

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, June 16, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Russ Bayer, Ann Bleed, Steve Duvall, Barbara Hopkins, Gerry Krieser, Greg Schwinn, Cecil Steward, Rick Wallace and Joe Wilson; John Bradley, Ray Hill, Mike DeKalb, Ed Zimmer, Steve Henrichsen, Rick Houck, Jennifer Dam, 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 June 2, 1999. Motion to approve made by Schwinn, seconded by Bayer and carried 9-0: Bayer, Bleed, Duvall, Hopkins, Krieser, Schwinn, Steward, Wallace and Wilson voting 'yes.

A Resolution of Appreciation was read into the record for Richard A. Erixson, Director of Public Works & Utilities, who is retiring June 30, 1999. Wallace moved approval of the Resolution, seconded by Steward and carried 9-0: Bayer, Bleed, Duvall, Hopkins, Krieser, Schwinn, Steward, Wallace and Wilson voting 'yes.

Mr. Erixson was very appreciative of the honor. He has had a wonderful career with the City and thanked the Commission for their help. He introduced Allan Abbott as the new Director of Public Works & Utilities, as appointed by Mayor Wesely.

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

June 16, 1999

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 66HP; SPECIAL PERMIT NO. 1776; FINAL PLAT NO. 98043, COUNTRY VIEW ESTATES 1<sup>ST</sup> ADDITION; FINAL PLAT NO. 99005, EDENTON NORTH 3<sup>RD</sup> ADDITION; FINAL PLAT**

**NO. 99019, CHENEY RIDGE 2<sup>ND</sup> ADDITION; FINAL PLAT NO. 99021, TIMBERLINE ESTATES 1<sup>ST</sup> ADDITION; ANNEXATION NO. 99014; ANNEXATION NO. 99015; ANNEXATION NO. 99016; ANNEXATION NO. 99017; AND COUNTY MISCELLANEOUS NO. 99001.**

**Item No. 1.6, Final Plat No. 99021**, was removed from the consent agenda due to a defect in the legal advertisement and will appear on the Consent Agenda on June 30, 1999.

Steward moved to approve the remaining Consent Agenda, seconded by Schwinn and carried 9-0: Bayer, Bleed, Duvall, Hopkins, Krieser, Schwinn, Steward, Wallace and Wilson voting 'yes.

**CHANGE OF ZONE NO. 3177**

**TEXT AMENDMENT REGARDING**

**HOTELS/MOTELS IN THE O-3 OFFICE DISTRICT.**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

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

This item was held over from the June 2, 1999, Planning Commission meeting due to a lack of quorum.

Duvall moved approval, seconded by Schwinn.

Bleed stated that she will vote against this text amendment. She believes we have used, and will continue to use, O-3 as a zoning district that is a good transition between residential and higher uses such as business, and if there is a potential of putting a hotel in the O-3 district, it takes away from the ability to see the O-3 as an appropriate transition between residential and higher density uses.

In addition, the increased use of signage is counter-productive to the proposed sign moratorium that is on today's agenda.

Duvall believes the existing restrictions are site specific. He does not want to eliminate the chances of growth and the location of the hotel. The ordinance as it exists is much too restricted.

Bleed believes the zoning could be changed if we want to put a hotel in a certain area. She does not want to increase the density and intensity of uses for an O-3 because it takes away the ability to see the district as an appropriate transition. If she thought there could be a high intensity use such as a hotel close to residential, she would be opposed.

Steward agreed with Commissioner Bleed, plus he believes it is not an appropriate action by this body to change the code for one site specific situation. The case could be made that the site specific circumstance of another action created the code. The code exists and he believes it can be supported in its present form. He does not believe this special circumstance justifies a change in the whole code.

Motion for approval carried 7-2: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer and Hopkins voting 'yes'; Bleed and Steward voting 'no'.

**COMBINED USE PERMIT/SPECIAL PERMIT NO. 14**  
**FOR A HOTEL IN THE O-3 OFFICE DISTRICT,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SO. 60TH STREET AND OLD CHENEY ROAD.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 16, 1999

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

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant. The discussion on the associated text amendment has brought up some things to address. This is a site specific application, but by removing some of the conditions of the special permit in approving the change of zone (text amendment), the discretion is broadened in whether or not to approve a specific application. The possibility of a hotel in the O-3 office district has existed for 15 years. This is simply for a slightly different type of hotel than was approved the first time. One of the problems we have in the zoning ordinance is that there are so many special permits which are there because we have had very specific criteria attached to them. In most cases, those Mr. Hunzeker has proposed in the past were at the suggestion of the staff in recognition of the appropriateness of a particular use in a particular circumstance instead of rezoning the property or adjusting the requirements of the existing district.

Mr. Hunzeker further submitted that in this case the Planning Commission will have the ability to propose conditions for the protection of the neighborhood and the surrounding area. This site is behind Stackwoods and behind the commercial building east of K-Mart, and west of a row of office buildings that would be between this site and any proposed residential development to the east. It is hard to imagine a site that is better protected from residential uses, and he does not agree that hotels and motels are necessarily more intense activity than an office park. In fact, he believes that hotels and motels are well related to office parks and it makes a lot of sense to be able to share parking with an office use. The developer of the office park is very enthusiastic about the aspect of sharing parking. The hotel building will be owned by the developer of the office park. It will be built to match the office park building.

In summary, Mr. Hunzeker suggested that this is a very compatible use and a good design--one that

will not cause any problems in this area, and this is an area where we have a high demand for hotel rooms and no hotels.

Mr. Hunzeker had no objections to any of the conditions of approval.

With regard to the unit size, Mr. Hunzeker explained that the number of units and the criteria for size of units were in the previous text amendment.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**      June 16, 1999

Schwinn moved approval, with conditions, seconded by Duvall.

Steward proposed an amendment to separate the conditions and waivers regarding signage, seconded by Bleed and carried 7-2: Duvall, Wallace, Krieser, Bayer, Steward, Bleed and Hopkins voting 'yes'; Wilson and Schwinn voting 'no'.

The Commission then commenced discussion regarding wall signs. Steward is concerned because the staff report indicates the proposed signs are more than 100 sq. ft. larger than the permitted wall signs, and he assumes that by the Commission's action on Change of Zone No. 3177, we did not throw out those restrictions. Ray Hill of Planning staff clarified that the text amendment allows signs to be adjusted with the approval of the City Council. Before the amendment in Change of Zone No. 3177, the City Council did not have any opportunity to even discuss signs.

Steward then suggested that the off-premise pole sign being located outside the normal front yard seems to be an unnecessary intrusion in that particular neighborhood. He is hopeful that the Commission could perhaps approve the main proposal, with the ordinary conditions of signage as opposed to the waivers of the sign regulations.

Steward moved to amend to require that there be no waivers of the sign regulations. Motion was seconded by Bleed but failed 4-5: Wallace, Steward, Bleed and Hopkins voting 'yes'; Duvall, Krieser, Wilson, Schwinn and Bayer voting 'no'.

Main motion for conditional approval carried 8-1: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward and Hopkins voting 'yes'; Bleed voting 'no'.

**WAIVER OF DESIGN STANDARDS NO. 99006  
TO WAIVE THE DEPTH OF LOT WHEN ABUTTING  
A THOROUGHFARE, ON PROPERTY GENERALLY  
LOCATED ON THE EAST SIDE OF SO. 56TH STREET,**

**GENERALLY IN LINE WITH SPRUCE STREET,  
SOUTH OF PIONEERS BLVD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** June 16, 1999

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

The Clerk announced that the applicant has submitted a written request for an additional two week deferral to continue discussions with the neighbors. Bleed moved to defer with continued public hearing and administrative action scheduled for June 30, 1999, seconded by Bayer and carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**CHANGE OF ZONE NO. 3183  
FROM R-2 RESIDENTIAL TO O-3 OFFICE PARK  
ON PROPERTY GENERALLY LOCATED AT  
80TH AND "O" STREETS.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:** June 16, 1999

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

Planning staff recommendation: Approval

Proponents

1. **Dave Harrison**, 8030 "O" Street, presented the application. The property abuts closely to some business use to the west making it difficult to merchandise a house as residential. Therefore, he and his wife are requesting this change of zone.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Bayer moved approval, seconded by Krieser and carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**CHANGE OF ZONE NO. 3185  
FROM R-2 RESIDENTIAL TO O-3 OFFICE PARK  
ON PROPERTY GENERALLY LOCATED  
AT NORTH 56TH AND "R" STREETS.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 16, 1999

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

Planning staff recommendation: Approval.

Proponents

1. **Steve Schulte**, presented the application as the Chair of the Church Search Committee of the **First Assembly of God Church** located at 56<sup>th</sup> & R. Mr. Schulte submitted additional information. This property is currently zoned R-2. In accordance with the provisions of the Lincoln Municipal Code, the applicant is respectfully requesting a zone change from R-2 to O-3. The property is currently in conformance with the height and area regulations of the O-3 district. Minimum area requirement is 2 acres and the property is 2.79 acres. Mr. Schulte displayed a zoning map of the property: There is O-2 to the south and east (Legionnaire facilities); the area to the east is zoned H-2 (Plaza Bowl and strip mall); to the east abutting R and Cotner is the All State Claims Service; to the south of Plaza Bowl is La Paz Restaurant, Patty's Pub, Home Real Estate and an office complex.

The Planning staff had concerns about the traffic impact at the corner of 56<sup>th</sup> & "R"; however, Mr. Schulte consulted with Dennis Bartels of Public Works and Mr. Bartels felt there would be no impact with this change of zone. In the future, Mr. Bartels suggested that there is potential for some development on 56<sup>th</sup> and the possibility of one-way. Mr. Schulte then talked with Mike Michaelson of Public Works, who did not believe there would be any impact at this particular location with the zone change; however, he did mention that there are various proposals regarding 56<sup>th</sup> Street and Mr. Michaelson suggested that there might be a greater tendency to lean towards P Street being one-way.

Mr. Schulte advised that the heart of this request is that O-3 would increase the opportunity for a greater array of prospects for this property. The change is compatible with the surrounding land uses; it would place an edge on the commercial zoning on the block bounded by "P", 56<sup>th</sup> and "R". It would provide a transition from the more intense commercial uses to the east and south. The proposed O-3 does require a use permit, and with that, it would provide a safety net for the neighbors to the north and west.

Mr. Schultze also advised that they did contact the neighbors to the west along 56<sup>th</sup> Street personally and were greeted with acceptance of the change of zone. They also held a public meeting at the church; handed out flyers door to door and made sure the Culler Neighborhood representative got the brochure. At the public meeting there was one neighbor in attendance, who had some very good questions about the zone change. Mr. Schulte believes they were able to answer her questions and she did not object.

