

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 30, 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, Greg Schwinn, Cecil Steward and Joe Wilson (Steve Duvall, Barbara Hopkins, Gerry Krieser and Rick Wallace absent); Ray Hill, Mike DeKalb, 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

Vice-Chair, Russ Bayer called the meeting to order and requested a motion approving the minutes for the meeting held June 16, 1999. Motion to approve made by Schwinn, seconded by Steward and carried 5-0: Bayer, Bleed, Schwinn, Steward and Wilson voting 'yes'; Duvall, Hopkins, Krieser and Wallace absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

June 30, 1999

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

The Consent Agenda consisted of the following items: **COUNTY CHANGE OF ZONE NO. 189; CHANGE OF ZONE NO. 3189; CHANGE OF ZONE NO. 3192; USE PERMIT NO. 120; SPECIAL PERMIT NO. 286H; SPECIAL PERMIT NO. 1293B; SPECIAL PERMIT NO. 1771; SPECIAL PERMIT NO. 1779; CITY/COUNTY FINAL PLAT NO. 99021, TIMBERLINE ESTATES 1ST ADDITION; COMPREHENSIVE PLAN CONFORMANCE NO. 99007; AND FINAL PLAT NO. 98031, NORTHERN LIGHTS 1ST ADDITION.**

Nothing was removed from the Consent Agenda.

Bleed moved to approve the Consent Agenda, seconded by Steward and carried 5-0: Bayer, Bleed, Schwinn, Steward and Wilson voting 'yes'; Duvall, Krieser, Hopkins and Wallace absent.

This is final action on Use Permit No. 120; Special Permit No. 1293B; Special Permit No. 1771; and Final Plat No. 98031, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

CHANGE OF ZONE NO. 3186

AND

CHANGE OF ZONE NO. 3193

TEXT AMENDMENT TO THE ZONING ORDINANCE

REGARDING "BOARDING AND LODGING HOUSES".

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: June 30, 199

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

Planning staff recommendation: Approval of Change of Zone No. 3186 and denial of Change of Zone No. 3193.

Jennifer Dam of Planning staff provided a summary of the two text amendments being proposed. The Near South Neighborhood Association wants to remove boarding houses as a permitted use in the R-6, R-7 and R-8 Residential zoning districts (Change of Zone No. 3186). Change of Zone No. 3193 is proposed language to make boarding houses a special permitted use in all residential districts. This was suggested by the Planning Commission. While requiring a special permit for boarding houses is an improvement over "by right", it would be difficult to develop criteria to provide adequate guidance to Planning Commission and City Council to distinguish between a boarding house that would have a positive impact on the neighborhood and one that would have a negative impact. If a boarding house were found to have a negative impact, it could be difficult to deny the request for the special permit because the City Attorney has previously indicated that if an application meets the required criteria for a special permitted use, then it should be approved.

Ms. Dam further pointed out that it does not appear that boarding houses are being used at all today to serve housing needs. There is only one that has been recently established, and that boarding house is an example of a detrimental impact that would occur under the existing zoning ordinance, based on other homes in the area and the number of police calls for that particular boarding house.

Ms. Dam further noted that at the last hearing, Commissioners Steward, Bleed and Wallace had valid concerns regarding availability of housing for certain citizens; however, the housing needs of those groups referred to are not being met today

through the use of boarding houses. If the zoning ordinance does present obstacles for provision of housing, then those obstacles should be addressed in an appropriate quorum.

Ms. Dam advised that the staff recommends that boarding houses be removed as a permitted use, but if the Commission wishes to allow boarded houses as a special permitted use, Ms. Dam suggested that additional time should be given for city staff and the public to review the proposed language.

Proponents

1. Jon Carlson, President of the Near South Neighborhood Association, testified in support of Change of Zone No. 3186 to remove boarding and lodging houses as permitted uses in R-6 through R-8 residential districts. He agrees that housing to serve four or more unrelated people is an issue that needs to be addressed. It is an issue that deserves in-depth review and thought. He believes that the proposals before the Commission today do not serve well as that forum. There are no boarding houses being operated to serve groups of students--without being the property owner, a student or group would not be able to obtain a license for a boarding house. There are currently no boarding houses that exist to serve a particular culture or ethnicity; however, there does appear to be an unfortunate demand to operate boarding houses as de facto group homes by denying services to their clientele. This is a serious problem throughout Lincoln. Congregate living is not met by the boarding and lodging house use. In addition, Mr. Carlson does not believe that allowing boarding houses by special permit serves any current or future population need. Boarding houses simply allow a harmful practice to continue and proliferate without addressing the current problems with boarding houses and the loophole. The minimal number of current legal boarding houses is an indication that the need is very low, indeed in a residential zone. The option is currently not being used, but is currently being abused. Neighborhoods suffer because of irresponsibility and resultant instability. The elimination of boarding and lodging houses will alleviate this suffering. The only people to experience a hardship would be those wishing to operate an otherwise illegal group home by denying services to their residents. Mr. Carlson does not believe that boarding and lodging houses address the concerns being raised by the Commission.

