

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, December 15, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Russ Bayer, Steve Duvall, Gerry Krieser, Patte Newman, Tommy Taylor, Greg Schwinn and Cecil Steward (Barbara Hopkins and Linda Hunter absent); Kathleen Sellman, 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

Chair, Russ Bayer, called the meeting to order and requested a motion approving the minutes for the meeting held December 1, 1999. Motion to approve made by Steward, seconded by Schwinn and carried 6-0: Bayer, Duvall, Newman, Taylor, Schwinn and Steward voting 'yes'; Krieser abstaining; Hopkins and Hunter absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

December 15, 1999

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3217; FINAL PLAT NO. 99037, NORTHERN LIGHTS 6TH ADDITION; FINAL PLAT NO. 99038, WILDERNESS ESTATES 2ND ADDITION; FINAL PLAT NO. 99041, HARTLAND HOMES NORTHWEST ADDITION; AND FINAL PLAT NO. 99044, NORTHRIDGE HEIGHTS 7TH ADDITION.**

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

Note: This is final action on Northern Lights 6th Addition Final Plat, Wilderness Estates 2nd Addition Final Plat, Hartland Homes Northwest Addition Final Plat and Northridge Heights 7th Addition Final Plat, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COUNTY CHANGE OF ZONE NO. 193
TO AMEND THE LANCASTER COUNTY
ZONING RESOLUTION TO REVISE
THE REQUIREMENTS FOR OFF-PREMISE SIGNS.

PUBLIC HEARING BEFORE PLANNING COMMISSION: December 15, 1999

Members present: Bayer, Schwinn, Steward, Taylor, Duvall, Krieser and Newman; Hopkins and Hunters absent.

Planning staff recommendation: Approval.

Proponents

1. **Mike DeKalb** of Planning staff explained that this application is an attempt to get the county running in line with the billboard ordinance that is now running through the city, with the same deadline for the expiration of the moratorium on February 10, 2000. The staff report includes both the original task force recommendation and the Planning Commission recommendation.

Opposition

1. **Mark Hunzeker** testified on behalf of **Lamar Outdoor Advertising** to comment about one of the changes the Planning Commission made to the city billboard ordinance. There is a provision which makes the minimum distance from residential districts 300', which was a change made by the Planning Commission from 75'. That provision, at least in the city code, and probably in some sections in the county, causes a problem which is almost impossible to fix. Many of the districts where signs are permitted are only 150' wide, and the 75' is a number that was placed in the previous code and left in the most restrictive draft of the sign code by the City Attorneys and by the staff intentionally because of those sections where there is only 150' of depth in the zoning district. This means if you are a front yard setback and a sign width away from the street, you have no more than 75' to the next zoning district. This causes a huge problem, for example, along "O" Street and along 48th Street. He recognizes that this application pertains to the county, but he believes it is a similar problem where there are very narrow stretches of zoning which permit off-premise signs. By imposing this type of setback, they are prohibited in very large stretches of zoned areas that otherwise would permit them. Hunzeker requested that the Commission consider modifying this provision back to 75'.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: December 15, 1999

Steward moved approval of the staff recommendation, seconded by Schwinn.

Duvall moved to amend to change the distance from residential areas to 75'. Newman commented that if the Planning Commission approves the staff recommendation, it reflects the action taken by the Planning Commission on the city ordinance at 300'. Motion failed for lack of a second.

Motion for approval carried 6-1: Schwinn, Steward, Taylor, Bayer, Newman, and Krieser voting 'yes'; Duvall voting 'no'; Hopkins and Hunter absent.

CHANGE OF ZONE NO. 3218
TO ADD A CHAPTER TO THE ZONING ORDINANCE
REGARDING "PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES"
and
CHANGE OF ZONE NO. 3219
TEXT AMENDMENT TO THE ZONING ORDINANCE
REGARDING "BROADCAST TOWERS".
PUBLIC HEARING BEFORE PLANNING COMMISSION: December 15, 1999

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

Planning staff recommendation: Approval.

Proponents

1. Jennifer Dam of Planning staff introduced Steve Huggenberger of the City Attorney's office and Tom Duchon from River Oaks Communication, the consultant. Dam submitted comments from Sprint PCS; however, the staff is not suggesting any additional changes in response to those comments.

Dam explained the purpose of the changes proposed in Change of Zone No. 3219 regarding broadcast towers. Currently, cellular/wireless towers are considered to be a broadcast tower. A separate chapter is proposed to deal with personal wireless facilities and proposes to leave television and radio broadcast towers distinct because of how they are defined in the federal code. This text amendment removes telecommunications from the broadcast tower definition. By special permit a broadcast tower is allowed to exceed the height of the base zoning district. This amendment also amends the portion of the special permit section for broadcast towers to refer it to the proposed personal wireless process so that any broadcast tower or personal wireless tower would be subject to the same criteria.

The staff has been working on this proposed ordinance for over nine months. The purpose is to facilitate telecommunications while minimizing the impact on the community. The first draft of the ordinance was presented to industry representatives in July. A meeting was held on July 20th, with comments back from the industry representatives and a good number of their comments were incorporated into the first draft of the proposed ordinance. This ordinance was distributed to 32 representatives of the telecommunications industry and 34 neighborhood representatives on November 15, 1999, with comments requested by November 29th. Two comments were received--LES and Alltel. The staff has made a number of changes based on their comments, resulting in support from Alltel. Dam met with George Scott of Divine Tower in regard to his comments dated December 10th, and she believes he is satisfied with some of the changes that have been made. Dam met with the Board of the Near South Neighborhood Association of December 6th, and spoke with a representative of the Woods Park Neighborhood on December 8th.

2. Tom Duchen, President of River Oaks Communications Corporation, 2 North Cascade, Suite 1100, Colorado Springs, Colorado, testified in support. This proposal attempts to strike a balance between protecting the public, health, safety and welfare; complying with the Telecommunications Act of 1996; and trying to encourage and further the development of enhanced telecommunications facilities. The ordinance has a framework of two basic approval processes--an administrative permit and a special permit. Page 6 of the ordinance provides that an administrative permit may be used with respect to replacing an existing tower; collocating additional antennas on an existing or approved facility; dealing with camouflage facilities or rooftops so long as the applicant does not exceed the permitted height in the district and that will have a minimum adverse affect on surrounding property and entryway corridors. Providers are encouraged to go through the administrative process which is more expedient. The special permit process relates to towers and additions to existing facilities. New towers would come under the special permit criteria and if an applicant wished to exceed the permitted height in a district.

With regard to the term of the permit, there were some providers that sought a term of up to 25 years. The recommendation became 15 years on the basis that that would be a reasonable amount of time for providers to recoup their investment.

With respect to the preferred locations and sites, this ordinance sets forth criteria by which there are preferred locations, limited preference sites and what is referred to as sensitive sites. The ordinance seeks to encourage providers to locate by this hierarchy. The preferred sites are those in which facilities can be unobtrusively located with respect to visibility, aesthetic issues, traffic flow, health, safety and welfare. The list then moves to minimum obtrusive sites and sites in commercial zoned or industrial areas. The limited preference sites are those which would be located on public property, commercial and industrial areas or located on multi-family residential structures which exceed 30' in height. There are some sensitive location sites enumerated including areas with residential uses, environmentally sensitive areas, Capitol View corridors, Capitol Environs District, etc.

In order to facilitate this process, the ordinance provides for a pre-application conference whereby the applicant would pay a \$1,000 fee. To the extent that the costs incurred are less than \$1,000, that amount would be refunded to the applicant. If the costs were more than \$1,000, then that amount would be paid by the applicant. LB496 provided specific language with respect to the recoupment of costs.

To the extent that a site is not a preferred location, there is criteria in the ordinance which require an applicant to provide additional detail as to why they were unable to locate a site in a preferred location.

The criteria for examination is contained on page 12-13. There are a variety of other factors with respect to security fencing, color, finish, lights, etc.

In terms of the some general other requirements, there are requirements with building codes, safety standards and some tower separation requirements. The applicants are required to provide a surety and indemnity requirements. There is also the issue of non-use and abandonment that is dealt with in the ordinance.

3. Steve Huggenberger of the City Attorney's office reviewed the revisions being made today, all of which were made in response to comments from providers, etc. In the purpose section, we removed the language regarding protection of property values--we did not want anyone to infer that we were insuring that the property values might not be impacted by the location of a tower. Language was added to the definition of abandonment -- it excuses abandonment when there are delays out of the control of the provider. In addition, the definition of tower was changed by adding the language, "constructed or used for the primary purpose". LES did not want their poles to be recognized as towers.

With regard to the fall zone requirement, there had been some indication from the Planning Commission previously to change that from the full height of the tower. This has been changed to half the height of the tower. Waivers to the fall zone requirement would be granted by the Planning Commission as opposed to the City Council.

