Mrs. Hansen on the southwest corner of 27th & Fletcher, which also had wetlands on it. The problem is that when you have no ordinance, you have no standard, and the staff is attempting to apply an ad hoc standard by soliciting input from the Corps of Engineers, Dept. of Environmental Quality, Game and Parks Commission and others, who up to this point have never had any input or any place in reviewing local zoning actions.

Mr. Hunzeker suggested that we have federal regulation of wetlands by the Corps, the Wildlife service, Game and Parks, DEQ and NRD, and there is no need to inject the local planning jurisdiction into this area of regulation. In fact, last week, during the Comprehensive Plan Annual Review, we heard a great deal of discussion about how little staff time was available to accomplish that review. It now takes six months to accomplish an Annual Review of our Comprehensive Plan; we didn't have time for the past five years to come up with a county plan; and we haven't the staff time to investigate or plan the urbanization of the Stevens Creek watershed, yet we are engaged in this process attempting to expand the authority of the Planning staff to regulate wetlands. Mr. Hunzeker suggested that the designation of parcels as natural and environmentally sensitive is simply not a good way to go about trying to decide where you are going to draw zoning jurisdiction boundaries. Let the regulatory authorities with the appropriate jurisdiction and body of law regulate those things.

2. Rob Otte, testified in support on behalf of **High Pointe, LLC**, owner of the property directly south of the subject property. He is in support because the city has changed a fair amount of zoning in this area and the zone should be changed on the subject property. There were some comments in the staff report regarding access and he suggested that with the property before the Commission today, the access issue has not been one that has been discussed between the applicant and his client. They view the access issue as already resolved. It would not be his client's preference, nor would they support, having any kind of access come off the property that they are developing immediately south.

In addition, Mr. Otte supports Mr. Hunzeker's statements about the environmental issues. We do not have a city ordinance governing this at this time. It appears that developers and builders and others in the city are expected to follow some sort of guidelines, but there are no ordinances to direct us.

Opposition

1. Mike Morosin, past president of the **Malone Neighborhood Association**, commended the staff for taking the lead on this issue. We have a moral responsibility to protect the creatures on this earth and protect our freshwater salt marshes. Maybe there aren't any special ordinances so maybe we need to create some. He has watched wetlands being covered up.

2. Tim Knott, representing himself and the **Wachiska Audubon Society**, testified in support of the staff recommendation. Approval of the change on the entire property is not a good idea because there is a long history of concern about continuing loss of the saline wetlands. An inner-agency task force recognized this as a saline wetland. If this zone change is approved, he believes it sends a message that the Planning Commission is promoting the development of wetlands. He believes it would advocate the filling in of these wetlands.

Mr. Knott also suggested that the argument that the Army Corps of Engineers will take care of these issues is not true. He believes the Planning staff and the Planning Commission have a responsibility and authority to stand up for the public interest in this area, serving as a guardian of the public trust, and they should exercise that responsibility.

Mr. Knott also suggested that there is a value to the owner in leaving the wetland portion intact because it could provide an essentially more attractive entryway into the City; green space would be more attractive than intense development; it could provide flow of groundwater; it could be incorporated into a development that would be attractive and economically beneficial to the owner.

3. Jim Ducey, 441 Steinway Road, testified in opposition. In looking at the staff report and the site, he is wondering whether it is a saline wetland or a fresh water wetland. He knows that the Corps will react differently based upon this distinction. There should be a very good site evaluation; there is an area of the property that is also a native prairie. Perhaps there is the need for a land use change, but perhaps it should be green space or a native habitat area because of the wetland.

Mr. Ducey also observed that one unique feature of the intersection is the upland prairie and a lowland wetland. This is an important distinction and a rare combination. Because the land use has not been designated, he questions the zone change. He urged that the Planning Commission investigate the site to determine what type of wetland it is and whether there should be effort made to protect the upland native prairie.

Hopkins asked the staff whether this action is different than usual because she recalls that the Commission has relied a great deal upon the Corps of Engineers in their review as the wetlands go through the process. Nicole Fleck-Tooze of Planning staff advised that the city staff has been giving more careful consideration to wetland areas. In this particular case, it is not so much a regulatory issue because the area is shown on the land use plan as wetlands and water bodies. For a change of zone, the city is under no obligation to grant a change of zone. We use the Comprehensive Plan to determine the appropriate land use and the plan clearly shows this area as wetlands or water bodies. AG zoning is much more compatible with such a natural resource than a commercial zoning designation. The agencies contacted have recommended that a delineation be done. This is a category I saline wetland, which is the highest quality we have. There has not been a site specific delineation to provide a legal description.

Response by the Applicant

Mr. Hunzeker believes there is some confusion as between what the rezoning of this site would do and what can still be done with the site under the bodies of state and federal law governing wetlands. It doesn't matter what this body or the City Council says the zoning of that site will be. If there are wetlands on it, they cannot be filled without a permit issued by the Corps of Engineers. We have been through this process on the east side of 27th

Street. It took about a year for the Whitehead parcel to be developed in order to secure a permit to fill approximately one acre of land in exchange for deeding to the NRD for the purpose of restoration and permanent maintenance of over 100 acres of saline wetlands which were degrading because of cuts that had eroded into the site over time. The vision that was described of these nice wetland areas at the intersection of 27th & I-80 was simply not the case. Those were dying wetlands. Due to the Whitehead and Dial projects, a substantial amount of land was donated to the NRD for further restoration and long term maintenance. These permits are not easy to get, and the suggestion that rezoning this property will encourage or enable someone to fill this wetland is simply not the truth. The problem that you create by making these requirements is that you require people to spend money up front before they have any assurance that they have anything of value that they can take to the bank to borrow money to start development. This type of survey would probably cost another \$10,000. It is expensive and it does not create any additional protection.

This application is trying to get the property in the right zoning category so that they can continue the process of discovering what can be done with the property and how they are going to get access to it. When you start requiring surveys and delineations prior to even zoning, you really start to put in some up-front costs that make it difficult for people to do the things that have been done across the street in the way of restoration and preservation. This discourages responsible preservation of these areas.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 10, 1999

Steward moved to approve the staff recommendation, seconded by Wallace.