The Church's desire with the O-3 zoning is to move forward to purchase vacant property at 70<sup>th</sup> & Vine for the church. They do not wish to uproot from the neighborhood. The church wants to stay within the same community, and this change would offer redevelopment for this site. The church has been contacted by a nonprofit hearing impaired school that is looking at the property; there is also consideration for a medical office complex; the church has turned down an individual that they felt would not be advantageous to the community.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Bayer moved approval, seconded by Schwinn and carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**CHANGE OF ZONE NO. 3186**  
**TEXT AMENDMENT TO REMOVE BOARD AND LODGING**  
**HOUSES AS A PERMITTED USE IN THE**  
**R-6, R-7 AND R-8 ZONING DISTRICTS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 16, 1999

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

Planning staff recommendation: Approval

Proponents

1. **Jon Carlson** presented this text amendment on behalf of the **Near South Neighborhood** to remove boarding and lodging houses as permitted uses in R-6, R-7 and R-8 zoning districts. Boarding and lodging houses are consistent with the design but the nature differs importantly. A board house tends to house a more transient population. The short term nature does not allow the sense of community that apartment living offers. It seems more appropriate that such use be located near motels or hotels. Homeowners have a higher degree of permanence as well as apartment dwellers. Removal of boarding and lodging houses will encourage a more stable and more responsible neighbor. This would be a benefit to the neighborhood as well as the community.

Mr. Carlson stated that a second area of concern is the suspicion that some properties exist that would be classified as group homes, which provide therapy or counseling service to occupants and

which require licensing. By denying services to their occupants, a property can be classified as a boarding house. This is undesirable because occupants who may be in need of those services will not have them; it allows de facto group homes to operate without spacing requirements, which is essential for the neighbors and the clients; it also removes the licensing requirements associated with a group home. This text amendment is not intended to affect legally operating group homes, but would close the loop hole that exists to have an illegal group home classified as a boarding house.

Mr. Carlson further advised the Commission that the City Mission and Salvation Army operate in I-1 and B-4 zoning; two properties at 2125 and 2145 “B” are under historical special permit; 1990 S. 12<sup>th</sup> is possibly a typo by the City Attorney’s office. Therefore, there is currently only one legally operating boarding house at 1930 “B”. That property provides an unfortunate example of boarding house operation. From March 1998 to May 1999, police officers have responded to 14 calls for service. Although troublesome to the area, this property is legally licensed and would be grandfathered under this text amendment.

Mr. Carlson believes that the greater public good is clearly better served by eliminating the loop hole; and is clearly better served by encouraging stability and responsibility in our neighborhoods. Lincoln has an opportunity to be pro-active and ahead of possibly an abusive situation and can provide a safer, stronger vision for our city’s future.

Bayer wondered what this would do to the bed and breakfast. Jennifer Dam of Planning staff explained that the bed and breakfast exists by way of special permit. It is on the historic register and is able to apply for a special permit for any number of uses.

Bayer asked for the neighborhood’s position on bed and breakfasts. Mr. Carlson stated that generally, they love them. They are not intending to get rid of them.

Steward wondered about the impact this may have on co-housing, i.e. Number of unrelated individuals living in similar confines. Ms. Dam stated that there would be no impact by this legislation. Those regulations would still be in place. Steward observed that the difference between boarding and co-housing would probably be ownership.

There was no testimony in opposition.

Steward inquired whether the staff is aware that other communities have or have promoted housing for cohabitation that is not necessarily a familial condition. Ms. Dam’s response was that the definition of family is up to three unrelated individuals living in the same home. This change of zone does not change the current opportunity or limitation on co-housing.

Ms. Dam further explained that Bed and Breakfasts are allowed only by historic preservation special permit and this change would not impact that. The Bed and Breakfasts and boarding houses are not

licensed through the zoning ordinance.

Wallace wondered whether this legislation would have any affect if someone staying at a bed and breakfast wanted to extend their time there. Ms. Dam stated that it would not affect that situation. That would be covered under the regulations of the bed and breakfast special permit.

Bleed thinks that maybe we are seeing a change in lifestyle. There was a time when boarding houses were quite essential for single people who did not want to own their own home. Is that what is going on here? Ms. Dam concurred that could be true. After the war and through the 60's there were more boarding houses. We don't see much of that anymore.

Bleed suggests that one of the problems we have in Lincoln with a high student population is having rental housing where there are more than three unrelated people living in the same house or apartment. She always thought of a boarding house as a potential solution to that problem. If we really cracked down on students living together with more than three unrelated individuals in a house or apartment, she believes there would be a lot of students affected. Are we removing an option that they would have with this change? Ms.

Dam responded that the information provided by the City Attorney shows there are no boarding houses being operated now. It's just not happening. Bleed wondered if part of that might be that we are not cracking down and enforcing the cohabitation limitation ordinance. She believes we might find a lot of rental housing that is out of compliance. Ms. Dam knows of cases that have been pursued and they have taken months and months of time to prove that more than three unrelated people actually lived in a house. It would take a considerable amount of time and energy to enforce those regulations.

Schwinn inquired about fraternities and sororities. Ms. Dam explained that they are a separate classification in the zoning district.

Wilson wants to know why the Commission is dealing with this if it's not a problem. Ms. Dam believes that it is a problem because there is one house that has a boarding house license that has been reputed to be targeted toward ex-convicts, which are listed as a category for group home; however, this group is not receiving any services or undergoing therapy. Therefore, it is not categorized as a group home and, therefore, it can be closer in distance to any other congregate living facilities.

Wilson does not believe it is a problem and it seems to be going away on its own.

Ms. Dam agreed that the use of boarding house as intended has gone away. People are finding new uses for them that are not necessarily as acceptable.

Bleed agreed that the problem of too many high density houses close together is one issue. Maybe

boarding houses could have the same spacing requirements as group homes. She is not sure that it is a zoning issue if there are clusters of people who need services living together that are not getting the services. Bleed also does not believe they are called boarding houses because there is not someone doing the laundry and cooking the meal. Yet we do have rental houses with a number of people living together that might be considered a boarding house. Bleed is not sure this is the right solution. Maybe it's a non-issue since there is only one boarding house.

Wilson wondered how this will solve the problem since the one boarding house will be grandfathered and continue to exist.

Response by the Applicant

Mr. Carlson agrees that at the moment it may not be an overwhelming problem, but there is a sense in the neighborhoods that it may be the beginning of a problem. Even though we can only focus on the one that exists, there is great sentiment that there are boarding houses being run that are not licensed. We may be in the beginnings of a problem and he senses that the problem exists. The neighborhood association believes it is appropriate to act now and only grandfather in the one property.

Wilson asked whether the neighborhood would accept a special permit for boarding houses in those districts. Mr. Carlson indicated that they had discussed it and ultimately, it was decided that the desire for the genuine use just does not appear to be out there. The neighborhood association believes Lincoln has grown past this use and that housing needs are now different. There is not a need for that special permit to be in place.

Wilson is concerned. For example, if the Salvation Army buys a 5-story house and wants to convert it to a rehab/boarding house, which is not a group home but maybe a half-way house, their hands will be tied and he does not want to do that. Mr. Carlson suspects that it would be more appropriate for them to be a group home. Mr. Carlson also believes that most scenarios considered would be solved by having the group home with the licensing and supervision rather than having a boarding house.

Bleed understands the problem but does not want to make it worse by changing the law. She could see, for example, a situation where you might have a number of unrelated people who want to live together but it is not possible because of the unrelated individuals requirement. They don't really need the nursing care of a group home, so right now they live illegally. Is there a difference between a boarding house and a place where you might have 6 unrelated people living together? Mr. Carlson suggests that facilitating that to continue doesn't solve the problem. If we have a problem with more than three people living in a house, then we would not want to continue that problem. Bleed agrees that there are certain areas where it would be undesirable, but there may be other areas where you might want to have a "rooming house" where people have an individual room and a common kitchen area. Ms. Dam suggested that she would need to review the fraternity and sorority definitions to see if it might fit.

Steward observed that to assume that more than three people living in a residential situation is undesirable is wrong. It may be illegal, but that's because of the code description. If we approve this text amendment, then we remove one of the options for that to happen. Ms. Dam suggested that one possibility is looking at this as a special permitted use and that language could be brought forward if the Commission were more comfortable. Bleed would like that, and would like to see spacing conditions included.

Bayer suggested keeping the hearing open and having the staff come forward with language for boarding houses by special permit.

Mr. Carlson is worried that even with the special permit process, we are not removing the possibility for abuse of the boarding house situation.

Bleed believes the Commission sees the problem they are attempting to address, but also sees other problems.

Steward suggested that the group home legislation also be considered. Ms. Dam would prefer to focus this on the boarding and lodging house. Changes to the group home legislation runs into a lot of bigger issues that would be better dealt with in a broader forum.

Wilson moved to defer two weeks, with continued public hearing and administrative action scheduled for June 30, 1999, seconded by Wallace and carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**CHANGE OF ZONE NO. 3169**  
**FROM R-2 RESIDENTIAL TO I-1 INDUSTRIAL**  
**and**  
**MISCELLANEOUS NO. 99005,**  
**WAIVER OF THE SUBDIVISION ORDINANCE TO ALLOW**  
**FLOODPROOFING**  
**ON PROPERTY GENERALLY LOCATED AT**  
**S.W. 6TH & WEST "E" STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 16, 1999

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

Planning staff recommendation: Approval of the change of zone and conditional approval of the waiver of floodplain requirements, both subject to completion of all items for approval of the IMS Addition administrative final plat.

Proponents

**1. DaNay Kalkowski** presented the application on behalf of the applicant, **IMS Properties**. Ms. Kalkowski suggested that the staff report does a good job explaining the requests for a change of zone and waiver of the subdivision ordinance to allow floodproofing. The change of zone from R-2 to I-1 is the final step of a three-step process implemented over a year ago with Lincoln Plating. The first step involved a preliminary plat by Lincoln Plating to shift West E Street to the south to be available to provide an access point into IMS east of SW 6<sup>th</sup>; the second step involved the vacation of the old 33' of right-of-way for West E Street that exists today. That vacation will be scheduled at City Council once the administrative final plat being brought forward by Lincoln Plating is completed.

The change of zone will complete this process by allowing Lincoln Plating to construct a private roadway on their property that will connect the property to West E Street. It is being built at extra width to accommodate truck traffic and to reduce traffic through the neighborhood.

A neighborhood meeting was held in May 1998, to go over the proposed development for this whole area and there was no opposition at either the Planning Commission or City Council hearings for the preliminary plat where West E was relocated. Another letter was sent to the neighbors last week to explain the most recent draft of the proposal for development that incorporates changes made as a result of meetings with the staff.

**2. Elmer Wessel**, testified in support. He is a native Lincolnite who started IMS 25 years ago at 6<sup>th</sup> & L. IMS corporation now has four divisions, all at 603 L Street. Industrial Machine Specialities manufactures special machines for industry; the second is Bison Recreation products, which manufactures basketball products; the third is Industrial Powder Coating; and the fourth is Sign Co., which manufactures rotating signs for the sports market. They do not manufacture billboards.