With regard to the surety requirements, the original amount was \$100,000. This has been changed to \$50,000 on the basis of some cost research and the current \$50,000 surety requirement for Cable franchises within the City of Lincoln.

The ordinance also provides that the city needs to be notified within 30 days if there is a change in ownership or a transfer.

Bayer noted a letter received suggesting that the word "personal" be deleted. Huggenberger explained that it is used because that is the federal definition. Bayer wanted to make sure that this does not prohibit the city from applying the ordinance to non-personal telecommunication towers. Huggenberger stated that it would not as long as they fit within the definition.

Proponents

1. Gary Reber of Alltel testified in support of the proposed ordinance. Alltel worked with City staff to draft this ordinance and the result is a document that is greatly improved from its original version. It does not meet all of Alltel's concerns but it addresses most of them and provides a framework Alltel can operate within to continue to provide wireless service in Lancaster County and Lincoln. It does create some administrative hurdles to locating facilities because of the additional requirements being created, but Alltel believes it successfully addresses the concerns of the City and County on the number, size and appearance of cellular facilities. Alltel shares those concerns and has historically designed stealth and camouflage facilities as they build and modify their network. Alltel intends to continue to invest and improve their network and looks forward to continuing to provide wireless service. Alltel has appreciated the opportunity to comment throughout this process.

2. Jon Carlson, President of Near South Neighborhood Association, testified in support. The Association is interested in supporting legislation that will minimize the impact of these facilities and preserve the character of the Lincoln neighborhoods. Rules are needed to protect the community while allowing the continued development of wireless service. The Association believes that this ordinance represents a positive step toward achieving that balance. The new ordinance recognizes that not all kinds of structures are appropriate for all areas. Its system of location preferences promotes tower and antenna sites that minimize the impact on neighborhoods without creating barriers to entry for new business. The new ordinance makes provision for a time-efficient administrative permit that would speed up the process for preferred sites. It presents clear standards for reviewing applications. The fall zone and bonding requirements will help protect the community from tower failure or abandonment. The new ordinance represents even-handed legislation--it provides a level playing field for all providers and rewards community-sensitive tower and antenna placement. As Lincoln moves toward becoming a large city with new business and new investment, it remains prudent and historically the wiser course of action to create a clear and reasonable system to insure continued responsibility in the growing wireless business community. This ordinance will help to insure just that.

Opposition

1. Andy Pollock testified in opposition on behalf of **AT&T Wireless**, which has not had an opportunity to fully review this ordinance. It did not reach the appropriate personnel at AT&T Wireless. Pollock wanted to know if there will be further opportunities to speak with

the staff to share specific concerns about the ordinance.

Dam explained that this is just the city portion of the ordinance at this point in time. A similar county ordinance will be heard at the Commission's January 12th meeting. If the Commission takes action today, this ordinance will be heard by the City Council in January. Dam suggested that the staff could work with AT&T Wireless between now and the time it appears on the Council agenda.

Pollock indicated that AT&T will take the opportunity to work with staff in the interim. He believes their list of concerns are short. He believes this ordinance will encourage competition and benefit the consumers of Lincoln and Lancaster County.

Public hearing was closed.

CHANGE OF ZONE NO. 3218

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: December 15, 1999

Steward moved approval, seconded by Newman.

Steward made an editorial comment. He believes this has been superb work by the staff in the spirit of collaboration that seems evident to make this a community-balanced ordinance.

Motion for approval carried 7-0: Steward, Duvall, Schwinn, Krieser, Newman, Taylor and Bayer voting 'yes'; Hopkins and Hunter absent.

CHANGE OF ZONE NO. 3219

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: December 15, 1999.

Steward moved approval, seconded by Newman and carried 7-0: Steward, Duvall, Schwinn, Krieser, Newman, Taylor and Bayer voting 'yes'; Hopkins and Hunter absent.

USE PERMIT NO. 99A

**FOR A 120,000 SQ. FT. SHOPKO STORE
ON PROPERTY GENERALLY LOCATED ON THE
NORTHWEST CORNER OF SO. 27TH STREET
AND PINE LAKE ROAD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION: December 15, 1999

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

Planning staff recommendation: Conditional approval.

Steve Henrichsen of Planning staff submitted additional information for the record including minor corrections to the staff report.

Proponents

1. Kent Seacrest appeared on behalf of **Noddle Development Company**, the owner and lessor of the proposed Shopko Store. Noddle Development has entered into a purchase agreement with Southview, Inc. and Ridge Development Company. The history of this site is quite interesting. This area was not intended to have urban services; however, 27th & Pine Lake Road became one of the first and most formal subarea planning processes. It was envisioned that the northeast corner would have the regional shopping center; the southeast corner would have the trade center; the southwest corner would have an office building; and the northwest corner (this corner) would have the neighborhood shopping opportunities, either a grocery store or hopefully a One Pacific Place type high-end retail.

The very first amendment to the use permit included some musical chairs--the southwest corner became the neighborhood shopping center and the grocery store. That left the northwest corner (this site) with the One Pacific Place high-end retail opportunity. Both the northeast and the northwest corner wanted the high-end retail, and they agreed to fight but worked together on the infrastructure and agreed to allow the market to decide where the high-end retail would go. They were both concerned that Lincoln was maybe too small to get any high-end retail. Both corners engaged and secured architects, got the brokers involved and the marketers involved. The northeast corner won the competition and secured the more high-end retail. The northwest corner is disappointed but is pleased that the high-end retail is in the area. Now, after 5 years of trying to market the northwest corner, this applicant has turned its attention to another land use, the executive Shopko Store.

This corner is already zoned B-2 so a change of zone is not necessary; this corner already has a use permit that allows 110,000 sq. ft. of retail and five restaurants. This application seeks 10,000 more square feet of retail and removes the five restaurants, resulting in less traffic.

Noddle Development has had 29 years of success in Omaha and has developed properties in over 16 states. They have had two sets of neighborhood meetings with the commercial neighbors to the north; four sets of neighborhood meetings with The Ridge, Southern Hills, Porter Ridge and the representatives of the residential developer who owns the land to the west. They also had two different meetings with staff. This building will be all brick on all four sides; this building provides vertical relief features; this proposal includes a seasonal building--an enclosed all brick, permanent garden facility; Shopko has agreed to work with Union Bank and Walgreens and has agreed to use the beige tone for the brick so that all the properties will have the same feel and look; the loading dock will be located on the southwest corner of the building on Pine Lake Road, the furthest point

from the neighborhood residents; the air handling equipment will include a parapet wall to screen all of the air handling equipment and if it cannot be screened, it will be colored to match the roof material.

The commercial neighbors have requested a landscape boulevard to make it more attractive. This requires removal of six parking spaces and Seacrest proposed an amendment to add a condition to this effect. This application also proposes an 85' setback, with a berm in that 85' of 8-12 ft. tall trees, making this development a minimum of 145' from its future neighbors.

The staff's initial response was one of nervousness; however, the staff is recommending approval with the residential buffering, the larger setback and reduction of traffic.

Newman asked whether there will be additional trailers parked in the parking lot during the Christmas season. Seacrest stated that the loading dock has three truck bays. Jeff Kirschenbaugh of Noddle Development stated that the covenants of the neighborhood association do not allow for temporary trailer storage. This store is large enough to accommodate the storage that is necessary.

Opposition

1. Tim Clare testified on behalf of Dale Jensen in opposition. Clare does not believe a Shopko store is comparable to a One Pacific Place, and his client is opposed to changing the previous intended use of the property from high-end retail to a Shopko Store, also with it being in excess of what was originally agreed upon. With regard to the traffic for restaurants being higher and greater than retail, Clare stated that the traffic study that he reviewed which accompanied the staff report, shows the traffic for the restaurants as “high turnover sit-down” restaurants, with turnover rates of approximately one hour or less and generally these restaurants serve lunch and dinner but may also be open for breakfast and are sometimes open 24 hours a day. Clare does not believe that this was ever the case envisioned for this area. The restaurants such as those at One Pacific Place include the Ruby Tuesday’s and that type of restaurant which are not open 24 hours a day. The traffic for a quality restaurant has turnover rates of at least an hour or longer. Generally, quality restaurants do not serve breakfast, some of them do serve lunch and all serve dinner. Clare believes the “quality” restaurant is the type that was envisioned for this area. The turnover from these type of restaurants, at least from a traffic perspective, is less than what will be experienced with a fast-food type of restaurant which is what the traffic study used.

Clare also discussed some correspondence he had reviewed written by the applicant, indicating that the property was originally planned for high-end retail use—the market has not supported the high-end retail concept and the high-end retail stores have located on the northeast corner. Clare has not seen any documents or any proof as to what

constitutes an effort to try to attract retail business to this site. The applicant has made the allegation but that is the extent of it. Clare would like to know who has been contacted in this effort.