Wilson clarified that Mr. Carlson believes that people are operating de facto group homes and calling them boarding houses all over the city. Mr. Carlson stated that he believes that the current boarding house use is being abused in that fashion. He has anecdotal residential evidence from the properties that he knows of that have no classification as a group home, yet they seem to have multiple clientele and multiple residents. He has a neighborhood list of some 20 properties, all within the Near South Neighborhood that are suspect. Lincoln currently only has one legally licensed boarding house.

Wilson wonders how removal of the boarding houses will change anything that's happening. Mr. Carlson believes it will allow the city to require a group home license for something that is operating that would otherwise be a group home. If they don't want to get the proper license, then the city can say they have no standing. Mr. Carlson suspects that some of the properties are operating illegally even now because they are running a boarding house without having a license. It is difficult to get information from Building &

Safety because their data base is not set up to make the cross-reference. He has a list of many properties that are functioning as something other than an apartment house and definitely serving multiple residents. The suspicion is that they are operating group homes and calling themselves boarding houses.

Bleed understands the problem of proving that there are more than three unrelated people living in a house. This is very difficult. But she is not sure this legislation is the solution. Bleed understands the request to remove boarding houses, but there will still be homes that are not a boarding house or a group home to deal with. But, Carlson believes the text amendment removing the boarding houses will provide the legal standing to pursue it. The houses that are suspect appear to have some degree of staff coming in and vans of residents coming and going, etc. The Near South Neighborhood is not concerned with those homes that house college students.

2. Mike Morosin, resident of Malone Neighborhood, testified in support of Change of Zone No. 3193 and in regard to the idea that we do not want ex-convicts to be congregating. This is an issue that should be brought to all neighborhoods for discussion. We cannot treat ex-cons as second class citizens and tell them where they can and cannot live in the community. This is a constitutional question. He understands the problem--the question is whether they are run properly. Mr. Morosin is in favor of Change of Zone No. 3193 to allow the boarding houses by special permit. The Malone Neighborhood has welcomed in projects that many neighborhoods do not want, i.e. Day Watch, domiciles, etc. The Commission should think very clearly because this is a legal issue that some people will want to challenge if it happens. The special permit might help alleviate the problem because they will have to present their case. There is a need for a boarding house because many people cannot afford the cost of an apartment. We've lost some. For example, the YMCA doesn't provide housing any longer. Mr. Morosin suggested that just because boarding houses are not being utilized does not mean there is not a need. We're putting up invisible gates.

Ms. Dam of Planning staff clarified that the proposal to remove boarding houses isn't directed to eliminate housing opportunities for any one particular group of people; it is not directed toward ex-convicts. One of the concerns that has come forward is that, based on rumor, the existing boarding house is being targeted to parolees. She does not know that this is true but it is a concern because if that is the case, it should be a group home and meet the separation requirements. The big concern is that if there is housing that is needed and the services are needed, then those services should be provided and they should have a license as a group home.

Bleed believes the problem is determining when a group of individuals needs some kind of extra help, care or supervision. What she is hearing is that there are a number of places where we may have several unrelated people living together which is something that could be served by a boarding house. She thinks there are several legal issues. Aside from eliminating boarding houses, how do we go in and say that the residents are individuals

beyond a family unit that need extra help?

Bayer is not comfortable with where this conversation is going. He does not believe the Commission should be talking about evaluating people that live in homes. Rick Peo, Assistant City Attorney, advised that there is a legal distinction between a single family dwelling, group homes and boarding and lodging homes. Maybe our definition of group home waivers as to what we really intend or mean. Perceptually, the group home is individuals who fall under supervision of some kind with their activities being monitored. The boarding and lodging house is basically the rental of a room--an independent person living in a non-family relationship. Four people living in a single family home does not make it a lodging or boarding house. They are people that are living together and sharing the expenses--there is not one person who is providing all the facilities.

Steward believes this issue brings up a condition where we have both real and potential needs for alternative lifestyle and housing to accommodate those lifestyles for which we do not have a good definition. He indicated that he would be willing to vote for this if he felt it was going to allow us to discover whether there are unlicensed group activities, with or without services. But steps two and three are how to get a better definition for alternative living other than single family or group homes. Mr. Peo's response was that in the past, the city tended to adopt and carry on the same definitions as the state, but over time the state definitions have changed and the city has not kept up.

Wilson asked Mr. Peo whether he believes eliminating boarding houses will facilitate prosecution of illegal group homes. Mr. Peo does not see a correlation. The multiple non-related residents in a single family home is another issue.

Response by the Applicant

Mr. Carlson clarified that there was no intent by the Near South Neighborhood to impact existing group homes by pursuing the boarding and lodging house issue. He thought it was a "pro-group home" position in that they are trying to nudge those people that should be in a group home situation into a legally operating group home situation. All the neighborhood is asking is that facilities that would be better classified as group homes be so classified and follow the proper criteria. He agrees that the non-related numbers living in a single family home is a separate issue and one that needs to be addressed, also.

Public hearing was closed.

CHANGE OF ZONE NO. 3186

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 30, 1999

Schwinn moved to deny, seconded by Bleed.

Schwinn does not see that the Commission has been presented with a real problem and he agrees with Mr. Morosin that there is more work that needs to be done. Though we may not need boarding houses in this economy, we can't expect it to stay the way it is. These houses may be needed for students or workers or whatever, and he does not think it is appropriate to remove them.