The company has about 225 employees; the traffic and parking problems are inherent in this location at 6th & L; Lincoln Plating owned all the residential lots across S.W. 6<sup>th</sup> and purchased them to facilitate the paving of S.W. 6<sup>th</sup> as access to his company; the property to the east, which is zoned I-1 is owned by IMS. IMS really needs to expand and needs to have a better location and a better image than they currently have. The synergy between Lincoln Plating and its process and the process of industrial powder coating as a finishing process is a fabulous blend in manufacturing. They believe that they can attract some very well respected manufacturers to this area. The zoning change will allow them to run the access road directly into the I-1 property.

Steward referred to the waiver of the floodplain regulations to allow floodproofing of the buildings, and asked if the applicant would assure that there are no general operations that are a potential environmental concern since the property is adjacent to a running tributary. Mr. Wessel stated that there would be none.

Mr. Wessel further suggested that economics will dictate whether they move all the operations out there. They will move three divisions to the new location: Sign Co., Industrial Powder Coating and then the IMS Division for sure.

The first building is 17,500 sq. ft.; the other buildings are 35,000 and 72,000 sq. ft.

IMS is now located in 12 buildings in the downtown area, including the Georgia Pacific Building and Nebraska Pump Building.

Bleed referred to the intent to look at a parking area in the R-2. Mr. Wessel stated that initially, they wanted to put duplexes across that as a barrier between the I-1 and the neighbors, and as they ran that through the channels, the Health Dept. threw up a red flag and did not want any duplexes next to the I-1 zoning. It was suggested that it be made a parking lot. Bleed does not believe putting residential uses in that strip makes sense and she was glad to see they were not intending to do that.

Opposition

**1. Mike Morosin**, past president of **Malone Neighborhood Association**, is very concerned about our stormwater runoff and wants to know how the stormwater is going to be addressed with this very substantial large building; how are we going to control the runoff and deal with the detention and retention?

**2. Melva Plouzek**, 1111 S. Mockingbird Lane, spent the last three years trying to protect floodplains in Lincoln. She sees no reason for this waiver request.

**3. Nancy Alley**(sp), Route 8, Lincoln, testified in opposition. She currently owns all the lots on both the north and south side of West C Street. She has concern about the parking lot located directly next to S.W. 6<sup>th</sup> Street. She asked whether anything would be done as far as landscaping or “hiding” this parking lot from view as they hope to build some duplexes on these 9 lots which they

own. Another concern is the location of the south approach into the parking lot as she believes it is very poorly placed in all of the lights from the cars leaving that parking lot would be directed onto the house. The approach should be moved either to the north to about the alleyway between West C and West E, or moved further south a little closer or basically right at the end of West C Street. Ms. Alley does not live on the property and thus was not invited to the neighborhood meetings and was not knowledgeable of what was going on.

Hopkins suggested to Ms. Alley that there will be opportunity to work with the applicant between now and the time these requests appear on the City Council agenda.

Staff questions

Bleed asked staff to address the floodplain issues and to explain the permit that has already been issued for fill, etc. Nicole Fleck-Tooze of the Planning Department stated that there has already been a development permit for filling the floodplain, which is allowed prior to platting. The applicant has commenced some grading work. The waiver is to actually try to assist in minimizing the amount of fill that needs to be imported into the floodplain. The waiver will allow floodproofing of the buildings rather than bringing in enough fill to raise the ground elevation to one foot above the flood elevation. It is consistent with what is allowed in the zoning ordinance and makes sense for this site because we are always looking for opportunities to not fill the floodplain. We cannot undo the fill permit. By allowing the waiver, we would be reducing the amount of fill put into the area from what they would have to do without the waiver. That is why staff is recommending approval of the waiver.

Wallace asked whether this waiver complies with FEMA. Ms. Fleck-Tooze advised that FEMA requires that commercial structures be either elevated or floodproofed, so yes, it does comply.

Wallace asked whether the staff foresees any problems with the parking lot as far as stormwater runoff. Ms. Fleck-Tooze explained that this proposal takes a portion of the fill from within the site, leaving the wetland area, and they will be coming in with a preliminary plat for some additional development, at which time the runoff issue will be re-examined.

Schwinn believes this area seems to be coming into quite an employment center, and he inquired as to what the city is looking at in terms of the traffic getting to "A" Street, to Folsom Street and to the bypass. What are we doing to compensate for this traffic? Ms. Fleck-Tooze responded that with this plat and change of zone, we want the traffic to go out West E to Folsom to the parkway. In terms of overall planning for traffic in the area, for this particular application there was no traffic study required. Public Works did not anticipate that this would have any significant contribution to that. Schwinn wondered whether we might be at the point where we need a subarea plan for this area. Ms. Fleck-Tooze's response was that if we continue to see applications like this coming forward, that would be something that would be discussed; however, we do not have a subarea plan for this particular area at this time.

Bleed inquired whether the special permit for the parking lot in the R-2 would require landscaping,

etc. Ms. Fleck-Tooze acknowledged that there are landscaping requirements and the Commission could look at special considerations because it is a special permit that would come before the Planning Commission.

**Response by the Applicant**

With regard to the grading and stormwater runoff, Ms. Kalkowski advised that they have submitted an administrative final plat and a grading plan, which is currently under review. Staff is recommending approval of these requests conditioned on that plat. The waiver actually helps to reduce the amount of fill in the floodplain. If and when they are ready for a parking lot, it would be a special permit that would be reviewed by the Planning Commission. The applicant will be happy to meet with the neighbor to talk about the parking lot as it is a future phase of the project and they will attempt to address her concerns.

**CHANGE OF ZONE NO. 3169**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Bleed moved approval, subject to completion of the conditions of the administrative final plat, seconded by Wallace.

Bleed commented that, given there is a significant area that is already industrial here, she believes it does make more sense to finish off the industrial in that area up to the street with appropriate buffers from the residential area across the street. Leaving the R-2 and having a special permit for the parking does make sense.

Bleed is also concerned about the activity in the West A area and it needs to be addressed. This will exacerbate the traffic problem to some extent.

Motion for approval, subject to the conditions of the associated administrative final plat, carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**MISCELLANEOUS NO. 99005**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Nicole Fleck-Tooze of Planning staff pointed out that the legal description for the waiver will be adjusted as it goes to Council. The staff and the applicant are in the process of fine-tuning the legal description for the conservation easement.

Duvall moved conditional approval, subject to the conditions of the associated administrative final plat, seconded by Bleed and carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**MISCELLANEOUS NO. 99008**  
**FOR A LIMITED MORATORIUM ORDINANCE ON**  
**OFF-PREMISE SIGNS 150 SQUARE FEET AND OVER**  
**and**  
**CHANGE OF ZONE NO. 3187**  
**A TEXT AMENDMENT TO THE ZONING ORDINANCE**  
**TO INCREASE SPACING BETWEEN OFF-PREMISE SIGNS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 16, 1999

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

Planning staff recommendation: Approval of a 9-month moratorium and deferral of the text amendment until the moratorium and review of the sign ordinance are complete.

Mike DeKalb of Planning staff submitted a slight revision to the staff report to correct the language from "signs over 150 sq. ft. in area" to "signs 150 sq. ft. and over in area".

Mr. DeKalb also submitted a letter from Lamar Outdoor Advertising which was sent to the Mayor and City Council explaining that in the past they had proposed 800' spacing between larger structures, and that they will support a moratorium with 4-month duration as that should be ample time for study. Lamar has also responded to the Mayor's request not to apply for additional permits during the moratorium process.

Mr. DeKalb advised that once the staff brings forward a recommendation for amendment to the sign ordinance, it takes approximately three months to process it through the Planning Commission and City Council.

Proponents

**1. Mayor Don Wesely** testified in support of the request for moratorium. This proposal is to try to deal with a very recent problem in the City with off-premise commercial signs. Mayor Wesely referred to the chart in the staff report showing an explosion of billboards in the last year. He has discussed the matter with the Council. The initial proposal was the text amendment to change the spacing from 300' to 800'; however, after further review it appeared that this change would have next to no effect. It was determined that the better course of action would be to take more time and ask for a moratorium and then sit down with the industry and private sector and talk it through and come up with a more long term solution to the problem. The 9-month period was not selected because he wants to take that long, but to be sure we don't get our backs against the wall in this matter. Reaching out could take some time and he does not want the process to be rushed into a decision.

"Let's slow it down and deal with the problem."

The City Council is writing to the two companies in Lincoln now and asking them to refrain from any applications for permits until we make a decision on the moratorium and get the new regulations in place. He is also aware of another company thinking of coming to Lincoln.

Lamar has agreed not to seek any permits voluntarily for 90 days, but the Mayor has not heard back from the other companies in that regard yet. The Mayor also suggested that the length of time of the moratorium is negotiable. He doesn't want to take nine months, but the reason it might take that much time is because he wants to include the interested parties. He suggested that a reasonable compromise would be 6 months.

Bleed suggested that the moratorium could be for 9 months, or a shorter period, up to the discretion of the Mayor and City Council. Her experience with signage is that it can get into incredible detail and take a long time. The Mayor stressed that his strategy is to get through the moratorium as soon as possible. We will try to simultaneously start the discussions on a longer term policy. We need the moratorium to buy us the time.

Mr. DeKalb pointed out that the language as proposed suggests that there be no signs over a certain size over a period of 9 months. If the moratorium is successful, the staff would propose a text amendment at that point in time and would release the moratorium language at the conclusion of the text amendment review and process.

Steward requested explanation of the study process. Is this a Planning Dept. internal study or a citizen's committee, etc.? Mayor Wesely advised that the Planning Department has started with their research. He has asked Planning to look at other cities and what they have done; step two is to involve both the Council and the Mayor's office, and if the Planning Commission is interested in participating in the discussions, that would be acceptable.

Steward wondered about companion language in the county regulations. Mr. DeKalb indicated that it could possibly have county-wide implications, but there is limited ability to do signing in the County outside the three-mile jurisdiction and nothing has been proposed for the county at this time.

Bayer noted that the Planning Dept. has been asked to look at a number of things and they are taxed to the limit as far as deadlines. He asked the Mayor whether he sees any relief for the Planning Dept. in respect to alleviating this problem. The Mayor does not know that this is as complicated as some of the other issues facing the Planning Department. It is more or less communication and that is what is going to take the time. He believes working out the details will be the time-consuming factor. He did also state that he will be back in the near future with a proposal to provide additional staffing to the Planning Dept.

Hopkins' comments were that "moratorium" has almost been a dirty word and she appreciates that

there are no other options; however, it is something discussed but not done. The Mayor believes that this unusual step is taken because it is an unusual problem that has come on us quickly; we're just hit by it suddenly and we have to slow it down immediately. In this case, he has talked with the City Attorney and we are not jeopardizing the city.

Schwinn's comments were that "we've had this ordinance for years. It seems that now we have a company that has read the ordinance and is taking advantage of it". Is there a public clamoring? The Mayor indicated that he has had telephone calls and he knows that people are concerned about it. We aren't stepping in and rejecting any issued permits. We have an ordinance that is inadequate and we want to correct it as soon as possible. He believes this is a legitimate way to move forward. He carried the bill about recognizing legitimate business and business investments in the Legislature, but we have extra responsibility to be very careful about what size signs do go up.