Approximately two miles to the north of this site is another Shopko. Clare asked the Commission to consider the impact of having two Shopko's within two miles of each other. If the existing Shopko is closed, what kind of eyesore is this going to have on that particular site?

Clare has only been involved in this project for 48 hours. Therefore, he respectfully requested a deferral to have the opportunity to talk with the applicant about his client's issues.

Staff questions

Newman understands that the property is zoned B-2 and normally a large discount store is only allowed in B-5. Steve Henrichsen of Planning staff advised that it is not a matter of being allowed—typically the B-5 district is where most of the large discount stores have been located, i.e. K-Mart, Target, Edgewood, Lincoln Crossings, WalMart. There is no prohibition against discount in the B-2, however.

Newman is also concerned about the other Shopko just two miles away. She wondered whether the Commission could require a market study to see if both can be supported. She does not want to see the Shopko at 27th & Hwy 2 closed. Henrichsen advised that the B-5 zoning district requires a market study; however, the B-2 district does not.

Response by the Applicant

Seacrest stated that there are no covenants that require high-end retail because the applicant was never confident they could make that commitment. The approved use permit does not require high-end retail. This application provides more setback and more buffering than is required up against the land of Clare's client. The traffic study found that this produces less traffic. This proposal shows no interconnection between this development and the Jensen neighborhood. The restaurants are no longer in place on this site.

With regard to market study, Seacrest submitted that if the high-end retailers do not return their calls, that is probably a pretty strong indication that they are not interested in locating on this site. Shopko has stated that it is their intent to have both stores; they feel there is enough market south of Highway 2 now; they are the only proposed site south of Highway 2. They are convinced that they can make both of them work and they want both of them to work. Seacrest offered to have Shopko confirm this.

As far as a deferral, Seacrest again stated that they have had lots of neighborhood meetings. Did you hear anyone say from the Jensen side that they want to talk about amendments to the site plan? No. The issue is defeat it or not. A two-week delay will not convince the Commission or the applicant on that issue. A deferral for modifications to the site plan would be acceptable. The issue of the opposition is the land use; however, this is an allowed land use for this site. The proposal is set back from those homes equal or greater than the B-5 standards.

Steward referred to the traffic counts and asked staff to describe the long term conditions of Pine Lake Road and South 27th Street. We are getting an intense set of commercial developments at this intersection. We have a middle school just down the road and we have had before us some plats entering off of Pine Lake Road entrance ways and we have had issues of through streets, etc. in this area. Dennis Bartels of Public Works explained that there was a traffic study for the Southridge four corners, which identified traffic improvements for the design of 27th Street and the improvements of Pine Lake in that immediate vicinity. Early next year Public Works will be letting a project to widen Pine Lake Road all the way from 14th Street to just east of 40th Street, with a future project with the urban five-lane section all the way to 56th Street. The traffic study identified the need for dual left turn lanes and nearly every one of those median openings under full development will be signalized. So there will be a lot of traffic at this particular intersection. Bartels explained that he reviewed this application for peak hour traffic. He does not know whether the two developments match for 24-hour traffic. They might, but he did not review it in that light. The numbers they submitted appeared to be similar traffic. There are a few cars less in the peak hour traffic, which was the controlling factor in designing the streets and the turn lanes.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: December 15, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, as revised, with amendment to add Condition #2.1.10 as requested by the applicant, seconded by Taylor.

Newman would like to require a market study to make sure that the community can keep the other Shopko. Schwinn has no doubt that the other Shopko will be closed as soon as the new one opens. Newman does not want to see that happen. Schwinn believes that is their prerogative.

Newman moved to amend to require a market study prior to approval of this use permit, seconded by Steward.

Newman does not want to leave a gutted core of the City with closure of the Shopko at 27th & Hwy 2. She wants proof that both stores can be supported.

Steward seconded the motion on a matter of principle more than whether it is a Shopko or not. We have a large box discount proposal in a zone that we don't ordinarily use for this purpose. If it were in one of those other zones, i.e. B-5, we would have required a market analysis. It is not unusual to expect this kind of retailer in what was otherwise intended to be a neighborhood shopping center, to present to the community better evidence that we actually need it and that it will be viable.

Rick Peo of the City Attorney's office advised that market studies are required in the B-5 by ordinance. It probably should not be required where the ordinance does not require it. It is not part of the application process. The market study needs to be done prior to the application coming before the Planning Commission so that the Commission can evaluate the proposal based upon the proposed uses, the Comprehensive Plan and whether the activity is supportable. The concept of the B-2 is that it is a smaller district, is not the same type of situation and does not envision those type of complications in making the analysis. With this motion, you are asking for something to happen after the fact. It would require a delay in order to get the study and to evaluate the situation. Peo does not believe the Commission has the authority to require a market study when the ordinance does not require it.

Newman withdrew her motion to amend.

Schwinn is not so sure that the neighbors at 27th & Hwy 2 would consider the closing of Shopko at 27th & Hwy 2 a bad thing. They might want to see that area redevelop and it is probably time. No one from the neighborhood is protesting this application so he believes there must be some sort of consensus for this facility to be moved over to 27th & Pine Lake Road.

Steward is opposed based upon his previous comments. He believes we are allowing license to be taken within neighborhood proximity and he is surprised the neighbors are not here. He does not believe good planning principles are being practiced in this kind of use of a zone that was not intended for that purpose.

Main motion for conditional approval, as revised, with amendment to add Condition #2.1.10, carried 5-2: Duvall, Schwinn, Krieser, Taylor and Bayer voting 'yes'; Newman and Steward voting 'no'; Hunter and Hopkins absent.

Note: This is final action unless appealed to the City Clerk by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 1123A
TO EXPAND THE PEOPLE'S CITY MISSION
LOCATED AT NO. 1ST & R STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 15, 1999

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

Planning staff recommendation: Conditional approval.

Proponents

1. **Michael Bott** appeared on behalf of the **People's City Mission**. He is the architect for the expansion. They have worked with the staff and they can achieve the required 43 parking stalls by removing a storage shed. There are currently 22,000 sq. ft. and this proposal seeks to add 20,000 sq. ft. of family shelter. Bott agreed with the staff conditions of approval.

Opposition

1. **Michael Drahoda, Davis Erection**, 5910 So. 27th, Omaha, applauded the efforts of the City Mission and he is not necessarily in opposition. His concern is a practical issue that may have to be addressed. His company operates some heavy equipment. Their ingress is on the southeast corner of "P" Street, with egress on the northwest corner of 1st Street. As the facility expands, he presumes that the services and the people it serves will also expand and will result in more vehicle traffic. They will begin dialog with the City Mission. They also might want the City Traffic Department to place "no parking" signs on North 1st Street from Q Street to P Street. Parking vehicles on that corridor will impede the ability to move the heavy equipment around.

2. **Craig Rosenberger, Lincoln Bumper Company**, located adjacent to the Mission, also has concerns about parking. Was there a variance requested as to the setback on 1st Street? If so, what effect would that have on parking on Q Street?

3. **Steve Meyers, Meyers Electric**, 401 No. 2nd, also has concerns about the parking. This morning at 6:30 a.m. there were 24 vehicles on the street south of the Mission and towards the west. The proposed expansion will increase this problem, and this is not the peak season for the Mission. The number of parked vehicles in the summer time is almost double.

Staff questions

Rick Houck of Planning staff explained that there is no waiver needed for the parking lot along 1st Street. The I-1 district only requires a 15' setback and 15' is being provided.

With regard to “no parking” signs along 1st Street, Houck advised that this would be requested through the traffic division of Public Works.

Schwinn asked whether there is a requirement that a certain amount of right-of-way be left open in the particular case of the heavy equipment operator. If his vehicle can't go down the city street, what's his remedy? Houck suggested that he would have to find another route out. There is no regulation that he knows of about how much pavement has to be kept open. Parking on both sides of the street should be within 1' of the curb, which on a normal street would leave about 14' of travel width or clearance. There are sight distance issues on the corners.

Dennis Bartels of Public Works stated that there are requirements as to parking distance from the corner. With regard to “no parking”, Public Works has a process and authority to establish no parking areas if warranted. However, the establishment of no parking areas can compound the parking problem on other streets if there is not enough off-street parking.

Houck advised that he inspected the site at least four times and the cars that were parked on 1st Street were well off into the ditches and there was probably 24' between the vehicles, which is just about as wide as a regular residential street. It wasn't like there was just one lane down the middle.

Response by the Applicant

Bott displayed a rendering of the site. In regard to no parking—he agrees that it would be in everyone's interest to have some “no parking” provisions near the Davis Erection entrance. Other “no parking” areas would not be beneficial. These are 100 ft. right-of-ways and very wide gravel roads with big ditches that are used for parking and the Mission would need to have this continue.