Steward stated that his first inclination was to move for a denial of the change of zoning completely. He believes the staff recommendation is a compromise situation. The first mistake in this saline wetlands area was the building of the interchange to begin with. Obviously, the Corps of Engineers did not stop that from happening, so why would we locally trust the opportunity for the Corps and the State to take what he believes is a local control issue in our best interests. He has as much concern for this area from the standpoint of the I-80 corridor and the views into the City. This is a very attractive entrance as long as it has AG zoning next to it, and now we are en route to turning it into a 56th Street interchange or worse, in terms of immediate adjacent development. At least we have the local responsibility to follow the staff recommendation and protect the wetlands and require the survey that will identify them specifically.

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

At the end of the meeting, Rick Peo, Assistant City Attorney, approached the Commission

with regard to the action taken on Change of Zone No. 3163. The recommendation of approval had a condition that the applicant delineate the wetlands prior to the change of zone being scheduled on the City Council agenda. It is Mr. Peo's opinion that is beyond the scope of the Planning Commission authority on a change of zone request. The applicant must be allowed to get his request on to the City Council if he wants to proceed.

The staff recommendation does not allow the change of zone to be scheduled on the City Council agenda until the applicant has hired a consultant to delineate the wetlands specifically. Then that area of wetlands was to be excluded from the change of zone. Mr. Peo advised that that is asking the applicant more than he is required to do to get his full request before the City Council.

If the City Council approves this recommendation, Steward wanted to know at what point the wetland delineation occurs. Mr. Peo indicated that at some point someone will have to come up with a specific area for the change of zone. The City Council could require the applicant to define it.

Mr. Peo suggested that the Planning Commission could approve the change of zone for that property only outside of the wetlands as delineated by a consultant. But the Planning Commission action should not require that delineation to occur until it gets scheduled on the City Council agenda.

Steward is not clear when the wetlands delineation will take place. Mr. Peo suggested that it would have to take place before the change of zone is approved by Council. It must be denied or approved until someone defines something less.

Mr. Peo suggested that the Commission could move to reconsider and re-vote the issue either up or down. If not, Mr. Peo stated that he will move the change of zone forward to the City Council on the basis of what he has discussed.

Steward is concerned about knowing who, what and when the definition of the wetlands will be given relative to the zone that is still available for development. What is the process by which that delineation gets made for the interest of the public? Mr. Peo does not believe the Planning Commission has a real prerogative to hold the change of zone indefinitely. There is an implied reasonableness of responsibility to take action.

Steward inquired whether it is during the final plat process that the wetland issue will have to come back forward. Mr. Peo concurred, or at building permits, etc. The issue will come up.

Schwinn moved to reconsider, seconded by Krieser and carried 4-2: Wallace, Schwinn, Krieser and Hopkins voting 'yes'; Steward and Duvall voting 'no'; Bleed, Bayer and Wilson absent.

Schwinn moved approval of the change of zone to H-3, seconded by Duvall.

Schwinn believes that with this being in an environmentally sensitive area, the Corps of Engineers would have to be involved. The delineation would have to be dealt with so he thinks that all of the checks and balances are in place and that we can move forward even though the land is zoned in its entirety. Certain portions could never be developed because of the rules and regulations we have in place. It is not within the scope of the Planning Commission authority to put those limitations on that change of zone now. We either vote to change the whole thing or not the whole thing.

Mr. Peo did not say they couldn't vote to recommend a smaller area. It is just that the developer cannot be required to delineate that area before it goes to City Council.

Steve Henrichsen of Planning staff stated that it would be staff's preference that the Commission recommend approval of the area outside the wetlands, striking the language that the wetlands must be delineated before going to City Council.

Duvall moved to amend to approve the change of zone to H-3 for the area outside of the wetlands, seconded by Krieser and carried 5-1: Wallace, Steward, Schwinn, Krieser and Hopkins voting 'yes'; Duvall voting 'no'; Bleed, Bayer and Wilson absent.

CHANGE OF ZONE NO. 2531AA,
WILLIAMSBURG VILLAGE FINAL P.U.D.
and
MISCELLANEOUS NO. 99001
FOR AN ELDERLY HOUSING DEVELOPMENT
ON PROPERTY GENERALLY LOCATED BETWEEN
SOUTH 38TH STREET AND SOUTH 40TH STREET,
NORTH OF PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 10, 1999

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

Staff recommendation: Conditional approval.

Steve Henrichsen of Planning staff submitted a letter from the Cripple Creek Homeowners Association requesting a continued public hearing on February 24, 1999, to give them an opportunity to meet and discuss this application.

Mr. Henrichsen also submitted a letter in opposition.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Hampton Development Services**, along with **Bob Hampton**. This is a project located at the northwest corner of 40th & Pine Lake Road in the Williamsburg Village PUD. This PUD was initially brought forward and approved almost 10 years ago, which included a full half-section of land. Over that time there has been a substantial amount of change. Originally, this property was designated multi-family and is presently approved as townhouse development.

2. **Bob Hampton** the developer, 3411 Williamsburg Drive, testified in support. 10 years ago there was no Pine Lake Road—it was a corn field. The first change was Security Mutual Life building their home office on the northeast corner of 40th & Pine Lake Road and the other change is Bryan Hospital's plan to build a 60,000 to 70,000 sq. ft. office building on the southwest corner with approved expansion capability to double that size. Haven Manor will be on the corner of 40th & Pine Lake Road, which is an assisted living facility of two stories, and Savannah Pines, an unassisted retirement 3-story building in the middle with 123 units. The buildings will be all brick and very much in keeping with the colonial Williamsburg style.

Mr. Hampton further pointed out that this development shows 5-8 times more setback than the minimum requirement of 30'. There is substantial common area between the retirement lot and the neighboring residences, as well as a bike path. If they can work out an agreeable solution with the neighborhood association, they will build berms in the common area and do extensive landscaping.

Mr. Hampton believes there are a lot of benefits to the neighborhood. The buildings will be high quality construction, built with maintenance free materials; one of the buildings will completely shield the neighbors from the traffic on Pine Lake Road and 40th Street. The developer proposes to add berms, large trees and landscaping in the common areas and on the subject site. Retired residents make good neighbors. They will be able to offer facilities and a community room for neighborhood meetings and functions. Mr. Hampton suggested that there would be future pressure for an office building on that corner if this application is denied.

Mr. Hampton noted that the neighbors have raised issues about increased traffic. Based on the city traffic engineering specifications, the currently approved plan for 26 patio homes would generate 12 trips per day, or 312 cars per day. This developer has counted cars at Gramercy Hill and between 7:00 a.m. and 9:00 p.m., there were 218 cars.