Bleed believes there is a real problem here and she believes this was an attempt by the neighborhood to address the problem. She does not think eliminating the boarding house, however, is the solution to that problem. If we really did enforce some of our laws about group living, she believes we would see a need for some kind of classification of boarding house. She thinks there is clearly a need now in this city to allow a number of unrelated individuals to live together in one non-apartment type of structure. She suggests that the fact that we are not prosecuting is the reason we don't have more official boarding houses. She acknowledges a real problem here that the neighborhood has tried to address but she doesn't think this is the solution and she thinks the whole issue needs more work.

Steward encouraged the neighborhood, interested citizens and staff to get together to see if some clarity can't be brought to more of the practical conditions of variety of houses. He thinks we have the problem going on all over the city.

Motion to deny carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

CHANGE OF ZONE NO. 3193

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Bleed moved to deny, seconded by Steward and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

CHANGE OF ZONE NO. 3188

FROM R-4 RESIDENTIAL TO B-3 COMMERCIAL

ON PROPERTY GENERALLY LOCATED AT

NORTH 27TH STREET AND STARR STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION: June 30, 1999

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

Planning staff recommendation: Denial.

Proponents

1. **Jeff Frederick**, the applicant and a real estate investor who owns numerous properties along North 27th Street, testified in support. He owns the car lot on 27th & Starr and the

house directly to the east that is in disrepair as are numerous other houses in the area. Mr. Frederick has attended some of the North 27th Street Redevelopment meetings and, according to the North 27th Redevelopment Plan, they are looking for ways to clean up and beautify No. 27th Street. Mr. Frederick is proposing to rezone the property to commercial and tear down the house which he owns. His plan is to rock the area for storage of additional cars. He had just taken over the car lot and the old tenant had about 100 cars on this small lot. Since taking it over, he has cleaned it up and has received numerous compliments. He will not be putting 150 cars on this lot. He just wants to generate a little more room and make access easier. The house is in disrepair; it would not be financially feasible to fix the house.

In determining what action to take, Mr. Frederick stated that he talked with the Planning Department, who suggested that he discuss it with the neighbors and check into the North 27th Street Redevelopment Plan. He talked to the neighbor directly to the north of the house, which is zoned commercial, and he had no objection. The neighbor to the east, who has a duplex that is in disrepair and up for sale, had no objection. Directly to the south is LaundryLand, and even though not zoned commercial, it has a special use permit for parking. There is parking lot use all the way down the road to the south.

Mr. Frederick acknowledges that this request might appear to be a spot zone, but he suggests it is not.

Mr. Frederick informed the Commission that he has not been through this process before and he was caught by surprise that the staff was recommending denial. He believes the area is already in residential decline and he does not believe removing a house in disrepair and rocking the ground is going to promote residential decline. He cannot wait until the city decides to rezone the area.

Mr. Frederick has owned the property 7-8 years. He has made numerous minor repairs to the house, but it is not currently occupied. The furnace went out last winter and the foundation is in disrepair. It would cost \$10,000 to \$15,000 to fix it up. It's a losing proposition.

Opposition

1. Connie Sievert, 2733 Starr, who lives right across the street, testified in opposition. She was not contacted by the applicant. She has put \$15,000 into her home; she is 50 years old; she does not need a car lot right across the street from her to reduce her property value. She does not believe putting a car lot in a residential zone is going to help. There are small children that play up and down the street all day long. The neighbors have been working on fixing up their homes. Why bring a car lot around the corner off 27th into the neighborhood? She has been told that commercial zoning of the property is way off in the future and that she should not worry about it.

2. Mike Morosin, past president of Malone Neighborhood, testified in opposition. He has been involved in the North 27th Street Redevelopment Plan. The intent is to try to save these houses that are affordable. He suggested that the applicant contact Roy Johnson of the Urban Development Department as there is money available for targeted areas such as this to fix up these rental homes.

Bleed noted the Urban Development comments that this is an area slated to be commercial in the future. Jennifer Dam of Planning staff concurred that this area is shown in No. 27th St. Redevelopment Plan as potential commercial use in the future. No. 27th Corridor Plan (the subarea plan) shows Starr Street, in concept, as being cul-de-saced in the future with office use on this corner. Bleed wanted a definition of what "future" means. Ms. Dam did not know a definite timeframe. There is a lot going on in this area now--new streetscapes, new police substation, etc. She could not say when that change to commercial zoning would occur.

Roy Johnson of the Urban Development Department advised that the Urban Development Department will take applications for housing assistance and consider them on their merit at that date in time. If the city purchases the property, it is purchased at value.

Ms. Dam also pointed out that if a change of zone is approved and it is made into a car lot, any portion of the lot would have to be paved--it could not just be rocked or graveled.

Response by the Applicant

Mr. Frederick is willing to pave the area. It is commercial directly north; directly south it is all parking; he will work with the neighbors, put up a fence, pave it, clean it up and wants to make it look nice.