Steward inquired whether there might be some traffic management by the management of the Mission to help the situation. This is a neighborhood cooperation issue. Bott agreed that the Mission would be very happy to work with the neighbors and he is agreeable to no parking adjacent to the Davis Erection point of ingress, and if that didn't work, they would agree to go to the signs. They will try to first work internally with the Mission and then go to a sign situation if they cannot control it adequately.

The Mission now has maximum capacity of 200 beds.

Taylor understands the parking concerns of the occupants around the area and it would be really good if something could be done with the road and ditches. He believes there could be a more efficient way to accommodate the parking needs.

Bott suggested that the parking might be something they could improve internally with the management of the Mission. It might be possible to do some diagonal parking to utilize the ditch and 100' right-of-way more effectively. Houck advised that the only real way to get control of the on-street parking is to have the street improved. Being an industrial area, it could be paved to 39' and that would really not allow diagonal parking. The unpaved gravel street with the road ditches is probably about the best that can be done to get the vehicles as far off the roadway as possible.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: December 15, 1999

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

Schwinn has been to Hyland Brothers right across the street and it would be nice to solve the parking, but he does not want to slow up the progress of the City Mission over parking a few cars. Their mission needs to be addressed and supported as much as possible.

Motion for conditional approval carried 7-0: Steward, Duvall, Schwinn, Krieser, Newman, Taylor and Bayer voting 'yes'; Hunter and Hopkins absent.

CHANGE OF ZONE NO. 3216;
MISCELLANEOUS NO. 99011; and
MISCELLANEOUS NO. 99012,
TEXT AMENDMENTS TO THE
ZONING ORDINANCE AND LAND SUBDIVISION
ORDINANCE REGARDING STORMWATER
REGULATIONS; AND TO ADOPT THE
DRAINAGE CRITERIA MANUAL.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 15, 1999

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

Nicole Fleck-Tooze of the Planning staff submitted additional information, including 1) a letter from the Lancaster County Board of Commissioners enclosing the Lincoln-Lancaster County Ecological Advisory Committee recommendation in support; 2) a letter from Lyle Loth on behalf of ESP in support; 3) letter from Rick Krueger of Krueger Development expanding the testimony he gave on December 1st. The Clean Water Act has a provision for a regional general permit and he is hopeful it will be possible for Lincoln and Lancaster County to receive such a general permit. If the costs are to be borne by the public, we should give our best efforts to reduce the redundancy that is inherent when the property owner has to receive a Corps of Engineers permit; and 4) letter from Patrick Rice of the

DEQ in support. The DEQ is exploring a partnership with the City and NRD to develop a memorandum of understanding that will aid in implementing the requirements for projects in Lincoln. The DEQ is also in final stages of developing a permit for the city that will require the development of a comprehensive stormwater management plan.

Ms. Fleck-Tooze then discussed the staff's written response to the comments raised at the initial public hearing, a copy of which is part of the record and on file in the Planning Department. That response discusses the following issues:

--The establishment of overland flow routes for the 100-year storm and the protection of homes along these routes and along drainageways is a fundamental component of the proposed ordinance revisions that addresses basic health and safety issues.

--With regard to costs, approximately 1/4 to 1/2 of the total costs are related to implementing and maintaining construction site Best Management Practices *already required under existing local, state and federal law*. The other 1/2 to 3/4 of the policy recommendation costs relate to stormwater management improvements targeted at keeping citizens and their property free from up to 100-year frequency storm hazards.

--The proposed ordinance and design standard revisions in general, and the erosion and sediment control standards in particular are integral to meeting the City's federally mandated NPDES permit requirements.

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--the City of Lincoln would be eligible for as much as an additional 15% reduction in flood insurance premiums if the proposed ordinance and design standard revisions are adopted, for a total savings of \$84,000 per year.

--The provision for easements is critical because they prevent homes from being built in areas subject to flooding and they are the mechanism to preserve overland flow routes and minimum flood corridors from being encroached by homes, retaining walls, fences and other structures which would obstruct flood flows.

--The City of Lincoln will enforce the proposed grading and land disturbance requirements. Both Public Works and the NRD will work closely with the Building and Safety Department, which technically holds the City's authority for enforcement of the Zoning Ordinance.

--The ordinances as they are proposed are based on the recommendations of the Stormwater Advisory Committee and are intended to be a positive first step in the direction of improved stormwater management to balance stormwater management issues with the concerns of developers and builders.

--The 150-acre threshold for minimum area drained by tributary was selected by the Stormwater Advisory Committee and is on the conservative side of stormwater management; at the 150-acre threshold a tributary would nearly always have a defined channel.

--The proposed corridor width was selected based on a formula utilized by the U.S. Army Corps of Engineers (COE) where vegetative buffers are required to mitigate channel realignments or other impacts to the channel. The advantage to utilizing this formula is that the corridor width is designed to be proportional to the size of the tributary channel. The use of this formula to determine the required width was in an effort to reach a middle ground among the range of possibilities. The formula tends to fall on the conservative side of the research available and does not necessarily include the full 100-year flood width. Any increase in width would be likely to have additional positive benefits.

--Wetlands protection is not reflected in the minimum flood corridor concept because it was not included in the Committee's policy recommendations.

--The proposed requirement to preserve riparian vegetation to the maximum extent possible is important from a stormwater management perspective to provide protection from stream bank erosion. The preservation of mature trees is also important in the regulation of stream temperature and the preservation of stream ecology and habitat, and it can increase property values on adjacent lots.

--By selecting a 2-acre threshold the proposed requirement would embody both City regulations and State and Federal regulations to bring forward a single streamlined process for approval. The Stormwater Advisory Committee discussed both higher and lower thresholds. The 2-acre threshold represents a compromise reached to address both stormwater management and development concerns.

--The proposed Storm Drainage Design Standards total 15 pages and is intended to replace the 12-page "Storm Sewer and Construction Manual" which is in place today. The Drainage Criteria Manual does not represent additional design standards.

--The main purpose of the Drainage Criteria Manual is to provide a clear and practical procedure to guide engineers, designers and public officials toward consistent design and analysis of stormwater related structures.

–Use of the NRD Manual is already a requirement of the Nebraska Department of Environmental Quality (NDEQ).

Proponents

1. John Cambridge, Olsson Environmental Sciences, testified in support. He explained that the stormwater design standards is a 15 page document replacing 12 pages that are in the current manual that has been in place since 1976. Currently, in order to do storm sewer management design on a subdivision, he has to refer to eight different notebooks. This attempts to get all the guidance information into one document that is usable and consistent.

2. Don Taute, City Attorney's office, submitted a written memorandum regarding enforcement. He agrees that the city is the primary enforcement agency. He also suggested other revisions to the proposal.

The other issue addressed by the memorandum deals with the Drainage Criteria Manual. The Lincoln Board of Realtors commented that there were numerous additional requirements being imposed, but this is not the case. A consulting engineer in Lincoln will look to all the documents. There are very few additions to the design standards themselves, going from 12 to 15 pages. The technical data aspect is not being changed and no additional burden is being imposed. The Lincoln Board of Realtors also took issue with respect to the NRD manual as adopted by the State. In an attempt to avoid any duplicity in the manuals, the staff proposes to strike the references to the LPS NRD manual on p.9-58 and 9-61 of the Design Criteria Manual, and indicate that the requirements as adopted by the state would have to be followed.

Taute observed that some of the comments suggest that we should do nothing. Unfortunately, we are well past that point in time. We are required by federal law to do what is being proposed. The staff does believe these regulations are necessary.

3. Lyle Loth of ESP Engineers testified in support. He does believe that there is some language that needs to be clarified.

3. Mark Arter, of the Arter Group, a real estate development consulting firm, testified in support. The Arter Group was involved in the study effort with Olsson and John Layman to examine the costs and benefits of the proposal. Part of the role he played became an effort to prevent bureaucratic creep--unnecessary regulation that did not have sufficient benefit. He believes the overall effort is a good balance between cost and benefit.

4. Foster Collins appeared on behalf of the Blue Stem Group of Sierra Club in support of the proposal. To weaken the suggested regulations and requirements further compromises a plan that already represents a compromise. The Blue Step Group would like to see additional language included to provide protection of wetlands. This is a good start and he urged that the proposal be kept intact.

Opposition

1. Larry Hudkins, Lancaster County Commissioner, stated that there is a letter from the County Board stating that they have not yet been briefed on this ordinance. The County Board has not had an opportunity to review the proposal. He referred to page 17, item (c), and proposed the following amendment: “Trees and riparian vegetation within and adjacent to minimum flood corridors shall be preserved, if possible to the maximum extent possible. ~~Those areas of riparian vegetation within minimum flood corridors which cannot be preserved shall be mitigated.~~” Mitigation is quite an expense and cost. Some of this land is going to be in agricultural uses until urban development occurs, and in good soil stewardship sometimes you do need to go in and clean waterways.