Mr. Hampton also observed that Lincoln has a dramatic growth of elderly population. Nebraska has the 7th largest concentration of seniors in the U.S. Other facilities say that 30% of their residents move in from outside either Lincoln or Omaha. Seniors 65 and older are the fastest growing demographic group, so the need for retirement facilities such as this will only increase.

Mr. Hampton also pointed out that many of Lincoln's most expensive homes are built next

to elderly facilities.

Mr. Hampton reiterated that Savannah Pines has 5-8 times more setbacks than the typical projects in Lincoln.

Mr. Hampton has been on the Williamsburg Village Homeowners Association board for the last five years. He sent out two different notices on this project to the affected neighbors and held two separate informational meetings. He also had a meeting with the Williamsburg Village Homeowners Assn. Board and the homeowners newsletter gave everyone notice of that board meeting. There were only 8-10 people out of over 400 that came to the meeting.

Mr. Hampton believes he has gone out of his way to be up-front with the neighborhood about this project.

Duvall asked Mr. Hampton to respond to the neighbors' understanding that this area would be developed as townhomes. Mr. Hampton explained that the property is now approved for 26 patio homes similar to the West Savannah Court project that has been under construction for four years. That project has been terribly slow because the people buying the patio homes are empty-nester, retired people who do not want to back up to a busy street.

Mr. Hunzeker also noted that there has been over a million square feet of commercial space approved at 27th & Pine Lake Road; we have had a major shopping center designated in the Plan at 84th & Hwy 2; and over the time that Williamsburg has been developing, all of the housing that exists south of Pine Lake Road has been constructed. Not only was Pine Lake Road dedicated and constructed during that 10 years, but the use and likelihood of Pine Lake Road being a major arterial has changed substantially. They have made substantial changes to this project in response to their meetings with the neighbors. It originally had a bank at the corner with a drive-thru. Since they have eliminated the bank and substituted the assisted living facility, it is now 5' below the elevation which was originally proposed.

Mr. Hunzeker also noted that none of the projects referred to in the staff report have the setbacks that are proposed in this application.

Mr. Hunzeker stated that the applicant agrees with the staff recommendation, except Condition #1.1.2 to eliminate the access to Pine Lake Road. One of the concerns of the neighbors is traffic. The traffic from this project will be as light or lighter than under the existing scheme; however, they still want to have an access point for Pine Lake Road, both for the convenience of visitors and for minimizing the amount of traffic coming through the intersection at 38th & Pine Lake Road.

Mr. Hunzeker also addressed Condition #1.1.6, which would require the developer to

change the note to say the height will not exceed 35' except for cupolas. As a general proposition, Mr. Hunzeker didn't disagree but requested that the Commission add the phrase "except in the middle section of the building where the distance from residential lot lines is 200' or more." This will mitigate the one area of the building that exceeds the height limitations; it is about 42'. For architectural reasons they want the building to have the Williamsburg design criteria. They have no objection to having the elevations provided attached as conditions of approval.

Steward inquired why the two entrances on Pine Lake Road on each side do not line up. Hunzeker believes there is a street on the south side at 38th Street and the drawing is in error.

Steward asked if there is any implied or intended relationship between the assisted living facility and Bryan Hospital across the street. Mr. Hampton stated, "not at this point", but he thinks there is a benefit to having the Bryan doctors close by.

3. Dean Tiemann, with Haven Manor, who resides at 1610 So. 77th Street, testified in support, addressing the traffic situation with an elderly facility. He was administrator of Gramercy Hill for 10 years. In checking with staff members at Gramercy, currently 14% of their residents have cars. The number of couples at Gramercy is limited and very rarely would a couple have two cars. He gave a brief synopsis of the relationship of Gramercy Hill with the neighborhood.

4. Gus Peach, Haven Manor, submitted information from neighborhood associations about their facilities. He is in agreement with this facility being built in Williamsburg Village. He gave a brief history of the Haven Manor facilities and the type of residents. Mr. Peach was approached by Mr. Hampton to discuss building a Haven Manor facility in place of the drive-through bank/office building. Haven Manor has not received any complaints or problems from their neighbors at other locations.

Opposition

1. Melvin Jones, 3820 Old Dominion Court, testified in opposition. This project will be right outside of his window and the back side of his house will be looking at the subject property. Prior to purchasing his home, he looked at the neighborhood, transportation systems, school systems and investigated some of the support services planned for the neighborhood. Because he had been finance director of the nation's Capitol, he looked at some of the city plans because he wanted to know what was going to happen in this entire area. He called everybody. He was assured by this body that the property in question was going to be future residential. You can imagine his surprise when he received notification that was going to be changed. He went to the developer's meeting, hoping that he could have a better understanding of the project. He learned from the developer that "it really doesn't matter—that this was going to be approved anyway". He has not had the opportunity to participate in this process in Lincoln, Nebraska. He is new

to the community. But when he goes to look at a neighborhood he wants to purchase within, he uses his due diligence and relies on what he is told. When those things are changed, with the kind of statements he heard, he began to wonder what the role of the developer is in the planning process; what is the role of the citizens in relying on PUD's; and what is the role of this body? He met with his neighbors and they want to discuss issues of fairness, drainage, traffic, and what they can do as citizens in relying on the plans that we look at before purchasing a home. Those of us who have relied on the plans in purchasing their homes and bringing their families in, expect that there will be some holding to those plans. This is not a NIMBY issue. We are not talking about a retirement community. We are talking about our lives on a plan that we thought was good when we bought our homes. That plan is changing to the detriment of our neighborhood and Mr. Jones requested that the proposal be denied.

Hopkins asked Mr. Jones what his top two concerns would be. Mr. Jones stated that he is concerned about traffic. He believes the traffic will go through the residential neighborhood. There needs to be a second look at the developer and the staff positions. There is an issue about drainage. We need to explore the sub-terrain of that area. There will be a lot of runoff despite the elevations that were shown. And this will drain onto his property. Why can't we stay with the original design? Is it a money decision? He suggests that the developer needs to look at alternative ways to do what was originally approved.