**2. Mike Morosin**, past president of **Malone Neighborhood Assn.**, testified in support. The Malone Neighborhood is an older neighborhood that has had to endure this pollution for many, many years. He agrees that we need to take the time to give the neighborhoods a little bit of voice in speaking to the issue. Most of the older neighborhoods don't have covenants and are unprotected in many of these issues. We now have an opportunity to do some things that will do some good for the city.

### Opposition

**1. Martha Lee Church** with **Lamar Outdoor Advertising**, formerly Imperial Outdoor Advertising, testified in opposition. Lamar wants to go on record in agreement with the increased spacing. Lamar, formerly Imperial, has respected the 300' spacing requirement for years, and they would like to talk more about the 800' spacing. However, Lamar is opposed to the 9-month moratorium. This will be nine months of no growth for the company. They lost some structures in the North 27<sup>th</sup> Street Redevelopment. They will not be allowed to apply for permits which would allow for no growth for the company. They firmly believe that four months should be adequate time to address this issue, with cooperation of the industry. She did write the letter to the Mayor voluntarily agreeing not to apply for any permits in the interim. Her company was not approached by the Mayor's office--they took this upon their own initiative after reading it in the newspaper. They respectfully request to be allowed to continue to grow the business at a very responsible rate.

**2. Tim Cowell**, from **Lamar**, testified in opposition. The Company also believes that the 800' spacing would in fact make the moratorium nonexistent. We would not need the moratorium if the Commission would today pass the 800' spacing requirement. This would eliminate a lot of locations. He referred to O Street. With the current spacing of 300', there could be a sign every block. The zoning on O Street is wide open for signs. The 800' spacing would stop any growth on O Street, just as the moratorium would do. The moratorium stops Lamar from maintaining the sign if they were to lose one. Their projected growth for 1999 is 11 new structures. Five of those are replacements. They lost two to the No. 27<sup>th</sup> Street Redevelopment Plan, and three to other private sector development. So their net growth in 1999 will be 6 new signs, which is slow, responsible growth.

He believes the moratorium is excessive.

Wilson inquired what might have prompted the growth to 21 in 1998. Ms. Church stated that they have 11 structures planned for 1999, and, again, it is a maintenance situation of trying to keep pace with the structures that they have lost. Mr. Hall added that as this very quick growth started to happen, from an industry standpoint, the applying for permits was a knee jerk reaction to secure these areas. Out of the 21 permits, only 11 will be built in 1999.

Bleed asked why they are against the moratorium if they are willing to agree not to apply for any new permits. Ms. Church explained that they were asked to make this voluntary effort before any action could take place. They wanted to assure the Mayor and the Council that they will not seek permits while the 800' spacing amendment is processed. They agreed to the 90 days because they are requesting the Commission to discuss and act on the 800' spacing as opposed to the moratorium.

Wallace asked whether Lamar has discussed this with other competitors. Ms. Church stated that they have discussed it and those representatives are here to speak today.

**2. Kelly Gray with Gray Outdoor Advertising**, testified in opposition. They have been working with City Council Member, Jon Camp. Mr. Gray requested that the Commission delay the moratorium legislation and proceed with the spacing issue. Gray Outdoor Advertising supports Change of Zone 3187. He believes that the voluntary stoppage of new permits and the spacing should help slow things down and stop the growth and give them time to put together a new plan. Mr. Gray is asking for no moratorium--that the Commission concentrate on the text amendment. Gray will agree voluntarily not to apply for new permits for 90 days.

Staff questions

Wilson asked staff to respond to the testimony that the 800' spacing would be the same as a moratorium. Mr. DeKalb stated that the staff has reviewed the signs put up recently and the more recent signs which have generated the big concern would not have been affected by the 800' spacing. Staff's concern is that once these signs are in place, they are probably going to exist for 30-50 years unless you put up big bucks to get rid of them. The staff believes that the proper way to handle it is to have a reasonable moratorium with everything put on hold, talk it out and figure out the best way to determine the issue and how to resolve the issue. We do not believe the 800' spacing will affect the newer areas of the City.

Wallace asked whether the staff had been working on this for awhile or did it just come up? Has there been time for the Planning staff, the industry and the interested parties to sit down and discuss it? Mr. DeKalb stated that no, it has been abrupt in the sense that we were seeing 1-6 signs a year. In the last year, there were more permits and more signs, we had an election and the issues were raised. In all reality, we are talking the last three or four months that it has come up. Lamar came in May to discuss the 800' spacing, and then in the meantime the Council beat them to it.

Bleed asked why 9 months. Mr. DeKalb's response was that every time he has gotten into the sign code, it has turned into a can of worms. Once we get into it, we've doubled the time that we had anticipated. We are trying to be time specific, recognizing we need three months to process a text amendment, form whatever the group is, study the issue and figure out the resolution. If we can complete the study in less than 9 months, we could repeal the moratorium.

Bleed wondered whether it could be worded so that a company could replace signs that are lost. Rick Peo, Asst. City Attorney, has discomfort with this thought. Moratorium is a stop and you don't have the equal protection problems. If we had a four month moratorium, he is sure he would have to be back here next month with an ordinance to extend the moratorium because it will take three months to get it to the Council and adopted. We need time to research the issue, draft the ordinance, submit it for review and comment, put it on this body's agenda, have public hearing here, and then introduced with two readings at Council, and two more weeks before it is effective. There is 8-10 weeks of processing time once it is submitted. And that assumes there are no deferrals at any of the stages. The moratorium cannot be extended without another ordinance change going through. Whatever ordinance comes forward will repeal the existing language of the moratorium. If we can get through sooner, we will.

Hopkins has concerns for the industry. A moratorium is hard to face. How much of an additional season will we be taking out of their industry? Mr. DeKalb explained that if the proposed sign is in compliance with the ordinance, the permit is issued across the counter if there is no moratorium in place.

Wilson asked whether staff is anticipating that Lamar and Gray will be big participants in this process. Mr. DeKalb anticipates that they will. Wilson is hopeful that the industry can facilitate the process.

Schwinn asked why the Commission is even being presented with the text amendment for the 800' spacing at this time. Mr. DeKalb explained that the staff was directed by City Council to prepare that language. Staff is recommending to defer the spacing to study all the options. Schwinn believes that we as a community have to decide whether we want those signs.

Bleed wondered if there is a way to accept applications so that once the legislation is in place, the applications can be expedited. Mr. Peo explained that the process involves two codes--the zoning code that regulates size and location, and the sign code which issues the permit based on the structure meeting certain physical standards. Those applications can be submitted and Building & Safety will determine whether it meets the requirements, but without the zoning they cannot issue the permit. That turnover time for that type of permit is short. The signs cannot be pre-approved. Mr. Peo assured that issuing the sign permit does not take that much time.

Bayer commented that there are so many important things facing the city today and he is concerned that this will become the Planning staff's priority over the next 9 months. Mr. DeKalb stated that

if it is assigned to him, it will be one of his higher priorities. Bayer cannot believe that this just became the most important issue in our city. What will happen to the permits now pending? There are 39 issued that they can build. Mr. Peo explained that it won't stop anything that you want to apply for and put in the system right now until the moratorium is in place. Once the moratorium is issued, they can't submit any new applications. If the moratorium is recommended for approval by the Commission today, it will be 6 weeks before the moratorium can be approved by the Council and Mayor. The moratorium does not start until the ordinance for the moratorium is adopted. Self-imposed is just self-imposed. It's not law.

Hopkins does not believe we can assume the 90 day voluntary indication.

Public hearing was closed.

**MISCELLANEOUS NO. 99008**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**      June 16, 1999

Steward moved approval, seconded by Bleed.

Duvall stated that he will vote against the moratorium. He does not see how we can hold a business hostage for a year. They will lose their signs by attrition. We are not doing anyone any favors here. We need to address this issue in a timely fashion. A year is hardly timely.

Wallace would like to delay until the parties have had an opportunity to clarify the impacts. We need an ordinance and that takes time, but all this communication appears to be abrupt.

Steward believes the evidence is clear as to why this is abrupt. When you get a pattern jumping from 12 to 44 and 40, we have clear evidence. It's not somebody's whim. It seems to him that we have a situation where, as in many cases of the physical environment, that people have to see the effects before they understand that there is a negative impact. He believes this is justified in terms of the size and number. He is hoping that those permits issued in the pipeline and not started are a sustaining circumstance for the industry, but the fact remains that this is a sensitive community issue, and what is an industry to one person is pollution to another. We have a public responsibility to help the industries that are in a growth circumstance but to try to do it in a sustainable way. Drive down Dodge Street in Omaha and you will see what our future is. If that is what we wish to have in

Lincoln, then we should either delay this or deny action on it.

Wallace agrees that the numbers bear out that there is a problem. He believes the fact that one of the companies came forward early and said there was an issue is important. But he is hearing some confusion on how and when and how long this takes. He agrees that there is an issue that needs to be addressed. He personally did not realize it was such a complicated issue. He is not against a moratorium, but he believes that industries, individuals and communities should have rights to sit down and work these issues out and he does not believe they have had that opportunity because it has been so abrupt.

Schwinn suggested that if you were to take this moratorium to any other business, he believes there are very negative impacts. We are very cognizant on this board that all the parties get together and have discussions before we do anything and he does not believe this has happened in this situation. They have offered 90 days. He thinks we need to take them at their word because it is a good faith gesture on their part.

Schwinn added that we have had this sign ordinance for 20 years and it has worked up until now, so do we really have a problem? Is this that big of an issue? This is really a political thing that is going on with the new administration and new Council members. If this Board does not approve this, the city can still appeal just like anybody else and it goes on to the City Council. Mr. Peo advised that there is no appeal process in the code for anything like this. It is erroneous to say that Council could demand it up. The recourse would be a court mandamus action. We do not want to get into that type of situation. With respect to this issue, the Planning Commission can hold it for two weeks, but can also make recommendations. The Planning Commission is not passing the ordinance; it is advisory. The administration came this way to take a conservative approach to allow public input and the public hearing before Planning Commission and City Council and to take a conservative approach to adopt a moratorium. Nebraska has never had one. A lot of jurisdictions allow this type of action to bypass the Planning Commission. We took the approach to follow the same procedure as a text amendment. He suggests that the administration is showing good faith by bringing it before the Planning Commission. He is not sure a two-week deferral is going to do anything. It is more appropriate for this body to make a recommendation. The Commission could recommend the moratorium be denied and adopt the spacing ordinance.

Bayer pointed out that if these companies had come in for 8 years in a row with 10 billboard signs a year, we would not see it as a problem now. He does not believe they should be punished because they are catching up. What's the magic number about 40 or 50 if it's a catchup? He believes it has been good faith on the billboard industry to be willing to delay for awhile.