2. Mark Hunzeker appeared on behalf of the **Lincoln Board of Realtors and Home Builders Association**, in opposition. The letter submitted at the first hearing on behalf of the Lincoln Board of Realtors addressed what they felt were some constructive comments relative to this ordinance. It is not in the interest of either of these organizations to see floods damage homes. They are in the business of providing and selling homes and are not in any way interested in seeing them damaged by flood water. He resents the comments by the City Attorney indicating that their comments amount to the “do nothing” approach. We are not here to tell you to do nothing. We are here to comment constructively. Cost of housing is an important issue. Housing prices have been escalating at a rate substantially greater than inflation for the past decade. By their own admission, the proponents have calculated costs to be somewhere in the neighborhood of ½ of 1 percent of the cost of a new house, which equals \$700 to \$800. That’s a lot of money for a person trying to purchase their first home.

Hunzeker went on to state that there are some legitimate concerns which have to do with definitions contained in this ordinance. For example, on page 15, he believes that the definition of “minimum flood corridor” deserves attention. This requires a corridor 30 ft. on either side of any defined channel plus a distance 6 times the channel depth. It is without any reference to any calculations which may indicate that a 100-year storm could be contained within a smaller area. This ordinance would effectively require another street right-of-way width plus 5 times the depth of the channel, to be taken right out of the middle of a subdivision which happened to have a drainageway in it, even if that drainageway was near the top of the drainage basin and did not drain that much water at all. Hunzeker suggested that the definition be modified so that it would simply require a channel of a width necessary to contain the 100 year storm. The additional 60' would not be necessary; the references to the depth of the channel would not be necessary.

Furthermore, on page 16-17, Hunzeker believes that 26.15.020(b)(7) is ill-defined. It is broadly enough worded that it can be interpreted to mean effectively designating overland flow routes on each and every lot. The way this is written, you end up with the situation where you may in fact have a walkout lot where the 100 year storm is designed by the engineer to be carried by the street right-of-way in front of the house and be required to have a minimum opening which would not allow for a walkout basement. The same is true of 26.15.020(b)(8). These are items which do impose some additional cost and which are in need of clarification.

Hunzeker believes they can work this out with the proponents. His clients do not necessarily disagree, but the language needs to be clarified before it is forwarded to the Council.

With regard to 26.15.020(c), on p.17, with regard to trees and riparian vegetation, Hunzeker purports that nowhere in this ordinance is riparian vegetation defined nor any indication what it means to mitigate if riparian vegetation is removed. He suggested that the modifications offered by Hudkins make sense. Often times we are talking about scrub vegetation and weeds which, once lots are sold within a subdivision, are going to be removed by the homeowner with or without anyone's approval. People don't want Russian olives, willows and cedar trees in their back yard. Further, Hunzeker noted that 26.19.031 on p.17 requires easements for that purpose. Having a subdivision requirement which protects true flood conveyance routes from having grading or other obstruction makes some sense. It does not make sense to have easements which protect, for all time, natural vegetation which has grown up along a channel or natural drainage route.

Hunzeker then referred to p.21 which includes a requirement that a farmer doing some modification of his land has to come in and certify that his land will remain in agricultural use for not less than 3 years in order to obtain waiver of the drainage and grading plan in accordance with the terms of this ordinance. There are a few things that need to be changed and he believes that Steve Masters agrees. It is simply a matter of coming up with the proper language.

In summary, Hunzeker stated that he is simply trying to make constructive comments to make these things somewhat less burdensome for people who are trying to create housing in Lincoln.

Steward asked Hunzeker whether he has calculated the life of the building cost in his cost concern. Or are you just concerned about first costs? You keep telling us that approval of this is going to add to the cost of a house—you are only talking about the first cost—the purchase cost. Steward takes the position that if it is in a hazardous condition by reason of having conformed to a better set of regulations, then the owner is guaranteed less lifetime cost. Hunzeker does not believe that anything he has suggested would in any way increase the hazard to any house. Nothing he has suggested would diminish the protection that is offered by this ordinance. Steward does not believe it is a complete

picture when Hunzeker says that conformance with the new regulations will increase the cost of a house. Hunzeker believes it certainly does increase the initial cost of the house. Steward believes it could decrease the cost of flood insurance. Hunzeker's response was that most of the homes in areas being subdivided today are not in areas where flood insurance is even a consideration.

Schwinn observed that changing the minimum flood corridor may in essence in some places actually widen the right-of-way. Hunzeker agreed. But on the other hand, if we are talking about an area where this is a relatively defined drainage course, that is something we've been doing for years. We have always been defining 100 year storm limits in those drainage areas and we've been labeling the lots along those drainage courses with minimum opening elevations.

Hunzeker believes it would be appropriate to defer these items until the definition issues can be worked out.

3. Terry Kubicek, 1800 So. 53rd, testified as President of the **Friends of Wilderness Park**. Perhaps it is the aura of the season but it is truly rare when he can agree with Hunzeker and actually embrace his concerns. Kubicek applauds the Planning Commission and the Planning Department for this effort, but he believes there needs to be further definitions in this ordinance to make it enforceable and workable and to protect the public safety of the community. He advocates a widening of the minimum flood corridor. Or there should be an interim standard of a floodway corridor that is 100' wide plus 10 times the channel depth. This would also provide an area for hiker/biker trails. As we move from 150 acres, if public safety is our concern, let us drop that standard to 40 acres. There are risks of flooding in Lynn Creek. Let us avoid this kind of risk.

In terms of enforcement and referencing, Kubicek suggested that it would be appropriate to have NAVD 1988 as the reference point and to make sure, whether the floodplain is delineated or not, that all elevations be referenced to that datum to remove any confusion. This reference needs to be clarified and repeated throughout the ordinance.

In terms of vegetation, Kubicek supports the idea of mitigation, but we need to define mitigation and at least express a preference for native species to Nebraska. The Ponderosa Pine and other hardwood species are native to Nebraska.

Kubicek also suggested a two-to-one mitigation. In the event that something is torn out, there is a cost to the public that should be recognized and a two-to-one mitigation is appropriate, particularly if it is a wetland.

Kubicek expressed concern and supports a definition and clarification regarding agricultural lands. The current language refers to an exception for tilling and cultivation. He suggested an additional exception for construction or rehabilitation of terraces and field waterways. Do we really want farmers to have to come in and ask for an exception when they are really

rebuilding a terrace or an established waterway? Kubicek does not think so and it should be reflected here. This also requires a three-year preservation of those practices. He submitted that many times those practices are done with SCS or NRD cost-share funds and because those are public monies, he believes it would be more appropriate for a five-year maintenance of the practice before any land use change.

Given the concerns of Hunzeker and his own concerns for additional definition, Kubicek suggested that perhaps a two-week hiatus will give us an opportunity to work with the staff to come back with some definitions that might be more workable or least a more clear set of options for the Commission's consideration.

Duvall asked Kubicek whether this could be a general regional plan. Kubicek believes it is possible if it met the standards, but we would also need to bring in the NRD to broaden the base of participation.

4. Ken Reitan testified in support at the initial public hearing. He submitted written comments today requesting stronger language rather than weaker. Willows are native trees and are not undesirable. Unlike Hunzeker, he believes those that want to remove natural vegetation are in the minority. He believes people want to live close to the natural areas.

5. Graham Johnson, graduate student at UNL, is opposed to the general nature of taking things in piecemeal approaches. We are going to have to start looking at things comprehensively. These types of stringent policies and regulations need to be embraced by everyone and used as an impetus for improvement of the economy and environment. This should be a piece of the pie of a general framework that is comprehensive.

Response by the Applicant

Steve Masters of Public Works stated his appreciation for the many comments received and the discussion by Hunzeker. He believes they can work through the language together and agrees that it would be desirable to wait until the next Commission meeting to see if they can't come closer to agreement. Hudkins has offered some thoughts and ideas that he would like to examine further. We do not want to create further hazard. We need to revisit the language in the riparian area.

Schwinn expressed appreciation to the staff for getting responses back to the Commission. Schwinn understands that the regional general permit referred to by Krueger's letter may be a way to eliminate the 404 permit. Fleck-Tooze believes that to be Rick Krueger's understanding. She attended a meeting with the Corps of Engineers yesterday in Omaha. The federal regulations are changing and there will be proposed new federal guidelines for the general permit, and then each of the regional offices will have the ability to propose a regional general permit. The technical language confuses the issue, but she believes there is an opportunity to work further with local communities to establish regional general

permits that address the issues such as combining the regulatory measures that are necessary for local, state and federal regulations. We are open to exploring that, but the Corps has indicated that the Corps' regional general permits are under a review process now.