Steward pointed out to Mr. Frederick that one of the concerns of the Urban Development Department is that when and if the property becomes commercial, there need to be defensible edges between the residential and nonresidential uses. If we change this, the screening requirement is very minimal in B-3, and those characterized as a defensible edge is not that desirable. Mr. Frederick had planned to put up a nice wooden 6 to 8' privacy fence.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 30, 1999

Bleed moved to deny, seconded by Steward.

Bleed thinks this is a mess. There is no easy answer. She has sympathy for the owner who is looking at a sizable cost to fix up the house when it may be rezoned in the future. But, we need to do what we can for this neighborhood to maintain it as a quality

neighborhood and to the extent we can increase the quality of housing stock, it is appropriate. She is concerned about making this parking lot a viable buffered parking lot when it is so close to houses.

Steward understands the logic for alignment of commercial north and south in the neighborhood; and he is concerned about the edge transitions between commercial and residential. If he had some definitive indication that the property owner had a specific plan for landscaping and trees, he would have been more sympathetic. But in this case he cannot support it as it stands.

Motion to deny failed 4-1: Wilson, Bleed, Steward and Bayer voting 'yes'; Schwinn voting 'no'; Hopkins, Duvall, Krieser and Wallace absent.

A motion must carry by five votes to move forward to the City Council. Therefore, this item is held over for administrative action by the Planning Commission on July 14, 1999. Public hearing has been closed.

SPECIAL PERMIT NO. 1778
FOR SOIL EXCAVATION ON PROPERTY
GENERALLY LOCATED AT NO. 58TH STREET
AND ARBOR ROAD.

PUBLIC HEARING BEFORE PLANNING COMMISSION: June 30, 1999

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

Planning staff recommendation: Conditional approval.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant, **Wapiti Enterprises**. This site has been the subject of a mining permit in the past, which expired in February. There was recently a similar application to the east of this property which was recommended for denial by the Planning Commission but approved by the City Council after the applicant agreed to a condition which deferred operation until the paving of Arbor Road. That condition is also included in this permit and the applicant does not object. They are currently working with the County Engineer's Office toward moving that paving project up into this construction season.

Opposition

1. **Teresa Tambke**, 6001 Arbor Road, directly across the street, testified in opposition to the renewal of this mining permit. The land is still owned by the same person; when the previous permit expired, the permittee had also received a letter saying it would not be

renewed because all of the rules and regulations were not followed. Ms. Tambke has unsuccessfully fought these permits for four years. If they stipulate they will not operate until Arbor Road is asphalted, she would still like to have hour limitations, such as 7:00 a.m. to 6:00 p.m., half a day Saturday and no holidays. The freight company across the street runs 24 hours a day. She does not want any additional noise to deal with.

Bayer recalled her previous testimony and the additional information she submitted. Bayer inquired of staff as to the condition for hours of operation. Mike DeKalb of Planning staff pointed out that the notes on the plan are incorporated as part of the permit. The hours of operation are listed on the plan and those hours are to be posted on the sign at the gate.

Response by the Applicant

Although there were a number of problems in the previous permit, Mr. Hunzeker pointed out that this project has never been formally cited for a violation. This area will be the subject of a substantial amount of grading and there is a substantial amount of dirt to be removed, and whether it is part of this mining permit or as site preparation for construction of buildings, there will be material taken off this site. In fact, within the past 60 days there has been material taken off this site from the prior excavation by the County for county projects, with full consent and approval, without any mining. The mining permit gives the city more control than it would have otherwise, and he does not think it detracts from the area any more than the other activities that will occur there, regardless.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Bleed moved to approve the Planning staff recommendation of conditional approval, seconded by Schwinn.

Bleed believes the conditions of approval are appropriate and she is hopeful that they will be enforced.

Steward stated that he will vote to support the motion but he cannot help but express continuing concern for excavation and modification of the landscape along the Interstate. At least in this particular site, there is a berming condition between the Interstate and the site which he believes will give whatever is developed on this property somewhat of a screening condition. However, he does not believe the community is thinking carefully enough about the Interstate corridor. This is a continuation of attack on the landscape.

Motion for conditional approval carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

This is final action on this application unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

PRELIMINARY PLAT NO. 99013
CYRILLA COURT 1ST ADDITION
ON PROPERTY GENERALLY LOCATED
AT NORTH 1ST STREET AND BENTON COURT.
PUBLIC HEARING BEFORE PLANNING COMMISSION: June 30, 1999

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

Planning staff recommendation: Conditional approval.

Proponents.

1. Roy Johnson with Urban Dev Department presented the application. He testified in January when this property was surplus. The city has since contracted with Lyle Loth to complete the plat and they have held a neighborhood meeting.

The proposal is to create 34 lots for first time home buyers with lower household income. There will also be 9 market rate lots and an outlot developed in the future, which will be maintained by Parks; Outlot C will be offered to the Park Side Townhome Assn. for maintenance.

Mr. Johnson advised that the infrastructure improvements occurring before construction of the houses will consist of construction of a street and adjustment of the channel in cooperation with the NRD and Parks. This will have a positive impact on the park with discharge within the park. In addition, there will be parking provided and more access into Roper Park.

2. Lyle Loth, ESP Engineers, testified in support and agreed with the conditions of approval; however, he requested that the word "waivers" be added to Condition #2.