2. Susan Kriz, 6706 Old Dominion Road, testified in opposition. She does not believe we can project how many cars the elderly facility might have. There are visitors, employees, deliveries, etc. We are told that the traffic will enter and exit through 38th Street or Pine Lake Road. She finds it difficult to believe that there will not be a congestion problem there. People will naturally desire to use Williamsburg as a shortcut. That amount of traffic is a great concern. She spent a great deal of time considering where to build a home for her family. She wanted a friendly, safe neighborhood for her children. This new traffic will negatively impact what they currently have and what they planned to experience. The reason they were comfortable building their home was because of the restrictive covenants that existed. They were especially comforted by the covenant that says no lot within the property shall be designed other than in the Williamsburg PUD. She believes there has been a lack of good faith by the developer. Mr. Hampton was involved in the neighborhood association and he was asked about his plans for the northwest corner of 40th & Pine Lake Road and he indicated he was having difficulty marketing that corner due to the noise and traffic, but that he was still contemplating placing an office building on that corner, and that this would not change the status of residential development on Savannah Court. Nothing was mentioned about a 200 unit living facility or acute care facility. Two weeks later, the neighbors whose homes directly face the future patio homes received an invitation to attend a meeting on this current plan. This sent a shock wave through the neighborhood. This is an unfortunate proposal that seriously changes what they believed they were investing in.

3. Marty Miller, 6740 Leesburg Court, testified in opposition on his own behalf and on behalf of the other two property owners on Leesburg Court. When they moved here in November of 1996, they were advised by the realtor that there would be an office building across the street (Security Mutual) and a hospital addition to the south of Pine Lake Road. They understood both of these and that 40th Street would become a four-lane road. The only problem is that it was also explained that the southwest corner would be either townhomes, patio homes or some nature of residential. In November of 1997, they were told about an office building at the very corner of 40th & Pine Lake Road that would not be very high or very big, and it was explained that it might be a bank, and they had this understanding and were told they would have an opportunity to talk about it. Now, they are facing a 3-story brick facility abutting the common area. At one time it was stated there might be a lot of fill dirt brought in to raise up the premises. This building's third floor will look down onto his deck and the other two homes. He would be more amenable to two stories. But they were led to believe this was a planned area with specific expectations.

At the time Gramercy Hill was built, Mr. Miller lived in Taylor Meadows. Flooding was a problem to some of these homeowners while it was not a problem to Gramercy Hill. Many of the houses flooded.

4. John O'Connor testified in opposition. He is building at 3811 Old Dominion Court. He looked all over south Lincoln six months ago for the ideal lot with a lot of green space, unobstructed view and took traffic into consideration. They thought they found the ideal lot and paid a high premium for it, based upon the marketing material they received with Mr. Hampton's logo on it (copy submitted for the record). All of the patio homes are shown on the marketing material. The proposal being discussed today was announced at the framing stage of their home. Mr. O'Connor wants what was promised and delivered on the literature.

5. Linda Patterson testified in opposition. In about one week she will be living at 3821 Old Dominion Court, directly to the north. The issue is an "apartment complex", not the elderly. She volunteers at Tabitha Nursing Home. It has nothing to do with the elderly. It has to do with commitments. She purchased her lot with full assurance that the property behind hers would be a continuance of the Savannah Circle townhomes. She had no reason to believe that anything other than that would be built on that property. She is adamantly opposed to the 3-story apartment building. Her home will be the closest residence. Mr. Hampton said 20' trees to them; today he said 15' trees. She has heard all different kinds of numbers as far as setbacks. She requested that the Commission insure that Hampton Development Services honor its commitment to her family, to her neighborhood and to her community by upholding the approved plan for the 6-acre tract and that it be developed as residential duplex lots as currently platted.

6. Shashi Verma, 7211 Briarhurst Dr., testified in opposition. He purchased the corner lot at Old Dominion Court to build his dream home. His purchase closed on 9/29/98 and

within one month, the plan was announced for the retirement facility. This is a shock and he urged the Commission to consider very seriously and correct the situation.

7. John Bergmeyer, appeared on behalf of **Tabitha Housing Corporation**, owner of Lot 1 within Williamsburg North 13th Addition, in opposition. Tabitha purchased the property five years ago for the purpose of constructing and operating elderly housing units. Although Tabitha has not started or completed construction of its elderly housing project, it does intend to do so in the future. However, the feasibility of such would be negatively impacted by competing units within such close proximity. Tabitha has spent a lot of time and money on this project. It is now unfair and improper to allow a competing development within the Williamsburg area. When Tabitha purchased the property, they relied on the existing PUD which did not provide for the development of the competing use. The residents in Williamsburg supported Tabitha because its location would serve as more of a buffer between the residential and commercial areas. Because of Tabitha's significant investment and plans to develop for elderly housing, it seems inequitable to now allow a competing facility to be developed in Williamsburg.

8. Don Spinar, 3760 Savannah Circle, directly west of the proposed development, testified in opposition. He has lived in three planned communities. Multi-use property has its history and community leaders have used it to help integrate a variety of services and benefits to the neighborhood, but it has been found that a balance is required to keep multi-use property at an appropriate facility. The corner of 40th & Pine Lake Road already has two commercial facilities designated. Directly west of the Bryan building is a very large apartment complex; the southeast corner is single family homes. Placing the retirement and assisted living facility on the southwest corner will create an over-balance of high density and commercial use for the neighbors. When he sold his home in Rolling Hills, an apartment complex located nearby was a detriment to the sale of his home. This retirement facility will impact market values. If this change is approved, there will be a major shift in the Williamsburg community from an appropriate integration of multi-use to an extension of the commercial use already begun at 27th & Pine Lake Road.

9. Kent Folsom, 3810 Old Dominion Court, testified in opposition and presented a petition in opposition which has been circulated and is still being circulated. 166 signatures have been obtained, representing 144 households in Williamsburg. A majority of all Williamsburg households, 51%, have already signed this petition. 60% of all households have been contacted thus far, and of that 60%, 85% have signed the petition and another 7% are undecided. With regard to water runoff, the current plan assumes that .4 of every inch of rain that lands on this 6-acre site will flow off of this 6-acre site. The assumption for the proposed facility would be that .7 of each inch of rain would flow off. About 75% more runoff will occur and they do not see any provision for increased runoff detention on the site. The flow liner runs through the backs of dozens of Williamsburg homeowners. Does the existing surface water management system include the excess capacity necessary to handle this increased runoff? He did talk with Dennis Bartels of Public Works, who indicated that there are not enough answers and he felt further study might be

needed on this runoff issue. The homeowners association had a study done by an environmental assessment firm in Omaha in September of 1998. The question was, what sorts of problems is the association likely to face of a costly nature over the coming years and decades. 90% of that report talks about runoff and the problems construction generates. Mr. Folsom requested that there be further review of the developer's plans and calculations.