Bayer moved to amend the main motion to change the moratorium from 9 months to 5 months, seconded by Wilson.

Bayer stated that it will take six weeks to go before the City Council. Thus, we are already into the winter months. The industry voluntarily delayed for 90 days. What if an outside third person came

in and did not participate in the voluntary delay? He thinks 9 months is too long.

Bleed does not want Planning staff to spend 9 months focusing only on the sign ordinance, but on the other hand, she believes Mr. Peo made a reasonable point that if we can't get this done within four months or five months, then what do we have but a situation for the extension of a moratorium, and that creates a real problem. She understands putting pressure on staff and the sign companies to get this done, but she is concerned that it is a constraint that is going to be difficult. She is nervous about not having an official moratorium with a few companies agreeing not to apply for new permit, but then having some third party come in who did not voluntarily agree and does apply for permits. She would prefer to have a 9-month moratorium with the understanding that it will proceed as expeditiously as possible and that we get an appropriate new sign ordinance as soon as possible.

Steward spoke in favor of the amended motion. When you consider the seasonable character and the fact that this would give staff about 60 days to do their work, it does seem reasonable if a large part of the research is looking at other cities' ordinances and other examples. It is short, and he thinks the 9 months was well considered, but under the consideration of the industry's attempt to be collaborative and work with it, then he thinks the 5 months is a reasonable compromise.

Motion to amend the moratorium to 5 months carried 7-2: Duvall, Wallace, Krieser, Bayer, Steward, Bleed and Hopkins voting 'yes'; Wilson and Schwinn voting 'no'.

Bleed commented that because there weren't that many applications for that number of years, it suggests to her that these companies are not going to go out of business during a moratorium. They have managed to exist with only 2, 3, 5 or 6 for a year. If she thought it would put them out of business she would feel very differently. She appreciates the willingness for the sign industry to voluntarily do a moratorium; however, she is concerned that without an official moratorium a third party could come in and make application for sign permits. She has experienced many times people coming up to her and asking her to do something about No. 27<sup>th</sup> Street and the proliferation of signs. We need to do something to look at the signage that is coming along with our growth. She believes the moratorium protects the existing companies.

Wilson stated that he will vote against the moratorium for business reasons. The companies have agreed to a self-imposed moratorium and this will put some pressure on the city, whether it's the Council or Law or Planning, to get this resolved. He believes the 800' spacing is reasonable and acceptable. Additional amendments could be made after that time, if found to be necessary. He does not believe there will be a proliferation of signs at the 800' spacing.

Steward believes that this is a growth issue that is not unlike the difficult decision about changing the ridge policy and going into Stevens Creek and threatening Wilderness Park. It is a growth issue. It is the case that as more people are expected, more advertising is desired, and with more advertising there is more business opportunity, but it should also be the case that the city has more attentiveness about the impacts this growth is bringing us. We need to look at the whole issue in light of rapid pressure for growth. The distance is not the only issue.

Wilson agreed, but he believes the other issues can be dealt with as they are brought forward. He had expected to see some citizens testify in support of this amendment, and, frankly, there is no one here except for the industry, so he does not believe there is a great outcry in the community to change this. But, Bleed argued that this is one of those issues where the average citizen would not take time off from work to come down here and speak, but it is one of those constant irritants that people talk about.

Schwinn pointed out one last little irony. The Journal Star prompted us to move quickly on this and move forward, yet they advertise on billboards; the politicians that prompted us to move forward had a plethora of billboard advertising in the last few months.

Hopkins commented that if she didn't think that the industries had anticipated this somewhat in the short view and have enough to keep them taken care of for the next few months, she would feel differently. She would be devastated to have some other company come in here and apply for permits when others have voluntarily participated. She wants the same playing field all the way around. She also does not want this to look like the setting of any precedent that the Commission is in support of moratoriums in general. She takes it very seriously and will be very sensitive about it.

Motion to approve the moratorium for 5 months carried 6-3: Wallace, Krieser, Bayer, Steward, Bleed and Hopkins voting 'yes'; Duvall, Schwinn and Wilson voting 'no'.

**CHANGE OF ZONE NO. 3187**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**      June 16, 1999

Bleed moved to defer until the completion of the sign code review and expiration of the moratorium, seconded by Steward.

Bleed believes it makes sense not to muddy the process by putting this change of zone in process since they are recommending the moratorium. Let's let the study and research take place.

Motion to defer carried 8-1: Duvall, Wallace, Krieser, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'; Wilson voting 'no'.

**SPECIAL PERMIT NO. 1775**  
**FOR A PARKING LOT**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NORTH 70TH STREET AND SEWARD AVENUE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 16, 1999

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

Planning staff recommendation: Conditional approval.

Ray Hill of Planning staff submitted new Condition #1.1.3 to be added to the conditions of approval which requires a revision to the site plan to remove the parking overhang from the side yard setback.

Proponents

1. **Rod Laucomer** appeared on behalf of the **Disabled American Veterans** for this parking lot expansion. This is a very restricted lot and they were recently required to do a lot of expansion in terms of handicap access. For years and years it has been a situation where people parked all over the area and they are still parking in the front right-of-way. They have determined that they need access and more parking in the back. The third turning lane became available on 70<sup>th</sup>, which allows the access and makes it possible to park along the north side.

Mr. Laucomer agreed with the conditions of approval. They may lose one or two spaces with the adjustment by the new Condition #1.1.3, but they will comply. The reason they are requesting this special permit at this time is because they have a building permit and it would seem more prudent to do the parking lot along with the building project.

2. **Greg Holloway, Commander of Chapter 7 of DAV**, testified in support. The DAV has spent a lot of time and effort to make the chapter house available to all the veterans and to provide service to the disabled persons in this community.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Wallace moved approval of the Planning staff recommendation of conditional approval, with the revision submitted today, seconded by Bleed and carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**COMPREHENSIVE PLAN AMENDMENT NO. 94-34;**  
**ANNEXATION NO. 99005;**  
**CHANGE OF ZONE NO. 3168;**  
**PRELIMINARY PLAT NO. 99002,**  
**VINTAGE HEIGHTS 2ND ADDITION; and**  
**SPECIAL PERMIT NO. 1762,**  
**VINTAGE HEIGHTS 2ND ADDITION COMMUNITY UNIT PLAN.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:** June 16, 1999

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

Planning staff recommendation: Approval of the Comprehensive Plan Amendment, Annexation and Change of Zone; and conditional approval of the preliminary plat and community unit plan.

Proponents

**1. Kent Seacrest** appeared on behalf of **Pine Lake Development, LLC**, This is an application for 961 dwelling units comprised of single family, multi-family, triplex, duplex and acreages involving 282 acres in the Antelope Creek near the top of the basin. Mr. Seacrest submitted proposed amendments to the conditions of approval on the plat to clarify that they will replace trees that are removed and protect the wetlands; to clarify how they will manage the mini-park and the trails; and to set forth a series of agreements regarding the block lengths in trying to work around the wetlands and drainage area.

Ray Hill of Planning staff concurred that the staff has reviewed the proposed amendments and they are acceptable to the staff.

Opposition

**1. Charles D. Humble**, Erickson & Sederstrom, appeared on behalf of Rural Water District #1 of Lancaster County (RWD#1), in regard to the annexation request. The opposition by the RWD#1 is because of an issue, not because of this development. It is another growth issue. Mr. Humble came forward last December in relation to development at 40<sup>th</sup> & Pine Lake Road, indicating that because of the growth of Lincoln, Lincoln is beginning to bump into the service area of the RWD#1. In order to finance the distribution, they have a current bonded indebtedness of about four million dollars. Federal statute indicates that any municipality is prohibited from curtailing or limiting water districts such as RWD#1 from its ability to serve customers. Through this annexation, RWD#1 is losing

customers which makes it unable to meet its expenses and pay its indebtedness.

On March 18, 1999, Mr. Humble forwarded to the Mayor's office extensive background and a legal memorandum relating to this issue and requested a meeting to discuss. Now, after the election, etc., Mr. Humble has a meeting scheduled with the Mayor on July 16th (this is the meeting that was requested in March). Because this issue is vital to the existence of the RWD#1, Mr. Humble requested that action be deferred so that annexation cannot occur prior to their ability to meet. This may jeopardize the district's abilities to raise these issues further if the annexation does occur.

Bayer noted that there would be six weeks between now and when something is approved by City Council. He suggested that the Commission go ahead and take action today, and Mr. Humble will have his meeting with the Mayor before action is taken by the Council. Mr. Humble stated that he wanted to be on the record at each point of the process that he can.

Hopkins observed that this seems to be somewhat similar to the issue that the varying school districts face in annexations and the school bond issues. Mr. Humble noted that the staff report alludes to the school districts, fire districts and SID's, all of whom have been protected by state statute. Federal law applies to the rural water district as opposed to state statute. The purpose of the meeting with the Mayor is an attempt to begin to carve a procedure so that there are no surprises when the annexation comes forward.

Ray Hill of Planning staff advised that the school board and rural fire districts have a formula in place as to what the value is and then there is some type of agreement to offset that. Hopkins wondered if that would only be applicable to this situation or something that could be the model for the future. Mr. Humble stated that the desire and request of the RWD#1 is that it be all inclusive. This just happens to be one of the first ones that has come forward. As time goes along and Lincoln continues to grow, the issue will come up again and again and again. The RWD#1 also wants a formula so that it can be taken care of as an administrative function each time an annexation comes forward.

Steward clarified that Mr. Humble is looking for an agreement between the district and the city that does not necessarily involve property owners, developers and future property owners. Mr. Humble concurred. The property owners/developer may know the difference from a cost point of view, but it should just be a formula that is applied. Upon annexation, there is a policy that the city will provide service as soon as reasonably possible and that's fine. There may be a short period of overlap, but the RWD#1 business is not to provide service inside the city.

Rick Peo of the City Law Department advised that the City Attorney's office will be attending the meeting on July 16<sup>th</sup> to look at the proposed interlocal agreement between the RWD#1 and the city to look at the issues and come to an understanding. Federal law is pretty clear that if the RWD#1 meets the criteria, they could prevent the city from providing to customers in their district, which is contrary to our annexation policies to provide public water. He does not believe federal law precludes annexation; it just precludes who provides water service to the new people, so annexation

should be very cautious. Until they can come to some determination, they will be hesitant to recommend annexations involving this issue to the City Council.

Bleed believes that if the Planning Commission approves the annexation but the RWD#1 in fact had to provide the water, she believes it is contrary to city policy. So what would happen? Mr. Peo believes that is speculative. Other jurisdictions that went to court would get an injunction against the city and no one else can provide water. We might not hit that issue immediately. The service of the water occurs at the time of approval of the final plat. He is hopeful that after the meeting in July they will have a better understanding of what is going to happen.