Pertaining to the drainage and grading plan, the NRD has agreed to provide technical assistance in suggesting and dealing with alternatives and has agreed to address some of the floodplain issues raised by Public Works. The NRD has contracted with Olsson Environmental Sciences to provide a study report to address these issues. That report was finished yesterday and is in process.

Public Works is requesting that they not use the driveway into the park as a drainage channel. Mr. Loth explained that the goal is to provide affordable housing and this was one

effort that they thought would save some costs by using a driveway to the parking lot for drainage. However, Mr. Loth agrees with the staff condition to put in the storm sewer pipe instead.

3. Richard Krueger, President of Nebraska Housing Resource, testified in support and offered to answer any questions.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Wilson moved to approve the Planning staff recommendation of conditional approval, with amendment to add the word "waivers" to Condition #2, seconded by Steward and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

PRELIMINARY PLAT NO. 99006,
HARTLAND HOMES NORTHWEST,
and
SPECIAL PERMIT NO. 1777,
HARTLAND HOMES NORTHWEST COMMUNITY UNIT PLAN,
and
MISCELLANEOUS NO. 99004,
TO VACATE AIRPORT HEIGHTS AND OLYMPIC HEIGHTS 1ST,
ON PROPERTY GENERALLY LOCATED
AT N.W. 56TH STREET AND WEST ADAMS STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: June 30, 1999

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

Planning staff recommendation: Conditional approval of the preliminary plat and community unit plan, and approval of the plat vacation.

Proponents

1. **Lyle Loth of ESP** testified in support on behalf of **Hartland Homes** and expressed appreciation to the Planning staff for their assistance, guidance and diligence to do this replatting and rid themselves of a platting that occurred over 50 years ago. He Loth agreed with all conditions of approval, except he requested to add the word "waivers" to Condition #2 of the plat. He agrees that the stormwater detention should be provided and agrees with the staff recommendation.

Bleed wondered about providing at least a foot path between Cleveland, Butler and Madison. Mr. Loth could take this up with the owner but he is sure they would prefer not to because nobody likes them.

There was no testimony in opposition.

Steward commented that the Commission just approved a project for low income, first time homeowners (Cyrilla Court 1st Addition) that did not waive street trees, landscaping, etc., and here we have a project where the developer claims it will not be economically feasible to develop without the waivers. He inquired as to the history of Airport Heights in an adjacency situation where none of those characteristics were required to begin with. He is concerned about precedence. We approved that one and it creates a another following set of conditions, and another, and another, all contrary to our regulations, to make our city more liveable. How can we justify such a degree of waivers on this project? Steve Henrichsen of Planning staff agreed as to the concern for precedence; however, those plats being vacated involved numerous lots fronting on an arterial street. The staff believes there is some public benefit to eliminate lots that front on an arterial street. The reason to

recommend approval of these waivers goes to the cost of the development. It came down to not so much the street trees and sidewalks, but three residential streets. The plat on p.160 only shows Cleveland and Madison because he makes use of West Adams to get his access. He was comparing the cost of two local streets versus three streets in the revised plat. In comparing those costs, it was Mr. Hartman's opinion that doing the extra streets made it too costly. In addition, in the existing plat, none of the lots would require any street trees; he would not have to pave West Adams; and there would be multiple lots fronting an arterial street. There was considerable discussion about this before the staff came to the conclusion that it is beneficial not to have all the lots face an arterial street. The sidewalks on the arterial street are being waived. There will be sidewalks on the local streets. A street tree plan is required and the developer will work with the property owners to get those put in at some future date.

But, Steward believes that at some future date means additional expense to the then property owners. Mr. Henrichsen concurred that there may be sidewalk assessment districts which are assessed over a 20 year period; the street trees would be a cost to the homeowner or they might be able to apply to the NRD for a tree planting grant. Steward asked whether the purchasers will be informed of that potential condition. Mr. Henrichsen stated that it would not be required, but if the purchaser calls to ask the Planning Department about getting the street trees or sidewalks, this is information that will be passed along to them.

Mr. Henrichsen also advised that this same situation happened in Olympic Heights across the street. All the bonds were lost for the street trees through bankruptcy and those lots were developed without street trees as well. The costs issue was a cumulative matter, exceeding \$100,000. It was the applicant who told staff he would not go forward with the replat unless there were some waivers to reduce the costs. The staff came to the conclusion that there was public benefit.

Steward's concern in this northwest area of the city is that we continue to stigmatize it or continue to tag it with a certain condition of quality of life as contrasted with other parts of the community when we are trying to get mixed-income and mixed-level of housing. Mr. Henrichsen suggested that with Public Works agreeing to move forward with the paving of W. Adams and with N.W. 56th Street, those streets will be more toward city standard. The main loss will be the street trees.

Response by the Applicant.

Mr. Loth again referred to Ms. Bleed's inquiry about a pedestrian easement. The big problem with a pedestrian easement in the middle of the block is that there is a 10' setback on either side of the sidewalk, so effectively with only a 5' side yard setback, all of a sudden it's now 20' wide rather than 10'. These are small lots and no one wants that easement down their side lot line.

Public hearing was closed.