Staff questions

Steward asked Public Works to comment about the runoff and topography issues. Dennis Bartels of Public Works stated that the site is approximately 7 acres. Part of it drains back toward 38th and part to the open drainage channel between Old Dominion Court and Leesburg Court. The plan and calculations submitted address getting the drainage off this site but did not address potential affects downstream. Public Works did not approve the drainage calculations and that is something that needs to be done. In general, however, Mr. Bartels cannot envision that this project, whether residential or the apartment complex, would have any significant affect on the overall stormwater detention that is downstream. He believes it bears looking at in relation to potential walkout basements down to the first culvert crossing north of this site, and that can be done under the conditions of approval. Steward sought confirmation that those calculations would include the increased roof area and increased parking surface. Mr. Bartels stated that the calculations took into account the additional runoff.

Steward asked if there were any staff comments about the drive entrance proposal/road alignment. Mr. Bartels stated that there is another driveway into the Bryan complex. The widening project for Pine Lake Road will have a median between 38th and 40th. As far as moving traffic down Pine Lake Road, Public Works would prefer all the access be concentrated in the 38th Street area, which is a likely future signalized intersection. Mr. Bartels observed that historically, these elderly projects, on a per unit basis, definitely generate less traffic than the single family residential. The traffic in and out of a retirement age community is not normally during the peak times.

Steward inquired as to the historical circumstances of revisions to other PUD's. Is this change something that is highly unusual? Mr. Henrichsen advised that there have been two major changes to the Williamsburg PUD itself. The commercial area was removed, which took place after some of the single family and townhomes had begun. It was the area at the southwest corner of 40th & Old Cheney. There was a change from the corporate office idea to a little more retail such as the HyVee. The Jamestown area at the southwest corner of 34th & Old Cheney was originally shown for town homes. There was a change from townhomes to commercial uses and other retail uses. In addition, there have been other PUD's that have undergone changes. The Bryan Hospital property to the south was in the Pine Lake Heights PUD, which was changed from 40,000 sq. ft. of mixed

neighborhood center to 160,000 sq. ft. of office space. That property was converted from a PUD to CUP. Thus there has been a history of changes in PUD's.

Response by the Applicant

Mr. Hunzeker discussed the questions raised about downstream storm sewer capacity and detention. Mr. Hunzeker has no objection to Condition #1.1.19 being construed to include this information and approval prior to going on to the City Council.

With regard to the impact on the value of property, Mr. Hunzeker referred to the letter from Michael Raasch, of Raasch Appraisal and Consulting, which was submitted by the applicant for the record. This use is not something that will adversely affect residential values. All areas immediately west of Gramercy Hill were constructed subsequent to the construction of Gramercy Hill. These facilities do not have an adverse impact and virtually all of them have less of a setback and less of a dense landscaping plan than this project.

Mr. Hunzeker went on to state that history has demonstrated that these projects do not adversely affect traffic flows. People who move into these facilities sometimes own cars when they move in, but then they sell them. There will be lower trip generation than the approved patio homes would generate. This developer is proposing an additional access which is not presently approved under the patio home plan, thus they have an additional access point as well as less trips.

With regard to the height issue, Mr. Hunzeker assured that there is only one portion of this building which exceeds the allowable 35' height in the underlying R-3 zoning, and that is the middle portion of the building which is more than 200' from the nearest residential property owner. The building envelopes, setbacks and width of the outlot have not changed appreciably since the beginning of this proposal.

As to the information submitted by the opposition, Mr. Hunzeker noted that there is no date on the "Hampton Development Services/Hampton Enterprises" map showing the uses. In particular, he noted that the map does not indicate a lot of the homes that are currently sold that would have been indicated to have been sold if the map had been generated anytime within the last year or two. In fact with both business logos, it would have to be a fairly old piece of paper. It has not been within the last year or two that sort of information has been coming out of Hampton Development Services offices.

With regard to the location of the streets, Mr. Hunzeker referred to page 75 of the agenda, pointing out that 38th Street is a fairly through street.

Steward indicated that he would like to hear from the Cripple Creek Neighborhood Association and moved to defer with continued public hearing and administrative action scheduled for February 24, 1999, seconded by Wallace and carried 4-2: Wallace, Steward, Schwinn and Hopkins voting 'yes'; Duvall and Krieser voting 'no'; Bleed, Bayer and Wilson

absent.

SPECIAL PERMIT NO. 1754,
TO CONSTRUCT AND OPERATE A 106' MONOPOLE TOWER
1/2 MILE SOUTH OF ARBOR ROAD, EAST OF NORTH 40TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 10, 1999

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

Staff recommendation: Denial.

Mike DeKalb of Planning staff submitted a letter from the applicant requesting deferral until February 24, 1999, to provide additional information.

Duvall moved to defer with continued public hearing and administrative action scheduled for February 24, 1999, seconded by Steward and carried 6-0: Wallace, Steward, Schwinn, Duvall, Krieser and Hopkins voting 'yes'; Bleed, Bayer and Wilson absent.

PRELIMINARY PLAT NO. 98031,
NORTHERN LIGHTS,
ON PROPERTY GENERALLY LOCATED
AT NORTH 84TH AND LEIGHTON AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 10, 1999

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

Staff recommendation: Conditional approval.

Nicole Fleck-Tooze of Planning staff submitted a memorandum revising the staff report to add Condition #1.1.27, "to adjust the eastern boundary of Outlot C to a location 5 feet east of the bike trail".