Masters agrees that it is an interesting concept, and he thinks we are heading in the right direction based on the fact that we are able to get consensus with the state, the NRD and the City to put together some kind of a "one-stop shop". The state has indicated an interest in a memorandum of understanding for our site grading plan best management practices concept. We have also heard from EPA that they have interest perhaps in issuing us one permit rather than three for our stormwater and our two wastewater plans if we are able to put together some kind of coordinated basin-wise approach. Some of that is a ways out there, but he believes we are headed in the right direction. Schwinn believes that streamlining the system would allay some of the alleged costs.

Steward wondered whether it would be possible for the staff to bring some information about the fit or the non-fit or the changes or the distinctions between what might result with the county recommendations and the city. In some ways he has been concerned that we are a little bit backwards—all of the rain is not going to fall just on the city of Lincoln—all of our flood problems may in fact be created someplace else; we may in fact create more for the county in some circumstances. He needs some sense of the comprehensive connections between this set of regulations and what might transpire in the county. Fleck-Tooze indicated that the staff would attempt to put something together.

Krieser moved to continue public with administrative action on January 12, 2000, seconded by Duvall and carried 7-0: Steward, Duvall, Schwinn, Krieser, Newman, Taylor and Bayer voting 'yes'; Hunter and Hopkins absent.

COMPREHENSIVE PLAN AMENDMENT NO. 94-42
TO ADOPT THE WILDERNESS PARK SUBAREA PLAN
AS AN APPROVED SUBAREA PLAN OF THE COMPREHENSIVE PLAN.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 15, 1999

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

Mike DeKalb of Planning staff submitted additional information, including a letter from the Lancaster County Board submitting the support letter from the Ecological Advisory Committee; letter from the Home Builders Assn. with four items of concern; a letter from Bill Austin of Erickson & Sederstrom containing three proposed amendments; and based on requested amendments from Bill Austin, a proposed amendment from staff to resolve their concern.

Proponents

1. **Charlie Humble** appeared on behalf of **LES** as a proponent of the subarea plan for Wilderness Park with the amendments submitted by Bill Austin's letter dated December 14, 1999. LES had a representative who participated in the subarea study group and it was the understanding that the language resulting from that participation would allow utility crossings of the park; however, the reassuring language did not appear in the report and it left the subarea plan then ambiguous and confusing in regard to that issue. Humble stated that he was not here to raise any issues or point any fingers. What was done was done. He is here, in the spirit of public participation, to say to you that LES serves the electrical needs not only of the city, but of the surrounding area, and the possibility of crossings in the future really does need to be addressed. This proposed language is offered from the perspective of LES having successfully crossed the park in 1993. The existing KV line was done in relationship to mitigating factors. The line is not built in a straight line; there is no corridor; trees of certain heights were left in place; and other mitigation measures relating to maintenance have been employed. The proposed language would appear on page 1-12 and Page 3-4: "Make any necessary utility crossings in an ecologically sensitive manner and any necessary disturbance which is caused by such crossings should be reasonably mitigated to minimize disturbance of natural systems." Humble believes this will make it consistent with the language on page 6-33 of the report. With this amendment it makes it clear that in the future, if LES does its job in relation to proper planning and proper mitigation, then LES could cross the park.

Steward's concern would be who decides what is necessary. Any necessary utility crossing is rather ambiguous. Humble observed that there is quite a planning process that goes along that is employed by LES, and that planning process plugs into the City's one and six-year CIP; LES also has requirements relating to approval of certain projects by the Power Review Board; LES has been a participant in the Comprehensive Plan from the gitgo and continues to be; LES has some Public Service Commission requirements, so there are a lot of opportunities for public input once LES makes the determination that the crossing would be necessary. The determination of what is necessary is done here in the public forum and we'll all work together, but LES makes the initial determination based upon their years of experience on what is necessary to serve the expanding customer base.

Steward is sure it would not be arbitrary but if we're allowing a crossing, he wants to be sure there is a way to tie it to the City's Comprehensive Plan condition. Humble advised that every LES project is formulated in relation to the Comprehensive Plan. They work closely with Planning staff, the Commission, the Council, the County Board, plus the LES board and administration. The City Council finally approves the LES budget, so there are many opportunities to get the public input. "Necessary" is really determined by the public.

2. **Bill Austin**, testified on behalf of **People's Natural Gas**, in support of the plan with the amendments suggested by Humble. As with LES, People's Natural Gas is concerned to

avoid any absolute preclusive language being contained in the subarea plan because in the future there will undoubtedly be some needs to engage in utility work in the vicinity of the park. He showed an aerial photo of the existing gas main from the town border station extending all the way to 14th and Yankee Hill. It narrows from 12" to 8" as it goes to the south and crosses at Rokeby Road. The purpose of that line is to serve the LES turbines located further over to the west. The existing line is functional now for the purpose of providing adequate service to the turbines, but there is a third turbine that will be coming on line in 2001 which will require gas service. The amendment is a clarification. Page 6-33 already makes reference to the statement about necessary utility crossings in an ecologically sensitive manner. This amendment attempts to do just that. It is the operative language that this amendment addresses--an attempt to make the language of the plan consistent and recognize the ability to make the crossing when necessary. Utility crossings are qualitatively different from road and trail crossings.

3. Wayne Price, Norris Public Power, testified in support, and agrees with the amendments proposed by LES and Peoples Natural Gas.

4. Phyllis Hergenrader, 5701 Yankee Hill Road, representative of the Yankee Ridge Neighborhood Association, testified in support. The mediation effort was a long and arduous process that required dedication and commitment of participants to see it through to the end. She missed only one meeting. There was a great deal of give and take among the participants, which included land owners, developers, environmental and floodplain advocates, bird watchers, trail users, elected representatives, public officials, etc. A lot of time was exerted to mold and integrate statements to reach consensus. No one got everything they wanted nor did anyone lose everything they wanted. It was a compromised consensus. The principles outlined in the plan will guide future management of the park and the adjacent development that will impact the park and ultimately the citizens of Lincoln. It's apparent that there will be attempts by interests not satisfied with one aspect or another to add amendments that would better satisfy their own individual interests. To accept these amendments would undermine the work of the mediation group. She urged that the Commission not alter the proposed plan. At the outset, the mediation process was proposed by the city and county as a way to bring many diverse interests in the park to fashion a plan to meet these interests that all the participants could live with. This is a product of their commitment, dedication and trust. Amendments will violate the spirit under which the mediation participants worked. She urged that the Commission acknowledge the importance and significance of the public participation process by adopting the subarea plan and incorporating it as a part of the Comprehensive Plan.

Bayer asked whether Ms. Hergenrader would support the amendments being proposed today by the utility companies. Ms. Hergenrader did not receive the information and she has not had time to study it. In the mediation process, most of the time when we talked about corridors through the park, we had roads and utilities together and she would have to study that to determine how she feels about separating the two issues.

5. Moni Usasz, 3240 So. 31st, appeared on behalf of Friends of Wilderness Park in support of the subarea plan. The park has suffered from neglect for years and the flurry of development around the park lead fairly directly to the subarea study in the first place. She was also involved in the mediation process. The process was useful. It provided a chance to talk with each other. The plan is not perfect. What plan ever will be when you have conflicting interests from a variety of perspectives? It is important to know that the document provides an integrated overall strategy for Wilderness Park and its environs. This plan needs to be considered as a whole; otherwise, much of its value is lost. If torn apart, it will appear that the citizen participation process was for naught. It is important to have a final plan that includes information about the best environmental practices such as no development in the 100 year floodplain adjacent to the park; 100' buffer corridors; environmental overlay districts; park impact fees, etc. To leave such things out of a plan committed to help protect the park's environmental integrity would be wrong. We have some concerns about the plan with regard to the continued management of the park and the need for ecologically trained staff at Parks & Recreation. The Parks Department will support the formation of a science advisory committee but it will need funding. The Friends of Wilderness Park does not agree with treatment of old fields in their third decade of growth as prairie that needs to be burned, but believe the plan has been written well enough that the Friends of Wilderness Park can have input on their concerns at a later time. She requested that the Commission support the plan in its entirety.

Steward commented that the community is always well served when there are volunteers willing to devote energy, effort and time and he commended the group organized for promotion and protection of the park. He noted that some of Usasz' concerns seem to be plan maintenance and plan implementation issues more than changes or revisions to the plan itself. He asked whether the Friends of Wilderness Park is discussing the plan maintenance strategies. Having a plan is one thing, but having the will and interest to see that it is implemented is something else. Usasz agreed that to be a big concern. Parks and Recreation has spent 1% of its budget on Wilderness Park. The Friends of Wilderness Park will begin to look more in detail into the plan and think about the management. They definitely want to have input in making sure that things are carried out.