PRELIMINARY PLAT NO. 99006

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Bleed moved approval of the Planning staff recommendation of conditional approval, with amendment adding the word "waivers" to Condition #2, seconded by Wilson.

Bleed commented that the Planning Commission has discussed voiding plats if they do not develop in an appropriate period of time and this is a good situation where that should have been done. She appreciates Hartland Homes' attempts to do something different than what was previously approved.

Motion for conditional approval, with amendment, carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

SPECIAL PERMIT NO. 1777

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Steward moved approval of the Planning staff recommendation of conditional approval, seconded by Bleed and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

MISCELLANEOUS NO. 99004

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Bleed moved approval, seconded by Schwinn and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 99008,
ACQUISITION OF CONSERVATION EASEMENT;
and
CHANGE OF ZONE NO. 3184
FROM R-2 RESIDENTIAL TO O-3 OFFICE PARK;
and
PRELIMINARY PLAT NO. 99014, WILDERNESS ESTATES 3RD ADDITION;
and
SPECIAL PERMIT NO. 1774, WILDERNESS ESTATES 3RD ADDITION
COMMUNITY UNIT PLAN;
and
USE PERMIT NO. 119
FOR AN OFFICE BUILDING
ON PROPERTY GENERALLY LOCATED AT
SOUTH 7TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: June 30, 1999

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

Planning staff recommendation: A finding of conformance with the Comprehensive Plan on Comprehensive Plan Conformance No. 99008; approval of Change of Zone No. 3184; and conditional approval of the preliminary plat, community unit plan and use permit.

Steve Henrichsen of Planning staff submitted a memorandum correcting the staff report on the Use Permit to indicate that the Planning Commission action on the use permit is final action, unless appealed to the City Council.

Mr. Henrichsen displayed a map showing the neighborhoods that are affected by this application, including The Meadows, Wilmer's Addition and Salt Valley View.

Mr. Henrichsen also submitted four letters in opposition which were received after the staff report was submitted to the Planning Commission.

Proponents

1. **Lyle Loth**, the owner and developer, provided some history on this project. He purchased Lot 68, a 5 acre tract, in 1994; prior to closing he did some investigation and knew that there was some controversy over its development and the adjacent property to the south. The two major issues dealt with density of the residential housing as well as traffic access through The Meadows neighborhood. His original concept consisted of taking access at Old Cheney Road opposite of Hunts Drive, extending a street across the drainageway and through the trees, terminating in a cul-de-sac north of the property line.

This would enable him with minimal tree removal to create 13 single family lots and not have any access through The Meadows neighborhood.

Unfortunately, at that time, city staff insisted that he extend the street to the south line of his property so that there would ultimately be a connection to Glenridge Drive in The Meadows. Mr. Loth revised the plan and then resubmitted Acorn Valley, removing the cul-de-sac and extending the street to the south, again with 13 single family lots. There was nearly unanimous opposition to this connection from The Meadows neighborhood. Mr. Loth withdrew the Acorn Valley plan and staff suggested he visit with his neighbors to the south, Rick and Julie Schaefer, to see if they would consider joining in a plat which would allow access through The Meadows neighborhood and eliminate the need of the connection to Old Cheney Road. The Schaefers were in agreement to processing the plat as such and it was submitted as Wilderness Estates 1st Addition, and was approved in April 1995. Since his access was dependent upon the Schaefers developing, Mr. Loth could do nothing and platting this public cul-de-sac for only three lots was something the Schaefers could not see to do economically. After waiting, the Schaefers asked Mr. Loth if he would consider a land swap, to which Mr. Loth agreed and the plat was processed as Wilderness Estates 2nd Addition.

*****At this point in the meeting, the building was evacuated for a tornado warning*****

The Planning Commission reconvened at 3:30 p.m.

Mr. Loth continued with his testimony in support. Wilderness Estates 2nd Addition was approved in October of 1997, and right now there are 5 single family lots that the Schaefers did own and have sold to a builder and two are being built upon.

During the next year, since Oct. 1997, Mr. Loth investigated other possibilities for development. He contacted three church groups that he knew were looking for possible church sites. Then he contacted three groups that were developing nursing and assisted living homes and one of those panned out; he also thought about an R-T district, knowing that he would need industrial or commercial zoning next to it. He thought the BN and UP railroad tracks would have such an industrial zoning, but they are zoned AG. Therefore, he could not do R-T zoning, but staff suggested the O-3 might be appropriate and that is what is before the Commission today.

Mr. Loth explained that this application now consists of 8 single family lots terminating in a cul-de-sac and an office building on the north side of the creek with no connection to Old Cheney Road other than the driveway access to the office building.

When he first started this project, Mr. Loth contacted representatives of The Meadows

neighborhood, Salt Valley View, Wilmer's Addition, the immediate neighbors to the northeast and east, as well as the Friends of Wilderness Park. Based on those contacts, he made some changes to alleviate concerns, such as reducing the size of the office building from 10,000 to 6,000 sq. ft., reducing the size of the parking lot; constructing a wetland to filter the runoff from the parking lot; and adding a conservation easement on more than half the site to preserve the trees, wetlands and natural drainage.