Proponents

1. **Kent Seacrest** appeared on behalf of the coalition of property owners. This is an amendment to the preliminary plat and the applicant agrees with all staff conditions of approval. This project took over two years to even get the big picture in front of the Commission in 1996. Two years have passed and they have been working on the next level of details on the planning concepts. One of the new planning concepts was the preservation of a riparian corridor. They have been working on that concept of preserving

the trees, wetland and drainageway, while still allowing the neighborhood residential development to go forward. In the same corridor, they wanted to do recreation, ice rink, parking, trail network, road network and utility improvements. The project was approved in 1996, but after two years of hard work they have learned a lot and it became really complicated. They have discovered human error, miscommunication, communication with wrong personnel, and nature had an influence. There were diseased trees, the winter storm of 1997, and beavers became neighbors causing some damage. The developer and city staff share the importance of protecting the riparian corridor. Mr. Seacrest expressed appreciation to the Parks Department, Planning Department, City Attorney, and Planning Director for all their hard work, patience and ideas.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 10, 1999

Duvall moved approval, with conditions, as revised, seconded by Wallace and carried 6-0: Wallace, Steward, Schwinn, Duvall, Krieser and Hopkins voting 'yes'; Bleed, Bayer and Wilson absent.

CHANGE OF ZONE NO. 3161
FROM O-3 OFFICE PARK TO H-4 GENERAL COMMERCIAL
and
SPECIAL PERMIT NO. 1629A
FOR AN AUTOMOBILE DEALERSHIP AT
SOUTH 27TH & PORTER RIDGE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 10, 1999

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

Mike DeKalb of Planning staff submitted one additional letter in opposition.

Proponents

1. Mark Hunzeker appeared on behalf of **DuTeau Chevrolet** in support of this application. He submitted a rendering of a prototype Chevrolet dealership which GM recommends to its dealers. The proposal will be “something like this”. It may not be the identical structure that will be built but it is as close as he can come today to a good picture of what this project will look like. It will be a one-story structure with a two-story center area that will include some offices and additional parts storage on the second level.

Mr. Hunzeker acknowledged that a number of issues have been raised in meetings with neighbors and the correspondence. Many of the concerns, aside from the general opposition to a change in zoning on this 150' strip of land, relate to lighting, noise, traffic, and visual screening of this facility. Mr. Hunzeker submitted a proposed motion to amend the conditions of approval to add conditions regarding outside lighting; garage doors on the east side of the building; outdoor speakers; signage; test drives; and landscape screening exceeding city design standards. Mr. Hunzeker also showed a line of sight rendering, showing the grades such that the facility and parking lot are not going to be sitting high on 28th Street. The grade at the property along the east side for most of the way is approximately 4-6' higher than the finished floor elevation. So the trees and 6' fence on top will provide a visual barrier somewhere between 8-10' and in some places more above the level where the cars will be parked. He believes this demonstrates that they are going to have a very good visual barrier. Combining that with the reduced automobile traffic with the use being a lower traffic generator and lower square footage, will represent a significant improvement in terms of compatibility of this use with the residential uses.

Wallace asked Mr. Hunzeker whether they had met again with the neighborhood group. Mr. Hunzeker's response was that they have talked about all of these things with the neighborhood, but this is the first time they have had the list in writing. The motion to amend is directly in response to a list of issues that were given to the applicant by the neighbors. The applicant has not done everything they requested, e.g., they have not agreed to put locked gates on the facility at night; they have not agreed to increase the

height of the fence to 8'. This facility will be much less visible than what is in the approved permit. Mr. Hunzeker believes that the vast majority will not be able to see that this is a car dealership, and it is certainly much less visible than the LES substation immediately to the south.

Hopkins inquired about security lighting. Mr. Hunzeker suggested that they will probably have less than one-third of the lights left on after business hours. He presumes that there will likely be secondary fixtures on some of the poles which will be much lower intensity to provide the security lighting. The light poles could be much higher than 30' but DuTeau is willing to be bound to 30'.

2. Jerry Bring, employee of DuTeau, submitted a letter in support from the **employees of DuTeau Chevrolet**. Mr. Minnick has not requested their support in this effort. This business has been in the community for 71 years. The employees are very excited about moving into a new facility. The existing buildings are old and in three different locations, making them less effective. With all employees in one location, it will be an obvious asset to the company. DuTeau respects family values and they do not believe they will infringe upon this neighborhood. It will be one company and not a string of office buildings or a facility that would stay open all night.

Opposition

1. Erik Andry, 7011 South 32nd, testified in opposition on behalf of the Porter Ridge neighborhood. He clarified that not one person at any of their meetings has said that they don't think DuTeau is a good company that probably deserves a new building somewhere. This neighborhood is not trying to prevent a business from expanding or becoming re-generated or moving or progressing. The residents have done everything they have been asked to do. They've had two general meetings, but they just found out about all the amendments today at this meeting. These issues have been on the table for more than two weeks. There has been no communication. There is one key aspect that was discussed that is very serious—employee parking. The drawings show about 499 parking spaces. There are 62 full-time employees. The neighbors have not gotten an answer to the question about where the employees would park. The residents are fearful that they will park on 28th Street, a residential street.

Mr. Andry then spoke to what the neighbors believe to be the key issue. He thinks everyone is missing the point. The neighbors are not saying DuTeau wouldn't be a great neighbor. They are not saying they would be worse than other uses in H-4. The contention of the neighbors is changing the O-3 to H-4. Why does it have to be so close? These plans do not provide the buffer from commercial to residential as provided by the O-3. What is the purpose of preliminary plats and original zoning? The purpose appears to be to sell the residential property before they change the zoning. The point is that these residents, especially those on South 28th, would not have purchased their homes if this auto dealership had existed when they bought their property. The property owners would

be happy to have DuTeau build on the existing H-4 zoned property.

Mr. Andry acknowledged that the neighbors realize that the O-3 could have a lot of different uses, but they want to have what they were told they would have.

2. Brian Brim, 7410 South 28th, testified in opposition. His property is the closest to this proposed action. He and his wife did take the time to really think about buying their home and sat on the porch before they bought the home and looked at the power station and called about it and were told there would be no activity and that is correct. They were concerned about moving onto the edge of the neighborhood and knew there were some risks. They were comfortable with the existing O-3 and H-4. That's what this is all about. You can do all the changes on the special permit, but the bottom line is that it will be a really big car lot and there isn't a whole lot you can do to change that. The O-3 offers a transition from the fast paced world into the neighborhood. If you let a car lot go in there, that will be one big car lot. It is basically going to change the landscape and the feel of that entire neighborhood. If you change the zoning, you take away the buffer that we so seek in our lives from the fast-paced world that we live in. Different businesses do impact you differently. What smart zoning does is provide the transition with the sequential pockets to deal with, and then you have another type of building that is not as noticeable. A big huge car lot imposes itself upon you. He agreed that the applicant has addressed a lot of issues, but the neighbors are being asked to negotiate about something they don't believe in. He wonders if any of the executives at GM or Chevrolet would have a car lot of this size at the front door of their home.