6. Kent Seacrest appeared on behalf of **Southview, Inc. and Ridge Development Company** in support. He was involved in the mediation process. Urban form is a responsibility of the Planning Commission and it has to do with the utility crossing issue. Seacrest pointed to S2 on the map, which is in the future service area so it is intended to someday be urbanized. If we keep it out of Wilderness Park it will cost an additional 4-5 million dollars. Assuming we could mitigate that sewer line and put it in the park, the community saves that cost and we could hope to mitigate the park damage. It is important to know that this utility crossing is important if you believe in the Comprehensive Plan and want to believe in following the urban form because that area has got to get sewerred. You have to go through the park unless you want to spend 4-5 million dollars. Another interesting urban form is southwest Lincoln. It will someday be a sweet spot. It is so close to Downtown and the University. It has utility infrastructure nearby. Again, on

urban form basis, if that were to open you have to figure out how to get the water and sewer and most of this infrastructure is on the other side of Salt Creek. Are we keeping our options open? He supports the amendments proposed by Mr. Humble.

Seacrest agrees that the roads are important, also. He is wondering if roads should be added to the utilities. He does not want to propose widening roads in the plan, but if the planning process says we need a utility and a road, then it needs to be properly mitigated. Prohibition has consequences to urban form. The language is not as clear as he wishes it would be.

Steward agreed that there are consequences to urban form, but there are consequences to urban form no matter what we do. It is not wise to mitigate and compromise whenever we choose. This plan places a higher set of values and priorities on this as a part of the urban form. Seacrest believes there are ways to be strategic at the utility and road crossings and still have the wonderful attributes of the park. He is afraid that by the absence of the language it will be prohibited.

Opposition

1. Ken Reitan on behalf of the **Wachiska Audubon Society**, spoke at this time. He stated that he is generally speaking in support because the plan contains a number of positive elements including buffers along the park and tributaries leading in to the park, etc. The concerns are that the new development occurring near the park will radically change the character of the floodplain near the park. Perhaps new studies need to be done on the Salt Creek floodplain. This may slow up the process or perhaps an amendment could be made to the plan at some point in the future.

He also suggested that widening of trails for emergency purposes will negatively impact the natural experience of the park and damage wildlife populations. Widening of trails will promote forms of recreation that will damage the park and the natural experience that the park offers.

In addition, he supports the use of controlled burns to restore native prairies, but the report should reflect the fact that there are only one or two areas where this would be possible. It is a very difficult process.

Reitan agrees that the report should address the possibility that LES or another utility will want more corridors across the park. He would like to see restrictive language added regarding utility corridors. Costs would not be the only factor.

In summary, Reitan observed that this plan is a big step forward; however, minor changes could and should be made but not slow up the process.

2. Terry Kubicek appeared in a **neutral** position on behalf of the **Friends of Wilderness Park**. The subarea plan is a major step forward. It involved a broad base of the community. There is, however, a near fatal flaw--it is not consistent with any kind of 100 year floodplain study under a fully urbanized condition. There is concern that was brought up about the stormwater ordinance. He submitted that that proposed ordinance and this subarea plan need to be conformed much tighter and we need to endorse a 100-year floodplain study for the entire basin of Salt Creek in and through the city and Lancaster County. If not, we put business at risk, residential homeowners at risk and the future of the community at risk. We can do an honest study and we have the opportunities here with these three initiatives--the stormwater ordinance, subarea plan and floodplain study-- to provide a benchmark. Corridors through the park are a concern, whether it be transportation or utility, and he raised the concern with electric utilities and their privatization. LES is publicly owned today. How would we address them if they were privately owned and wanted to cross the park? How do you mitigate the damage?

Response by the Applicant

DeKalb commented that this long process involved a lot of people and a lot of points of view and he believes Kip Hulvershorn did a fantastic job of bringing together a balance. Most of the people were satisfied with most of the items most of the time. There were some compromises.

Relative to LES, DeKalb suggested that there are two pieces in the Comprehensive Plan that have some conflict. Taking out the conflict as requested by Humble is appropriate, and he reiterated that as far as LES goes and public utilities, there is a CIP and there are growth systems that we consider. Bottom line, if we want to come through a public park, we need to have the easements granted to do that.

With regard to the letter from the Home Builders Association, DeKalb disagreed with the amendments suggested. Relative to implementation, there is a proposal being brought forward by the Parks Dept. called "Up the Creek" to implement this plan and includes a variety of options. This should be coming forward to the Commission in January.

As far as the missing pieces and the bigger picture, DeKalb suggested that we need to recognize that this is a policy document; it is a living document that year-to-year can be amended or changed. At this point it is an accomplishment and we should move forward. There are opportunities to fine-tune as it moves forward.

In view of the fact that we have been working on the subarea plan and the stormwater strategic plan at the same time, Steward wondered how we synchronize the two when they both come off the table. DeKalb believes they are synchronized well on the policy level.

During this process the S1-S2 subarea plan was included; the hydrology was considered; and the Beal Slough Stormwater Study was studied and incorporated. This could be amended accordingly. Steward believes that conceptually they seem sympathetic to each other.

DeKalb clarified that this plan does not include a transportation study and there are no recommendations relative to roads embodied in this report. We were very specific because during the public participation process that was an extremely sensitive issue. Conclusive direction could not be made and the recommendation is that the transportation needs additional study in a continuing transportation study process.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION

December 15, 1999

Schwinn moved approval of the staff recommendation, as revised, including the amendments submitted by Humble, seconded by Steward.

Schwinn commented that this is bringing a lot of unintended consequences to its highest point. He believes there were people who thought this would be a way to stop development. It is interesting that all sides have encompassed this report in a positive manner. The minor objections that we have seen indicate just how well this was done.

He does not believe there is anything in the Home Builders letter that is substantive and there is nothing they could not live with. The same appears to be true of the Audubon Society and Friends of Wilderness Park. Maybe the report under-estimates the costs of what this will do and it will take the collective will of the citizens to implement this. This is an incredible opportunity for this community and we need to move forward.

Steward agreed with Schwinn's comments. He put emphasis on the process. This mediation process on this issue is a model that we perhaps may want to employ in other circumstances for other reasons for larger issues. It gives him a sense of pride in the process and that sustainability can really take place with different points of view about how to go about it.

Motion for approval, as revised, with amendments requested by LES, carried 7-0: Steward, Duvall, Schwinn, Krieser, Newman, Taylor and Bayer voting 'yes'; Hopkins and Hunter absent.

COMPREHENSIVE PLAN AMENDMENT NO. 94-43
TO AMEND THE LAND USE PLAN
TO CHANGE AN AREA FROM WETLANDS/WATER BODIES,
PARKS AND OPEN SPACE TO PUBLIC AND SEMI-PUBLIC,
ON PROPERTY GENERALLY LOCATED AT SUN VALLEY BLVD.,
CHARLESTON AND NORTH 1ST STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: December 15, 1999

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

Proponents

1. Vince Mejer, City Purchasing Agent, and caretaker of the impound lot submitted additional information for the Commission's consideration. The staff listened to the concerns of the Commission and wants to address them. Approximately 22 sites within 2-3 miles of the Downtown area were considered, including city-owned land; privately-owned land and the costs to acquire; the corridor to the City was also considered. Of the 22 sites, after looking at all the different scenarios, it was narrowed down to this site as being to the best interest of the city and the people who get their cars towed.

2. Jim Peschong, Lincoln Police Department, showed a map of a snapshot in time of the Police Department tows in Lincoln, representing 837 tows. Predominantly all the tows are in the Downtown area. Thus, the closer we can have an impound lot to the Downtown area, the better it is going to serve the Police Department and the better it will serve the community. Several years ago, the city had an impound lot on No. 56th by the interstate. This created a large hassle for the members of the community who had their vehicles towed and having to go clear outside the city to view their car after an accident or to get their car. This causes great problems. For the convenience of the Police Department and the members of the community, he believes the impound lot should be closer to where people have access to it in order to retrieve their cars.

Peschong advised that they also tow a lot of vehicles during residential parking bans for snow emergencies and a lot of those high density areas are located around the Downtown core area. If the impound lot were located on the outskirts of town, we would probably end up paying more on the contracts to have those cars towed. This results in driving up the costs to retrieve a vehicle and people tend to abandon the vehicle. A couple of years ago, the impound lot was running about \$20,000 in the black. Last year it was \$2,000 in the black. He does not have the figures for this year, but at the end of October, they were about \$5,000 in the black. A lot of that is attributed to the fact that people are abandoning the vehicle for the cost associated with the impound. At that point in time, we have to start a process to wind up getting title and selling the vehicle at auction. Once we do that, we have to pay the towing and the storage. They get \$800-\$900 for every auction and they run an auction about every other week to get rid of vehicles.

Steward asked whether the city carries flood or fire insurance on these automobiles. Mejer advised that the city does not.