Mr. Loth noted that the comments and letters appear to have seven concerns: 1) traffic generated by the office use; 2) spot zoning; 3) commercial use in a residential area; 4) impact of the office building on the closing of Old Cheney Road; 5) pollution from parking lot runoff; 6) preservation of trees, and natural drainage and wetlands; and 7) preservation of the floodplain area.

Mr. Loth pointed out in the staff report that the office use is projected to generate less traffic than single family homes. The issue of spot zoning is also addressed in the staff report and this is not considered an invalid application due to spot zoning. As to the commercial use in a residential district, the staff report points out that office and commercial are not necessarily the same, and with the conditions that staff is suggesting on the building construction, it is for all practical purposes, an R-T zoning. The staff report also indicates that this development will not have any impact on the decision to close Old Cheney Road. Mr. Loth is not opposed to closing Old Cheney Road because it would eliminate the noisy train whistle and the at-grade train crossing, and will provide the ability to reduce the severity of the localized flooding of Old Cheney Road. The preservation of trees, etc., has all been discussed in the staff report and is addressed with the conservation easement. Mr. Loth noted that the Health Department, NRD and Game and Parks are all supportive of these concepts.

Opposition

1. Bill Behmer, 5620 Hunts Drive, testified in opposition. He lives in Wilmer's Addition. He has talked with 10 of 13 neighbors and they are all opposed to the change of zoning for the office building. There are some pieces of property that just should not be developed and this property is marginal because of its location near Wilderness Park. If it is developed, what Mr. Loth has proposed is probably the only right way; however, he questions whether the developer could also do the conservation easement, preservation of trees, etc., while still maintaining the R-2 zoning as opposed to commercial. Mr. Behmer recommends that the developer consider a few houses as opposed to the office building. He believes they would be prime real estate sites. When Old Cheney and the train crossing is closed, suddenly it becomes a really nice residential area. If it is changed to commercial at this point, it will be lost forever to the detriment of the neighborhood. The possibility of closing Old Cheney Road seems like a good possibility and logical. If it is closed, it changes the whole equation for this development and that should be taken into consideration. In addition, Mr. Behmer suggested that the people in the neighborhood have not had a lot of time to review the proposal as presented today.

Wilson asked Mr. Behmer whether he would rather have the property developed into 8 homes rather than office. Mr. Behmer would rather have the office building than 8 houses. He was suggesting less houses.

2. Kathy Siefken, immediate past president of **Salt Valley View Neighborhood Assn.**, testified in opposition to the O-3 zoning. This was discussed with Melva Plouzek as President of the Friends of Wilderness Park. This is an environmental sciences friendly proposal and Mr. Loth did come to the Association meeting and made changes, but they still have concerns. This is a proposal for an office/medical building. The medical building will bring in additional traffic and they have concerns about lighting; if it is for business parking, the standards may not be as high but as a business owner, Mr. Loth has certain parking lot liability risks and the lighting that will be required in such a parking lot is a concern to the residents. The impact will be minimal on Wilderness Park, but this proposal also takes place in a floodplain and building in the floodplain is not a good thing. They already have a problem with Beal Slough because of development.

Ms. Siefken also suggested that this is not just an environmental sciences issue. There are residents that purchased lots based on current zoning and invested in their homes. It is not fair to change the zoning now that those residences are in place. There are homes surrounding this entire property, and to change the zoning to O-3 at this point is not appropriate because it wasn't there when the people moved in.

Ms. Siefken also commented that there are 5800 vehicles going down Old Cheney now and it is difficult to get out of the subdivision. There are children that live along Old Cheney Road and the residents consider it to be unsafe at the present time. If more development is added where people will go out onto Old Cheney, the problem will be worsened. Anything that will increase traffic flow on Old Cheney Road compounds the problem that they already have.

3. Kathy Wiens, current president of **Salt Valley View Neighborhood Association**, testified in opposition. This proposal was discussed at three meetings, with information published in a flyer. The majority of the residents of Salt Valley View are opposed to any change of zoning. This is a residential neighborhood and always has been a residential neighborhood. The property is surrounded on three sides by residential uses. An office building on this parcel is not appropriate. The residents are concerned about the property being sold and the use changing in the future. Even as an apartment complex or six-plex, they would prefer residential. They are concerned about the traffic on Old Cheney Road.

4. Jeff Kingston, 5440 Hunts Drive, testified in opposition. He purchased his home about a year ago after many months of due diligence. They were attracted to this area by Wilderness Park--they liked the trees without stores within a couple of blocks. They are

very satisfied with their home. He sympathizes for the developer, but for he and his neighbors, it would be better left at the current zoning with some good residential lots.

Mr. Henrichsen confirmed for the Commission that the change of zone is on a 2-acre parcel. With the R-2 zoning, it is possible to get four units per acre, particularly if they were duplexes. There is also a 2.5 acre conservation easement area. With 5 acres, Mr. Loth could easily develop 16-18 or more units on the whole 5 acres. He now has 8 dwelling units in the residential part and the one building.