3. Troy Hartwig, 7420 So. 28th testified in opposition. He is one of many who strongly opposes this change of zone. He purchased his home from two different real estate agents and throughout the whole purchasing process, he asked what is going on in the neighborhood. His family strongly favored this area because of the promises they were made by their real estate agents. They were told they would see residential housing across the street with office space behind it. You buy a home on facts, not assumption. He would not have purchased his home had he known about the location of the car lot. He suggested changing the O-3 to R-T, but whether it is R-T or O-3, there is still a nice buffer zone between the H-4 and the R-3.

4. Sharron Anania, 7324 So. 30th, testified in opposition. They have been trying to work with DuTeau and Mr. Hunzeker. It is so important to know that the applicant has not come back to the bargaining table with anything before today. What kind of good faith is that? Why couldn't they have given us a few days to review the amendments? This applicant believed all along they could come in front of the Commission and easily get this zoning change. It is as important how these property owners feel as how the applicant feels. They should have respected the neighbors enough to provide them with the same information in advance.

Ms. Anania has no ill-will against DuTeau or Mike Minnick. This has nothing to do with the

entities involved. Her property is about 6 blocks from the subject area. She has gone back and forth with her opinion, but she is coming forward with strong opposition today based on principle. When you go into a new neighborhood, she agreed that things can change, so she believes the only thing that you have to go by is the zoning. A lot of the residents did check into the zoning issues. That is the underlying issue – she believes there should be a special extenuating reason to come in to change the zone. The residents have been told that there are other sites in Lincoln that are available for this car dealership. If DuTeau does not come onto this space, they will go somewhere in Lincoln and they will probably get a good location. This doesn't mean they can't build their nice new facility. When you make a purchase in the neighborhood, you are aware of the LES substation because it was in existence. She is also in opposition because this hurts her neighbors. She agreed that the property owners should have concerns about their property values. If the applicant really thinks the property values are going to stay the same, then maybe they should make that guarantee to the property owners. When you don't give details, it doesn't mean a lot. The employee parking concern has not been addressed. How tall will the trees be? If the Commission approves this application, she requested that the applicant be required to come back to the table with the neighbors and do some negotiating to make everyone happy.

5. Ken Dahlke of Porter Ridge Neighborhood Association, testified in opposition. He does not believe the comparisons made are appropriate. Porter Ridge sits at an elevation of 30-40' higher than the neighboring residential properties. The lighting will be a problem for the residents. The employee parking situation has not been addressed. The residents are fearful the employees will park on the residential streets. Mr. Dahlke referred to the document presented by Mr. Krueger at the last meeting regarding sales in the Edgewood area. The home sales in that document are irrelevant to today's standards. The appraiser assumed that the increase in prices are a reflection of inflation—nothing to do with the development.

Mr. Dahlke declared that this Commission is about to set a precedent. Please do not leave the homeowner's at risk. Plan with integrity.

6. Arnie Freeman, President of **Porter Ridge Neighborhood Association**, testified in opposition. He suggested that the lighting issue still leaves a lot to be desired, even with the proposed amendments to the conditions of approval. They are not aware of the city standards. They do not know how many 1/3 or 2/3 is.

With regard to the two garage doors, Mr. Freeman stated that this is contrary to conditions that were in the original staff report. What's going to change next?

Since the original meeting, the neighbors understood there would be a ground sign for the business, but they have now found out that it will be a 30' pole sign at the entrance.

The policy concerning test drives is appreciated.

With regard to the landscaping, Mr. Freeman believes that the buffers are a bluff. The elevations of the berms are nothing they anticipated or envisioned. There are two small berms, one at the northeast and one at the southeast corners of the east property line. The trees are not substantial. The fence for at least the northern half of the property line is on the outside of the supposed buffer.

Mr. Freeman questions the elevation. The elevation shown in the drawing is not consistent with what was presented in the original report. The elevation height for the building is approximately 10' higher than what is shown on the elevation chart today.

Mr. Freeman urged that H-4 without an O-3 buffer being adjacent to residential property is not a precedent that the City wants to set.

Staff questions

Schwinn inquired about the difference in lighting between O-3 and H-4 zoning. Mr. DeKalb advised that there is no difference.

Schwinn asked whether the 30' pole sign is permitted in H-4. Mr. DeKalb responded that this H-4 is under a special permit and only two pole signs were allowed. This would be one of those two pole signs. This pole sign could exist in the O-3 district.

Schwinn noted that the area for the change of zone is all parking lot. Is that not an alternative in O-3? Mr. DeKalb explained that the parking has to be related to the permitted use in the O-3. Storage and inventory is not allowed in the O-3 zoning. But the offices would have their respective parking in the O-3.

Steward referred to the grading plan and Mr. Hunzeker's previous testimony about the floor elevation. Upon further discussion, Mr. Hunzeker was asked to respond and he clarified the berm and the 6' fence on top of it will be at 86, which is 8' above 78, which is where you will be at the finished floor elevation. Steward just wanted staff to confirm that the road gradients on 27th Street are what the staff would expect them to be relative to that finished floor elevation. Mr. Bartels agreed. The grading plan does not change.

Mr. DeKalb suggested that the motion to amend does appear to pick up all of the items discussed at the last meeting. There is a minimum parking requirement in the code and this application exceeds that. It will be hard to distinguish between employee parking, customer parking and sales. Mr. DeKalb suggested that the Commission could ask that a condition be added to set aside a certain area for employee parking.

Hopkins asked whether the condition could require that employee parking be maintained on the site. Mr. DeKalb did not know how it could be enforced, but it could be added.

Response by the Applicant

Mr. Hunzeker is really disappointed that he is being accused of surprising anyone today because everything included in the motion to amend has been discussed with either Erik, or Erik and Arnie, or one other person who came to the two meetings they had since the first Planning Commission hearing. The implication that they have been misleading or withholding information dazzles him. The applicant was not invited to the meeting they had on January 6th. The applicant invited himself to the meeting. The applicant agreed to meet and only one neighborhood representative came to that meeting. The applicant responded to the issues at a subsequent meeting with the smaller group. They have had limited ability to communicate to the broader neighborhood and erroneously relied upon the neighborhood organization to get the information out. There is nothing in the conditions that the applicant has not promised to the neighbors in the meetings previously held.