In response to questions raised by Steward on the Comprehensive Plan amendment, Mr. Hill clarified that the Comprehensive Plan Amendment does not include any additional land other than what is shown in the change of zone, plat and community unit plan. The only environmental concerns are the wetlands and wooded areas. Steward wondered whether there is a drainage basin issue. Mr. Hill stated that there is not--that was all raised and discussed as part of the preliminary plat. The staff recommendation is based upon all of the applications being approved. There is no offsite impact because of this development. The paving of 98<sup>th</sup> Street is part of the plan; with the annexation it becomes part of the city, etc.

Bleed noted that there are no lift stations allowed and that is a key issue. Mr. Hill concurred, noting that it was a design issue that they were able to move around and do it without lift stations.

There was no response by the applicant.

Public hearing was closed.

**COMPREHENSIVE PLAN AMENDMENT NO. 94-34**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Bayer moved approval, seconded by Wilson and carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**ANNEXATION NO. 99005**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Bayer moved approval, seconded by Schwinn.

Bleed thinks the RWD#1 issue is a big problem and it needs to be solved before moving ahead on this annexation. She wants to have the RWD#1 issue resolved before this property gets annexed.

Motion for approval carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**CHANGE OF ZONE NO. 3168**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Wallace moved approval, seconded by Schwinn and carried 9-0: Duvall, Krieser, Wallace, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**PRELIMINARY PLAT NO. 99002**

**VINTAGE HEIGHTS 2ND ADDITION**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Bayer moved to approve the Planning staff recommendation of approval, with the amendments as requested by the applicant, seconded by Krieser.

Bayer commented that the fact that this applicant has brought such a clean package forward should be applauded. And Hopkins commended the staff's ability to respond and work things out.

Motion for conditional approval, with amendments, carried 9-0: Duvall, Krieser, Wallace, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**SPECIAL PERMIT NO. 1762**

**VINTAGE HEIGHTS 2ND ADDITION COMMUNITY UNIT PLAN**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Bayer moved to approve the Planning staff recommendation of conditional approval, seconded by Wallace.

Steward noted some concern expressed for fire protection on this project and he would like some assurance from the staff that we are adequately serving the potential buyers. Ray Hill of Planning staff referred to the Fire Department comments. He believes it was more of a drafting error. They want to make sure there are adequate fire hydrants. Public Works did not indicate that there is a problem with water pressure as long as we get the booster pump and that is one of the conditions of approval.

Motion for conditional approval carried 9-0: Duvall, Krieser, Wallace, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**ANNEXATION NO. 99009**

**TO ANNEX PROPERTY GENERALLY LOCATED  
AT NO. 84TH STREET AND ADAMS STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:** June 16, 1999

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

Planning staff recommendation: Approval.

Steve Henrichsen of Planning staff did a brief overview that would cover the five annexations now being called for public hearing. There were 9 annexations before the Commission today; four were on the Consent Agenda, which include vacant lands and there were no controversies and the zoning is in place. This is the third annexation study the Planning Department has done, starting in October, 1995. A second study was done in 1997, and those annexations were just concluded in August, 1998. At this point, of all the previous annexations that have been approved by the City Council, generally about 16 were proposed by the city versus a developer or property owner.

Last summer, the City Council asked staff to research this again. The annexations were presented to the Council on May 17, 1999, and the Council directed staff to forward the annexations to the Planning Commission. A letter was sent May 18, 1999, to all the affected property owners explaining the typical issues in an annexation; an open house was held on June 2, 1999, to talk with the property owners. The staff generally recommends approval of all the annexations being considered. They are contiguous, inside the future service limit, are generally urban in character, and most are already developed. Mr. Henrichsen stated that he will be requesting that Annexation No. 99011, at 14<sup>th</sup> & Mockingbird Lane, be deferred for two weeks because two property owners were inadvertently left off of the mailing list.

Mr. Henrichsen submitted a letter from Jim White in opposition to the annexation of the North Forty Golf Course and one residential lot. Mr. White does not believe the North Forty is yet surrounded by the city limits; sanitary sewer and water service are distant from his clubhouse and he does not need that service; he has already set prices for golf course membership and does not believe it is fair to increase the prices to cover additional city sales tax; the annexation will increase property taxes; and the property is shown as parks and open space in the Comprehensive Plan and he does not have the flexibility to development his property. Mr. White is requesting that this annexation be delayed one to two years.

Wallace inquired whether Mr. White would be required to tie into the city services. Mr. Henrichsen stated that it is policy that anybody who is on their own water service can keep their own well. They are not required to hook up to City water. If the property is within the City Limits and within 300' of a sewer line and can hook up physically, then there is a city ordinance that requires the property owner to hook up to the city sewer within 6 months. Mr. White's clubhouse is far away from any existing sewer line. If requested, however, it could be provided. He will not be mandated to hook up to sewer or water by this annexation. Mr. Henrichsen pointed out, however, that in a prior annual review, the North Forty asked for the corner of the property to be shown as commercial for a grocery store type of development and the rest as urban residential. That amendment was not approved by the City Council.

There was no other testimony in opposition.

Bleed asked for staff's response to waiting two years as suggested by Mr. White. Mr. Henrichsen

stated that in general, that is a comment that has been made in the past. Individual citizens as well would like the same opportunity to have the annexation delayed so that they would have time to change their plans for their property. But, in general, for many of these properties, particularly the North Forty, it has met the annexation criteria for several years. Certainly, there may some type of impact as far as property taxes, but that is the same impact as any other commercial activity inside the city limits.

Steward asked then if there has been any discussion with the property owner about annexation over the last couple of years since it has met the criteria. The major point Mr. White makes is rate scheduling for his customers which is return on his investment, and it is the planning period that he would have questions about. Is this the first notice that Mr. White has received? Mr. Henrichsen advised that May 17, 1999, would be the first official notice that this was going to happen. Mr. White has at numerous points had very preliminary discussions about developing this property and bringing it inside the city limits. He was involved in the North 84<sup>th</sup> Street subarea plan development three or four years ago. Certainly, he has been aware that this area could be potentially annexed. But the first formal notice was May 17, 1999.

Wallace confirmed that the property would still be taxed even though it doesn't need the water or sewer. Mr. Henrichsen responded that his property would be taxed for the general property tax levy, which does not support the city water and sewer. He is not paying for the city water or sewer because he would not be a rate payer.

Steward asked whether the Commission can defer annexation to a date specific, such as 12 months, so that the property owner might have an opportunity to do his business planning accordingly. Mr. Henrichsen's response was that the Planning Commission is making a recommendation to the City Council. Steward's concern is that the property owner does not have a chance within at least 12 months to adjust his business plan, but he may say, oh, well, I'll just wait and see what happens and still do nothing in the meantime. Steward would rather take action that says when it's going to happen to give the owner time to adjust.

Rick Peo, City Attorney's office, advised that he does not know the answer clearly. You can adopt ordinances that have a time certain effective date, but he does not know if that would apply on an annexation. Mr. Peo suggested that he would need two weeks to look at it.

Mr. Henrichsen observed there are two different ways the City Council could do it. They could put it on pending for a year; or they could approve the ordinance but craft it such that the annexation does not become effective for 12 months.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Steward moved approval of the annexation, not be implemented for 12 months, seconded by Duvall.

Duvall finds it unusual where we need to annex a golf course and a park that is so sufficient.

Wilson believes the motion is a good one, but thinks a vote to deny would accomplish the same thing. But, Steward believes denial leaves the property owner without any specific action to work against. This way, he will be alert to the City Council action and he will know what we were recommending and he could plan accordingly.

Schwinn agreed with Steward.

Bleed recalled a similar situation not too long ago where we had some homeowners where a huge part of their family income was tied up and they were making the same request for a delay to get their finances in order, etc., etc. She is not against the idea that annexations would be approved but then there would be a period of time where the people being annexed would have time to get their ducks in a row for the impact. However, that is a fairly significant policy change. She is concerned about doing this on a piecemeal basis. Why this property and not some homeowner who has the same problem and needs to figure out how to borrow some money? Steward noted that the Commission does not have that information. It's speculative and that is why legal needs to research the question. There is enough time between here and the City Council for that question to be researched. Here we have explicit information and an explicit request and he believes the city benefits by having this annexation done eventually.

Bleed wondered whether there would be certain criteria where this would be appropriate and others where it would not be appropriate? Steward does not believe we can anticipate all of the conditions and he is willing to take them case-by-case. Hopkins thinks the difference here is the use to the north and to the east. It's not in the middle of the donut.

Krieser believes that all property owners should have a certain length of time before they are annexed to know that they are going to be annexed.

Steward stated that he has always felt that we bend over backwards not to do takings and not put people in jeopardy for their lifestyle or economics, yet annexation seems to be a very sudden process. Maybe this would set a precedent that would fit.

Bleed thinks that a grace period of sorts makes some sense.

But Wallace wondered about the impact to the other side--the developers. It would be nice to have time for people to prepare.

Hopkins pointed out that property owners should not be surprised if they are in the county and see the city coming toward them. It should be a wake-up call every time they drive down the road. It's a natural process. You have to know it's coming your way.

Motion for approval, with the annexation not to become effective for 12 months, carried 9-0:

Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**ANNEXATION NO. 99010**  
**TO ANNEX PROPERTY GENERALLY**  
**LOCATED BETWEEN SOUTH 56<sup>TH</sup> STREET**  
**AND SOUTH 66<sup>TH</sup> STREET, NORTH OF PINE LAKE ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 16, 1999

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

Planning staff recommendation: Approval.

Steve Henrichsen of Planning staff pointed out that this property is located on the west side of 56<sup>th</sup> Street; Pine Lake Road on the south; the Trade Center to the north; Jerrold Heights is to the west; Country Meadows is to the east. Shadow Pines was annexed by final plat in the middle. This property meets all of the Comprehensive Plan criteria for annexation.

Mr. Henrichsen also pointed out that how many sides of property is bordered by the city limits is not one of the criteria for annexation. The criteria includes contiguous, urban in character, and generally developed. The policy does say that if property is surrounded on all sides, it shall be annexed. The State Fair Grounds is the only property completely surrounded by the City Limits and not annexed.

Bleed suggested, however, that if the property is surrounded by three sides, it is likely to become the donut.

Mr. Henrichsen further pointed out that this area has several parcels which are vacant; a lot of the other parcels are 3-5 acre residential lots; the sanitary sewer line is being extended along Beal Slough to serve Shadow Pines; there is a water main in Pine Lake Road; and the CIP includes improvements to Pine Lake Road to four through lanes in the near future.

Opposition

**1. John Hollingsworth**, 6520 So. 56<sup>th</sup>, appeared on behalf of his family and his parents at 6510 So. 56<sup>th</sup> in opposition to annexation because of the financial impact--the real estate taxes will increase and will be a hardship. He does not believe annexation is necessary at this time. He realizes they are in a position that is prime for being in the city and developing, but they have lived on this property all his life. His parents bought the farm in 1938; he grew up on the property; it is very sentimental. He knows things change, but it is their hope to stay a little country acreage as long as possible. His parents are in their 80's and it has been his personal hope not to disrupt the property until they are gone. Mr. Hollingsworth has not talked to all the neighbors but three people he talked to are against it. He has talked with Mr. Henrichsen and he understands the criteria and knows that they meet the criteria. He just doesn't want it to happen.