With regard to closing Old Cheney Road, Mr. Henrichsen advised that this decision is part of the Wilderness Park Subarea Study. That study has looked at various different options from a transportation standpoint and benefit to the park. The preliminary results from the consultant were discussed on June 17th, and the one option with some validity was the closing of Old Cheney Road because most of the traffic went to Pioneers or Warlick Blvd. But that is a completely separate process and this proposal will not have an impact on that decision to close Old Cheney Road.

But Steward believes that decision to close Old Cheney Road would have an impact on the functional use of the subject property. Mr. Henrichsen agreed that it may have an impact on the proposal and would eliminate the train whistle, but he believes the Health Department would still want to see residential uses as far away from the track as possible.

Response by the Applicant

Mr. Loth advised that he did hand deliver a letter to each of the residents in Wilmer's Addition which included a site plan and he attached his business card and asked for comments and concerns.

As far as the type of building, there are some very stringent conditions on the use permit geared toward the R-T zoning which allows only a 5,000 sq. ft. office building with pitched roof, windows on the front with a porch, etc. It will look a lot like a residential home. There will be considerable landscaping and a raised berm along Old Cheney Road.

As far as closing Old Cheney Road, Mr. Loth believes it might be a benefit. He can see a suburban office building in a relatively quiet area.

Wilson asked whether Mr. Loth would still be interested in the conservation easement if the zoning is not changed. Mr. Loth was comfortable saying that if the O-3 is denied, he does not believe he would push the maximum density that he could have by right. His very original plan had 13 single family lots, which would be pushing it to preserve the trees. He could see perhaps 11-12 single family lots, counting the 8 on the cul-de-sac, but would reserve the right to reconsider the original application which had an access off Old Cheney Road and connecting to The Meadows neighborhood. This would not be very popular, but

he can see secluded home sites back in the trees but it takes away the ability to preserve the wetlands because they would be on private lots. There would be issues with the drainage and the trees. Wilson does not want to tie Mr. Loth's hands.

Steward observed that it would appear that on the site where the office building is located, there would at least be three lots possible. And if it's an economic circumstance between the three lots and office site, it would not be that great of a difference. He commended Mr. Loth for the environmental planning he has agreed to do, but he thinks there is a possibility of the closing of Old Cheney and he believes that damages the potential marketability of the office building as contrasted to the residences. That is a detail design issue, however.

Mr. Loth further commented that it is his goal to house his own consulting engineering business in that office building. He is the tenant; however, he will not use the entire 5,000 sq. ft. It would not be a "medical" office building and that is covered in the conditions of approval.

Public hearing was closed.

COMPREHENSIVE PLAN CONFORMITY NO. 99008

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Bleed moved approval, seconded by Schwinn and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

CHANGE OF ZONE NO. 3184

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Schwinn moved approval, seconded by Wilson.

Schwinn likes what Mr. Loth is attempting to do with this property and he does not have a problem with a 5,000 sq. ft. building being located on a major arterial, which he believes Old Cheney to be. It is light use and the design standards are high. He is sure as a resident it would be great to have somebody else owning land that you can consider a park, but the fact is that the community has not shown an interest in buying this land to create a park. He believes the office use is less obstructive than more houses. He would rather work next to a railroad track than live next to one.

Until the applicant stated that it was intended to be his own office, Steward would have outright voted against this. Now, he is in a quandary. On the one hand he does not have a problem with the kind of mixed used as proposed, but he is concerned in this location as to the amount of parking, asphalt surface and lighting that will occur. The office as characterized is appropriate; the easement planning is very appropriate; he just doesn't

think that this particular location is appropriate for that much parking.

Motion for approval failed 4-1: Schwinn, Wilson, Bleed and Bayer voting 'yes'; Steward voting 'no'.

Bleed moved to reconsider, seconded by Steward and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'.

Upon reconsideration, Steward moved to approve the change of zone, seconded by Wilson.

Bleed has concerns about putting residential next to the railroad track. Without knowing about Old Cheney Road, it does give her some cause for concern.

Motion for approval carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

PRELIMINARY PLAT NO. 99014

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Bleed and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

SPECIAL PERMIT NO. 1774

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: June 30, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Bleed and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

USE PERMIT NO. 119

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 30, 1999

Schwinn clarified that the conditions of approval require a 5,000 sq. ft. office building (not medical). Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Bleed and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

This is final action on this application unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

*****OTHER BUSINESS*****

Rick Peo of the City Law Department requested that the Commission remove Change of Zone No. 3187 (to require 800' spacing between off-premise signs) from the pending list with continued public hearing and administrative action scheduled for July 14, 1999. At a precouncil meeting, the City Council indicated that they would like to possibly have the spacing requirements proposal reviewed in connection with the the moratorium. In order for the spacing requirement proposal to be heard by the Council, it needs to be removed from pending and rescheduled for public hearing and action at the Planning Commission's next meeting.

Motion so made by Bleed, seconded by Wilson and carried 5-0: Schwinn, Wilson, Bleed, Steward and Bayer voting 'yes'; Hopkins, Duvall, Krieser and Wallace absent.

At this point in the meeting, Commissioner Schwinn had to leave and there was no longer a quorum. Waiver of Design Standards No. 99006 and Annexation No. 99011 will have continued public hearing and administrative action on July 14, 1999.

The meeting was adjourned at 4:00 p.m. due to lack of quorum.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 14, 1999.