With regard to employee parking, Mr. Hunzeker did not add it as a condition because it is very hard to enforce, but if it is important enough, they would be willing to accept a condition that says they will make a minimum of 60 parking stalls available for employees on-site. The neighborhood can request no parking zones through Public Works.

Mr. Hunzeker believes they have tried very hard to make this project as compatible with the neighborhood as it can be, and he believes it is more compatible than what could be. The 58,000 sq. ft. of commercial space that is approved on this site for construction today (40,000 of H-4 and 18,000 of O-3) would generate many times the amount of traffic in and out of that site, both at peak hours and otherwise, than this facility. It would require a minimum of 200 parking stalls and probably more in the range of 350. There will be a much, much better visual screening between this and the residential area than is required under the O-3 district.

Mr. Hunzeker understands the concern about change in the neighborhood, but that is true with every project where there are neighbors. He also understands a little bit of the concern about the value of their investment. But he truly believes this applicant is doing what is necessary to not have an impact on those homes and to have a use that is more compatible than what is already approved.

Hopkins inquired about R-T zoning. Mr. DeKalb advised that the R-T would allow single family and duplex, office buildings, banks, barber shops, pharmacies, medical buildings, clubs, repair shops, churches. The abutting residential district, duplex lots, currently approved, could have been accommodated in R-T zoning.

Mr. Hunzeker clarified that the pole sign will be on the northwest corner.

Duvall asked Rick Krueger to approach the Commission as an adjacent property owner with approval for townhomes. Duvall confirmed with Mr. Krueger that he will get the price that the market will bear. Mr. Krueger clarified that those are existing final platted lots with services, generally 80' wide, and he intends to do an administrative subdivision and have two townhouse lots. This is generally what is abutting the power station further south on 28th Street. The distance between the townhomes is 5' minimum setbacks.

Public hearing was closed.

CHANGE OF ZONE NO. 3161

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 10, 1999

Duvall moved approval, seconded by Krieser.

Duvall observed that this is a commercial area and he doesn't see too many choices. He hates being in this position and feels bad that people have invested and purchased their homes, but they are also in an area of development and he believes this change is appropriate.

Schwinn believes the change of the zone to H-4 brings it into compatibility with the rest of the site – the fact that piece of land is only going to be used for parking, and in essence storage of inventory in this case, makes it even less obtrusive. He knows Lincoln is behind the curve in car dealership facilities. He has seen very nice uses of the land in Omaha and other areas in this same scenario. He believes this is a better use for this property and he believes the neighborhood is better served than by what could happen. He thinks the applicant has done a lot to help the neighborhood in the special permit and it is a far better situation than what could have been possible.

Steward is reluctantly going to support the motion—reluctantly because he wrote down during some of the testimony today, “buyer beware”. The circumstance here, where the edge of residential development meets or gets close to commercial, retail office and business, is fraught with difficulty. When we have large developed tracts of either residential or commercial and they are somehow separated, we don't have these conflicts as long as the commercial has been permitted already. But it is subject to change at the very edge. This is the nature of the dynamics of use zoning. There is always an edge. And in this community there is a dynamic and we can't avoid dealing with it on a case by case basis. He is very much concerned with the precedent for changing O-3 to H-4. He is voting on the basis that this is a one time special circumstance and he thinks the developer and owners have done a good job to respond in a physical design way to the difficulties to soften the outcome and the comfort.

Wallace added that he would hope this is a special one time case. It should be a heads up to all developers, home buyers and real estate market. But, he also hopes that all of these amendments are addressed and that cooperation continue until the final project. He

does not want to overlook the importance to continue the legacy of the DuTeau dealership in this community, but the rights of the homeowners must not be overlooked either. No one can win in this, but we can get along the best we can under the circumstances.

Hopkins knows this is a new neighborhood and that makes it harder since they've not been through this type of thing before. She did point out, however, that the role of the Planning Commission from beginning to end is only to deal with things that need to be changed. That is their entire role. In her mind, she believes this makes sense. She would live next to this. She has lived next to office and she hated it. To trade the office uses for cars and parking is an added bonus, in her opinion. If the townhomes or duplexes had been next to this, it would have been a whole different story. A year later and after the anger is past, she will be surprised if people are not pleased.

Hopkins also advised that neither Gates Minnick nor DuTeau have talked to her about this project nor have special favors been asked.

Motion for approval carried 6-0: Wallace, Steward, Schwinn, Duvall, Krieser and Hopkins voting 'yes'; Bleed, Bayer and Wilson absent

This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1629A

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

February 10, 1999

Schwinn moved approval of the Planning staff recommendation of conditional approval, including the amendments submitted by Mr. Hunzeker, and adding Condition #2.8 to read: 60 parking spaces will be reserved for employee vehicles., seconded by Krieser.

Motion carried 6-0: Wallace, Steward, Schwinn, Duvall, Krieser and Hopkins voting 'yes'; Bleed, Bayer and Wilson absent.

This is final action on Special Permit No. 1629A, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COMPREHENSIVE PLAN AMENDMENT #1A;

COMPREHENSIVE PLAN AMENDMENT #1B;

and

COMPREHENSIVE PLAN AMENDMENT #19,

PURSUANT TO THE 1999 COMPREHENSIVE PLAN ANNUAL REVIEW.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 10, 1999

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

and Wilson absent.

Steve Henrichsen of Planning staff submitted a memo from the Interim Director of Planning withdrawing Comprehensive Plan Amendment #1, pursuant to the 1999 Comprehensive Plan Annual Review. This amendment pertained to reaffirmation of the "ridgeline" policy and had been tabled by the Planning Commission on February 3, 1999.

Mike Rierden requested to continue all three Comprehensive Plan Amendments for 30 days.

Wallace moved to continue Comprehensive Plan Amendment #1a, #1b and #19 for 30 days, until March 10, 1999, seconded by Steward and carried 6-0: Wallace, Steward, Schwinn, Duvall, Krieser and Hopkins voting 'yes'; Bayer, Bleed and Wilson absent.

Mr. Rierden also requested that the Lindenwood Park change of zone, special permit and preliminary plat be removed from the Commission's pending list and scheduled for public hearing on March 10, 1999, along with Comprehensive Plan Amendment #1a. Motion was made, seconded and unanimously carried.

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 24, 1999.