**2. Mr. Dobson** testified in opposition. He talked about the decisions involving the Trade Center, Southfork and Country Meadows. Each time the City Council made a mistake, with Southfork and with Country Meadows, he knew he would eventually have to pay the price because to bail them out, the sewer has been put in. The Berean Church is the last straw. Now they need sewer, and so we're faced with the same thing that we've been working on for 30 years. So now it will be done on the backs of those property owners because the Berean Church wants sewer. His neighbor's property value went up \$70,000; his went up \$30,000. The property values have jumped substantially and if annexed, their taxes will probably increase \$1,000 a year, plus all the assessments that they will have to pay. They didn't want it; they're not asking for it; and all this good development is being done on the backs of people that are some of the solidest citizens that you have in the county. This annexation is just plain wrong. It is not necessary. Pine Lake Road does not need to be a four-lane highway. That's ludicrous.

Bayer was trying to rationalize why this annexation would be different than what the Commission just voted to do with the North 40 Golf Course, i.e. approve the annexation, but not to become effective for 12 months.

Wallace also pointed out that the Commission just voted to delay annexation for a business owner and this homeowner is wanting the same treatment.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

June 16, 1999

Bayer moved approval, seconded by Schwinn.

Bayer believes this is a different situation than the North 40 Golf Course. He understands the opposition and he would have been swayed significantly if all the property owners had shown up today. The Commission did not receive any letters in opposition. The City has a responsibility to follow the Comprehensive Plan.

Steward believes that Mr. Dobson makes an excellent speech about the problems of growth. Annexation comes with growth and the cost of services comes with growth. And the decisions that are made for property ownership that happen to be in the direction of growth are decisions that need to be made carefully and reconsidered often. Denial is not an option in this case. Delay might be an option but we did not have a well-spring of concerned property owners. He can make the difference between the two on the basis of individual circumstance.

Bleed is struggling. She is having a real problem distinguishing between this one and the North Forty. It is a business, but to an individual, she does not know she can make that big of a distinction. We are moving into an area where the discussion has been helpful. She has a lot of sympathy for

those property owners that have annexation forced upon them, whether individual or business, but at the same time the home developer that wants to develop the property and wants it annexed has money tied into it on the other side. Bleed stated that she will vote in favor, but wishes she could retract her vote on the North Forty Golf Course annexation.

Hopkins believes it is evident that the city has been coming in this direction. We voted on Comprehensive Plan Amendments as to where we are going to grow several years ago. You've got to know it's coming—you don't like it but you have to know it's coming. There are ways to recoup some value if the property owner chooses to develop the property. It's not a donut, but it's close.

Motion for approval carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**ANNEXATION NO. 99011**  
**TO ANNEX PROPERTY GENERALLY LOCATED**  
**AT SOUTH 14TH STREET AND MOCKINGBIRD LANE**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 16, 1999

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

Planning staff recommendation: Approval.

Mr. Henrichsen requested that the Commission continue public hearing for two weeks until June 30, 1999, because there are two property owners that were not notified.

Mr. Henrichsen further explained that this property is on South 14<sup>th</sup> Street in the area of Mockingbird Lane North and Mockingbird Lane South. To the north of this property is Densmore Park, which is inside the City Limits; to the east is Lincoln Memorial Cemetery which is inside the City Limits; to the south is I-3 zoning and part of the Horizon Business Center; to the west is the Burlington Northern and Union Pacific Railroad tracks and then Wilderness Park.

With regard to the Lazy Acres subdivision, 14<sup>th</sup> Street is in the CIP for improvement; there is a water main in South 14<sup>th</sup> Street; sanitary sewer trunk line is along the railroad tracks to the west. The property is zoned R-1. Lazy Acres is generally one-acre in lot size. This property meets all the criteria for annexation.

Mr. Henrichsen also pointed out that as we have gone through the previous 16 annexations over the last four years, there have been various annexations where nearly 100% of the residents were opposed to annexation. In those cases, the Planning Commission still recommended approval if it met the criteria of the Comprehensive Plan, and the City Council approved those annexations. Opposition by the neighborhood is not one of the criteria.

With regard to infrastructure in the vicinity, Mr. Henrichsen stated that in this particular area, there is only the water main in 14<sup>th</sup> Street and sewer trunk line along the railroad tracks. There is also a water main in Pine Lake Road. Within the area, there are not any city water or sewer lines. The properties are all on well and septic.

Opposition

**1. Keith Herbster**, 1201 No. Mockingbird Lane, testified in opposition. The sewer is at the railroad tracks, which is 1/4 mile from Lazy Acres. It costs \$30 a foot to get the sewer line in. The water line costs \$10.00/ft. It is at least 1/4 mile away. He is concerned about the assessments. With regard to fire protection, there is no water out there except for their own wells. Who will pay the assessments being requested by the Fire Department? The property owners are not asking to be annexed. A few years ago, he was told he would not be asked to be annexed until utilities are in the development. As far as urban in character, there is a park to the north, to the east is a cemetery, to

the south is rural, and to the west is Wilderness Park. To him, that is not urban in character. He believes it is a rural area. The infrastructure and service issues are not adequately addressed. 1/4 mile is not a minor extension in his opinion and is very costly. Why are we being annexed prior to the utilities being in place? This is a real concern and it is way too early to consider this annexation.

Mr. Herbster has lived here for 30 years.

Mr. Herbster got the letter about the June 2<sup>nd</sup> open house. He agreed that there has been talk about annexing the property for 4-5 years.

**2. Melva Plouzek**, 1111 South Mockingbird Lane, testified in opposition. The Lazy Acres property owners are self-sufficient with no problems with their wells or septic fields. There was mention made at the meeting that until they are within 300' they could continue with their wells and septic, and that their wells can be amended if there was a problem with the purity. There are covenants that have been in place since the subdivision was developed 30 years ago; part of the covenants are that the property will not be subdivided. Where would they stand on being able to continue to follow those covenants with annexation? The City will bring in the gravel and spread it, but then charge the owners for it. Their road is very usable and it costs her \$100 a year to maintain it. If the city is coming into this area, there is an existing easement for utilities, lights and cable. There are only 3 out of the 14 houses that might be a problem. If the owners are going to be responsible for paying for the gravel in order to maintain an unpaved road and the city comes in and tears it up like they tore up the approach, they will be in a bad situation. We all know it is inevitable but how it is done makes a big difference and the cost and expense to the property owners could be minimized. 90% of the residents are retired and on a set income. They need more information to work on in dollars and cents. They said at the meeting that there would not be any tax change and the next morning they received new valuations. Her property values appreciated \$20,000 two years ago, and another \$30,000 was just added. If she can get that market value, her property is up for sale. She wants to stay there because she built her home in terms of retirement. She does not want to start over at her age. These forced annexations are doing that to people. It would really help to have up-front knowledge of the dollars and cents. She wants to be sure they can continue the covenants and use the utilities that are laid out.

Bayer inquired about responsibility for the cost of extending the water and sewer. Mr. Henrichsen stated that the property owner would have to pay for the sanitary sewer only if they hook up, and they do not have to hook up if more than 300' away. The property owners would pay the city property tax levy. Bayer wants to know who pays for the sewer from the railroad track to their homes. Mr. Henrichsen explained that if the property to the west is subdivided, the developer would pay to bring it to their property line. From that point on it is possible that it would be done by assessment district.

Bayer asked whether the city honors easements and covenants. Mr. Henrichsen assured that the easements and covenants would not be changed by annexation.

Bayer inquired about the city's responsibility for repairing the road appropriately. Mr. Henrichsen advised that the issue as far as the gravel is the same standard of any other gravel road in the city limits. The property owners pay for the gravel, but the city pays for the expense of grading and spreading.

Mr. Henrichsen further explained that water and sewer are not CIP facilities. The City cannot put utilities in the street unless they are inside the city limits. The mains are paid for by the City. A property owner does not pay for sewer and water through their property taxes. Dennis Bartels of Public Works explained that in this instance the sewer is at the west boundary on the west side of the tracks. The rest of it is generally benefitted property. The water is available on the east side in 14<sup>th</sup> Street.

Bleed suggested then, if you were living on the west side, you would have to pay for the full length of the water line from the west. Mr. Bartels responded stating that everybody in between there and where it is extended to would end up paying their fair share of the total cost of both water and sewer.

Steward pointed out that in deference to the homeowners' testimony, it is actually ½ mile to get the sewer from the tracks to the eastern edge of the property; and ½ mile to get the water from where it is on 14<sup>th</sup> Street. But, Mr. Bartels clarified that all the property between is assessable.

Mr. Henrichsen clarified that the sewer line that would be serving these lots is the sewer line that is not necessary to serve the cemetery so it is a sewer line that would benefit them. If they do not request the assessment district, then their septic could stay in place. The water service could be phased.

With regard to the easements, Mr. Bartels does not know what easements are in place. Traditionally, the sewer and water go in the streets. If we have to run outside the street, we would try to utilize existing easements.

Bleed asked what the city is doing to try to provide the cost estimates. Mr. Bartels stated that previously, Public Works has done some preliminary engineering to show in general how the property could be served with some cost estimating. This could be done before the annexation gets to the City Council. At this point, it would only be an estimate. Assessment districts are based on the costs of the actual project. Bleed thinks it would be helpful for the homeowners to have some idea of the costs.

Bleed moved to defer two weeks, with continued public hearing and administrative action on June 30, 1999, seconded by Wilson and carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**ANNEXATION NO. 99012**  
**TO ANNEX PROPERTY GENERALLY LOCATED**  
**BETWEEN SO. 63RD STREET AND SO. 70TH STREET,**  
**SOUTH OF PINE LAKE ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:** June 16, 1999

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

Planning staff recommendation: Approval.

Mr. Henrichsen stated that this property is located South of Pine Lake Road west of 70<sup>th</sup> Street, including several acreage lots to the south of Country Meadows. Colonial Acres was part of a previous annexation; then there was a large area between 56<sup>th</sup> & 70<sup>th</sup> along Old Cheney Road to Hwy 2 which was also annexed at the request of the City; the area north of Pine Lake Road has been recommended for approval. There is a water main in Pine Lake Road; the sanitary sewer trunk line is about ½ mile from this area, but it is in the CIP. The property to the west is Campbell's Nursery. The initial proposal from staff was to include the northern part of Campbell's Nursery, but the City Council felt it more appropriate for the Campbell property to be looked at as a master plan versus the city annexing just the northern portion.

This property is currently zoned AGR and meets the criteria for annexation.