3. John Sinclair, architect with **Sinclair, Hille & Associates**, showed the site plan layout. The initial site plan has a boundary that moves to the east a little further than the eventual site plan because of the anticipated realignment of Sun Valley Blvd. Once Sun Valley is relocated, the fence would be moved back and the site takes on more of a triangular profile. The existing building will be relocated to this site. It is a metal building being disassembled and then moved over to this site and will be located in the far northwest corner of the site. The area for public auction will be fenced but not entirely secured. Screening is provided by visual slats and landscaping around the property lines. Relative to the floodplain issues, the metal building is proposed to be placed upon a raised building pad because the soil is contaminated. They will build it up with structurally compatible soil and the floor slab will be 1' above the floodplain. They did consider several other options relative to flood protection: 1) a floodproofing situation in which the building would be set up along floodproof walls structurally capable to withstand flood waters. The cost requires over-excavating the landfill site and bringing back new soil. This alternative also requires concrete access ramps for vehicles and pedestrians; 2) build a flood wall around the property, including flood gates; and 3) raise the building completely above new compacted soil and allow openings in the foundation for flood water movement. These three options were considerably more expensive than what is being proposed.

Steward wanted to know what takes place in the building. Sinclair advised that bicycles are stored and vehicles are brought into the building to be shaken down. Peschong added that the bicycles would be those picked up as found property around the city; vehicles that need to be dried out and dusted for fingerprints, photographed and processed; property removed from vehicles that are going to be auctioned is stored in this building; and the office for the impound lot is in the building.

Schwinn asked for an explanation of the alignment of Sun Valley Blvd. Scott Opfer of Public Works advised that in 20 year comprehensive plan, there is a plan to relocate Sun Valley Blvd., which would bring it catty corner across that property and tie into 1st Street. The state currently has that in their 8-10 year plan and we are trying to accommodate for that now.

5. Dr. Jeff Johnson, Olsson Associates, is doing the environmental assessments including wetland investigations and disturbances of the landfill. There were some mapped wetlands on the site; however, the delineation was done and they have identified no jurisdictional wetlands on the property. Other agencies visited the site including the Corps of Engineers, Fish and Wildlife, Game and Parks and NDEQ, to check the areas previously mapped as wetlands. Based on their opinions and findings for the delineation report, they concur that there are no jurisdictional wetlands on the property. Johnson has also visited with NDEQ about landfill issues. Their consensus is that if there is any disturbance to the landfill cap, you have to replace the cap. They asked about groundwater issues and

methane generation. NDEQ was advised that those issues have been addressed as part of the study and NDEQ is supportive of this project as long as it complies with the state regulations.

6. John Olsson, Olsson Associates, talked about the floodplain and how this project may impact it. The staff has considered different sites and there are reasons we have to be in the floodplain. Because it is on top of an old landfill it is impossible to excavate out of the cap to create the fill, so we are left with needing to bring fill in to build up the cap for this building. As you look at the County, there are a lot of studies that have been done, including the flood insurance study and that is all we have at this point in time. Many of the waterways in the county allow for development in the floodplain. In this particular reach of Salt Creek, there are certain limits on how much fill can be placed in the floodplain. Between "O" Street and I-180 they are allowing for 15% fill in the floodplain. The design outlined and proposed would meet this requirement of 15% fill within the floodplain. Do we meet current city requirements? Yes. Do we meet the floodplain insurance requirement? Yes.

Steward assumes then that it is impossible to raise the entire lot above the floodplain. Olsson agreed that they would not be able to do that on this site.

7. Kent Seacrest and Ann Harrell appeared on behalf of the Mayor, the Chancellor of the UNL and Jim Abel, President of NEBCO, in support and to help facilitate the baseball park process. Moving the tow lot is on the critical path in order to have the baseball stadium in 2001. There are many public policy benefits to relocating of the tow lot, but 22 sites have been considered and we think bringing minor league baseball to Lincoln is timely and we need to move on it if we are to succeed. Moving the tow lot away from I-180 is a tremendous benefit. It will make the corridor much more attractive. It will strengthen the downtown and improve the trail network overall. We also see this site as having very few residential neighbors and business people being impacted. We have got to recycle that 50 year old dump or landfill. Concrete asphalt parking, in-line skating, and basketball courts are all good uses to encapsulate it. DEQ is pleased that we are encapsulating it.

Opposition

1. Pat Knapp, 1614 North 31st, appeared on behalf of the **Blue Stem Sierra Club** in opposition. They are opposed to moving the impound lot to the proposed site because of the presence of the saline wetlands on the site. They are very rare ecologically, with 90% of them in Lancaster County. There must be some way to preserve that wetland. They are wetlands in the opinion of Game and Parks that could be rehabilitated. There may be some potential to restore and enhance those wetlands on the site. Doing what is being proposed is very much in conflict with the language of the Comprehensive Plan goals.

Bayer wondered whether the wetlands could be relocated. Knapp agreed that to be what Blue Stem is encouraging.

2. Terry Kubicek, 1800 So. 53rd, testified in opposition. If there is a 100 year flood in this area, the levy system will overtop a bridge. This impound lot will be at risk and there would be increased liability on the part of someone who had a vehicle there and found it was not protected and got flooded. It is a liability. In terms of public policy, the city should be setting examples of not locating city infrastructure in floodplains, subject to the risk. A 100 year flood will happen, whether it's a baseball stadium, or the impound lot or the LES lot on No. 27th or the Teresa Street treatment plant – they are all at risk. Here is an opportunity to avoid that risk.

3. Cheryl Burbach, 917 Claremont, testified in opposition as President of North Bottoms Neighborhood Assn. and the Foul Ball Committee formed in response to the baseball complex. The Foul Ball Committee believes that baseball money would be saved by not having to deal with the tow lot issue. The North Bottoms already lacks suitable park land and this is a terrible waste of parkland for a tow lot. The tow lot is already a sore issue with some of the North Bottoms residents. There are tow trucks running up and down Charleston Street all the time. When they met with city officials, they requested that if we do get baseball, could we think about moving the tow lot out of our area? It looks like now we will get the baseball complex and the tow lot.

If this tow lots does go in at this location, can the tow trucks be rerouted other than up and down Charleston Street?

The Foul Ball Committee also opposes the location of the baseball complex.

Response by the Applicant

Mejer indicated that Public Works will talk with the tow truck operators and request that they use Sun Valley instead of Charleston. There is some discussion that as the ballpark is developed, a portion of Charleston will be shut off and they won't be able to use it. Bayer suggested this be written into the contract with the tow agency.

With regard to the wetlands, Johnson explained how it became mapped as saline wetland. The Soil Conservation Service mapped the entire state; they found saline soils and connected the dots and said this area was a saline soil area (actually, it's only a portion of the subject site); based on that, the regulatory agencies involved with identifying saline wetlands examined the areas shown on the map and found some vegetation species that can be found in saline wetlands—a weedy species such as salt marsh aster—originally thought to be a pristine vegetation saline plant but this is no longer the case. The city has piled snow in this area, creating the saline source. There are no soils in most of the area of the site. It is rubble with brick and glass at the surface. There are no soils there to establish a prominent wetland. That is why the agencies have visited the site and agreed that it was a mis-mapping. If it was a category II wetland, the agencies would view it completely differently. They are of the opinion that this is not a wetland area.

With regard to accessibility for the tow lot, Opfer stated that when the future Sun Valley Blvd. comes through, the tow lot will be virtually cut off from the North Bottoms neighborhood so the tow trucks would not be able to cut through the neighborhood. He believes they can work with the Finance Dept. to prohibit them from coming through the neighborhood now. Public Works has worked very closely with the BMX people, also.

Steward asked staff to respond to the liability issue for having other people's property in the floodplain. It was discussed at the last meeting that it is really inconceivable that you could pull 500 cars out of there with 1 hour warning. Mejer responded that the plan presented shows guardrail into the impound area with the intent to tie the vehicles down with guardrail. The code requires they be moved or tied down. Steward does not believe his question will be answered.

Rick Peo offered that usually the city will not be responsible for acts of nature such as a flood. He believes that under the court claims law of the state, discretionary decisions of a governing body will probably be exempt or still have sovereign immunity. There is a good likelihood that the city is not liable but he has not done any research specifically.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: December 15, 1999

Taylor moved approval, seconded by Newman.

Taylor believes the arguments for this area are really strong overall. Therefore, and considering the fact that we can stop the towing of cars in North Bottoms, he believes some of the concerns have been satisfied. He believes it is to a point where this is the best way to handle the situation—one of the lesser evils.

Newman commented that if North Bottoms can get something out of this, more power to them. It is an unfortunate piece of land and this is probably the best we can do on this property.

Motion for approval carried 6-1: Duvall, Schwinn, Krieser, Newman, Taylor and Bayer voting 'yes'; Steward voting 'no'; Hopkins and Hunter absent.

There being no further business, the meeting was adjourned at 5:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 12, 2000.