Bayer believes this is significantly different than the other annexations on today's agenda. Bayer wanted to know why the Campbell property was not included. Mr. Henrichsen explained that the lot proposed was the northern 80 acres. Campbells includes several more lots going all the way down to Yankee Hill Road. Bayer wondered why the staff is recommending not to annex Campbells but to annex Jim White's golf course. Mr. Henrichsen went on to explain that the nursery is AG use. Bayer disagrees. He think it is a commercial use. Mr. Henrichsen then stated that the property was designated as urban residential in the Plan and we anticipate a proposal in the future to rezone the property to R-3 and develop a community unit plan or preliminary plat. There would be an annexation agreement to address all of the infrastructure for that area at that time.

Opposition

**1. Mr. Dobson** testified in opposition. If the city can't tell us how much it is going cost, then the City needs new city engineers. He does not believe there is any real justification for this annexation. As far as the Campbell property, there are two homes that are built there that are not included in this annexation and they are adjacent to the property proposed to be annexed. For some reason, they have been excluded. There are a lot of inconsistencies here. The Planning Commission tempers what the engineers do, just like civil government tempers what the military does. The annexation of this property is uncalled for. He has worked with the Family Acres Association for 25 years; it has been a very viable organization. If there was truly justification for annexation, the property owners would welcome it with open arms. If you want to provide sewer to the church or the triangular piece, go

ahead and do it, but you do not have to annex these people in to do it.

This is a very emotional thing. He built his home for \$40,000 and it is now valued at \$243,000. He has been retired for 15 years, but you really can't plan for this.

Mr. Dobson also believes it is a mistake to spend \$1.00 to improve Pine Lake Road. It is more than adequate to meet today's needs and the needs over the next 10-15 years.

He suggested that the Commission needs to have more compassion when annexing property and make darn sure it is something that really needs to be done—not just because somebody thinks it ought to be done.

**2. Janice Ross**, 6401 Pine Lake Road, does not think the average working person can come to these meetings without endangering their job. If we are going to follow the criteria in the Comprehensive Plan to the letter, then it is odd that the amendments to the Comprehensive Plan are almost as large in bulk as the Comprehensive Plan itself. She did not know about the favoritism being shown the Campbells until today and she is really angry. It just appears that the timing is not right. Her property does not have city on any side of it now. She sees no other reason than tax base. She has large animals and is looking for a place well outside the three-mile limit. She called the city when she moved out there and she was told that no developments were planned. She knows there are viable studies that widening roads and increasing speeds only increases the problem. It looks to her like Lincoln wants to become a mini-Los Angeles without the weather and without the ocean. A good part of the county is now in the City of Lincoln. We underestimate the value of food. Pretty soon, we're not going to have farmland. We should not confuse the words growth and progress, at least not positive progress. Sprawl is counterproductive. You may increase your tax base but you won't get anything for it in the end. There needs to be some attention paid to the larger issues rather than these piecemeal annexations and worrying about getting a tax base to support the school bond issues.

With regard to the animals, horses can be grandfathered as well as her steer, but she has a pig that used to be at the zoo and he cannot be grandfathered in. Ms. Ross wants more time to find another acreage further away.

She has been there 13 years.

**3. John Moller**, 7201 So. 70<sup>th</sup>, the southernmost property facing 70<sup>th</sup> on this annexation, testified in opposition. His big complaint is not including the Campbell property. He would rather see a straight boundary instead of jumping here and jumping there and picking and choosing. There is no reason why Campbell's should not be included. All the property owners are against annexation. He has lived out there 35 years without the city. Mr. Moller requested that this annexation be postponed for a couple years or until the City takes in Campbell's Nurseries. In the meantime, maybe he could sell his property and move to Missouri where he could afford to live.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** June 16, 1999

Bayer moved to defer until Campbell's Nursery comes forward with their proposal to bring in the whole area, seconded by Wallace.

Bayer agrees that it does make sense to draw the line directly across. What is the rush on this annexation? And some of the neighbors are paying Waverly School taxes. He does not want to approve this annexation because there are a whole lot of questions about this process.

Hopkins inquired about the previous agreement involving the school districts. Rick Peo of the City Attorney's office referred to an agreement between the city and LPS where LPS would not collect tax from people in Waverly that are already paying on the Waverly bond issue. That agreement was not for every annexation. Each one was negotiated individually.

Steward wondered about delay of implementation. He thinks the Commission needs to be cautious about precedent. He will support the motion if the ownership reference is deleted. He does not believe it is appropriate to single out a property owner for an impending condition. This was accepted as a friendly amendment to the main motion, to delete the reference to the property as "Campbell's Nurseries".

Secondly, in terms of principle, Steward wants the record to reflect that we are going to get more and more of the acreages in annexation conditions because we are finally bumping into this circumstance and this is why he has been so persistent in recommending no approval of new acreages that are within the near vicinity of the service limits of Lincoln. We are seeing the exact problem. People can purchase cheaper land, build cheaper residences and suddenly find themselves with no alternative but to sell or move out for redevelopment because of annexation. This is not a decent way to do planning. We are putting people in jeopardy without guidance in our Comprehensive Plan. He was going to make a motion to give residential acreages two years of deferment in annexation circumstances, but he thinks the motion as made is an appropriate one. This plot is extremely different than annexation of the plot on South 56<sup>th</sup> Street slightly to the west and north. There are many, many more people to share the infrastructure costs. The conditions are not the same. Somehow we have to come to grips with acreage conditions and annexation actions.

Bleed added that another big difference she sees is that this is not surrounded on three sides or more by annexed area.

Hopkins advised that the main motion is to defer until the general area and all of the land to the west continuing a straight line over to 56<sup>th</sup> Street is brought forward for annexation. Motion carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

**ANNEXATION NO. 99013**  
**TO ANNEX PROPERTY GENERALLY LOCATED**  
**AT SOUTH 93RD STREET AND OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 16, 1999

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

Planning staff recommendation: Approval.

Mr. Henrichsen had to leave the meeting so there was no presentation by the staff.

Opposition

1. **Susan Chadwick**, 9200 Old Cheney Road, testified in opposition. She owns 21 acres zoned AG and is engaged in agricultural activities with no plans to change the usage of her property. Last year, she opposed Himark Estates to the east because it violated the sanitary sewer design standards. At this time, she believes this property is being proposed for annexation only to aid in the development of the lots to the east. They currently have Greenbelt status on their property and by being annexed, they will lose that status and will have to pay three years back taxes plus accrued interest at 6%--the cost is estimated to be \$1800. Also, because their property has been split in half with two taxing districts, Waverly and Lincoln, there will be an increase in tax rate for the portion going into Lincoln from 1.764 to 2.175. Her assessed value increased \$35,000 in 1999. Currently, her house sits over 300' from the road and they would not be hooking up to the sewer and would not hook up to the water. Their systems are less than 10 years old and in good working condition. The well sits on the side that would be Lincoln property and she would have to pay the \$50 annual permit and go through annual water review.

The property owners were told at the open house that there would be a savings on their homeowners insurance. Ms. Chadwick checked and found that there would be no change in her insurance rates. When going through the opposition to Himark Estates, she had talked to city staff about annexing farmland and it was indicated that there are certain city permits they would have to obtain for certain farming operations. Ms. Chadwick requested that the Commission at least consider reducing the amount that is proposed to be annexed so that she can reduce the amount of back taxes that she will be paying if annexed. The Himark golf course is not proposed for annexation. Ms. Chadwick suggested that she be given the same consideration as the golf course.

The land across the street is in the process of being zoned and annexed (Vintage Heights), and these property owners believe that if Old Cheney could be brought in with that annexation, their property would not have to be annexed.

In addition, Ms. Chadwick does not believe that AG property is urban in character.

Schwinn pointed out that only part of the Chadwick property is being annexed. The part in the Waverly School District is not being annexed. Only the south part of their property is being annexed. 7 acres would be annexed, and the rest of the 21 would not be annexed.

**3. Ken Hunter**, 9330 Old Cheney Road, testified in opposition. Prior to purchasing his property in 1989, he talked with the Planning Dept. and he was told that he would be in the Stevens Creek area and that would not be annexed for 25-50 years. He does not believe this property would even be considered for annexation if it wasn't for the Himark Estates development. Although he has many concerns and questions, his main concern is the sewer. His property lies entirely in the Stevens Creek drainage area and he does not believe it is sewerable. If not sewerable, he should not be in the city. His property is adjacent to Outlot L. Outlot L does not have any proposed housing on it whatsoever, and that's because it is unsewerable. He believes he is within the 300'. He is also concerned about water. He's in RWD#1, and he is the last one on the line. He is also concerned about snow removal. Old Cheney Road is always clean. Is the City going to provide the same type and quality of service that the county is now? He is also concerned about the proposed future service limit lines. He thinks they are just for the convenience of some people or some developers. There appears to be no rhyme or reason. If annexed, his property taxes will go up. He is getting nothing in return except for regulations that he does not want and he does not believe his property meets the criteria.

**4. Charles D. Humble**, Erickson & Sederstrom, appeared on behalf of Rural Water District #1 of Lancaster County (RWD#1), in regard to the annexation request. The opposition by the RWD#1 is because of an issue, not because of this development. It is another growth issue. Mr. Humble came forward last December in relation to development at 40<sup>th</sup> & Pine Lake Road, indicating that because of the growth of Lincoln, Lincoln is beginning to bump into the service area of the RWD#1. In order to finance the distribution, they have a current bonded indebtedness of about four million dollars. Federal statute indicates that any municipality is prohibited from curtailing or limiting water districts such as RWD#1 from its ability to serve customers. Through this annexation, RWD#1 is losing customers which makes it unable to meet its expenses and pay its indebtedness.

On March 18, 1999, Mr. Humble forwarded to the Mayor's office extensive background and a legal memorandum relating to this issue and requested a meeting to discuss. Now, after the election, etc., Mr. Humble has a meeting scheduled with the Mayor on July 16th (this is the meeting that was requested in March). Because this issue is vital to the existence of the RWD#1, Mr. Humble requested that action be deferred so that annexation cannot occur prior to their ability to meet. This may jeopardize the district's abilities to raise these issues further if the annexation does occur.

**5. Mike Morosin**, past president of Malone Neighborhood Association, testified in opposition. It is very hard and not conducive for many of the public to attend these meetings. He suggested that this issue be brought to the forefront and put one or two of these meetings in the evenings so that people can feel like they are part of the government.

Government becomes its own worst enemy. The people are the government and many times the

people have come forward and asked for these meetings to be in the evenings.

Wilson commented that he has been on this board for five years, and if something is bothering someone and they can't come to the meeting, they can write a letter or call him.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**      June 16, 1999

Duvall moved to deny, seconded by Bleed.

Duvall does not believe the time has come yet for this annexation.

Schwinn understands that Mr. Henrichsen had to leave and is not available to answer questions. At best, Schwinn would have agreed to a deferral for two weeks, but he also supports denial. He does not understand why the golf course is not annexed. Why the island? Steward concurred.

Motion to deny carried 9-0: Duvall, Wallace, Krieser, Wilson, Schwinn, Bayer, Steward, Bleed and Hopkins voting 'yes'.

There being no further business, the meeting was adjourned at 6:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 30, 1999.