

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 28, 2000, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Russ Bayer, Jon Carlson, Steve Duvall, Linda Hunter, Patte Newman, Tommy Taylor and Cecil Steward (Gerry Krieser and Greg Schwinn absent); Kathleen Sellman, John Bradley, Mike DeKalb, Ray Hill, 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 June 14, 2000. Motion to approve made by Duvall, seconded by Newman and carried 6-0: Bayer, Carlson, Duvall, Hunter, Newman and Steward voting 'yes'; Krieser, Schwinn and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

June 28, 2000

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3251; CHANGE OF ZONE NO. 3256; SPECIAL PERMIT NO. 1844; SPECIAL PERMIT NO. 1847; SPECIAL PERMIT NO. 1848; SPECIAL PERMIT NO. 1851; FINAL PLAT NO. 00007, TIMBER VALLEY ADDITION; FINAL PLAT NO. 00009, VINTAGE HEIGHTS 7TH ADDITION; FINAL PLAT NO. 00014, VAVRINA MEADOWS 3RD ADDITION; AND FINAL PLAT NO. 00015, POINTE EAST ESTATES 9TH ADDITION.**

Item No. 1.2, Change of Zone No. 3256, was removed from the Consent Agenda and scheduled for separate public hearing.

Steward moved to approve the remaining Consent Agenda, seconded by Hunter and carried 6-0: Bayer, Carlson, Duvall, Hunter, Newman and Steward voting 'yes'; Taylor abstaining; Krieser and Schwinn absent.

Note: This is final action on Special Permit No. 1847, Special Permit No. 1848, Timber Valley Addition Final Plat, Vintage Heights 7th Addition Final Plat, Vavrina Meadows 3rd Addition Final Plat and Pointe East Estates 9th Addition Final Plat, unless appealed to the City Council by filing a Notice of Appeal with the City Clerk within 14 days of the action by the Planning Commission.

**CHANGE OF ZONE NO. 3256
TO CLARIFY USES PERMITTED
IN THE AIRPORT ENVIRONS DISTRICTS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 28, 2000

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

Planning staff recommendation: Approval.

This item was removed from the Consent Agenda at the request of the Planning Department.

Ray Hill of Planning staff requested that this application be deferred with continued public hearing and administrative action on July 12, 2000. This will allow the staff to have further discussion with the Airport Authority on the text amendment.

Duvall moved to defer, with continued public hearing and administrative action scheduled for July 12, 2000, seconded by Newman and carried 7-0: Newman, Taylor, Steward, Hunter, Duvall, Carlson and Bayer voting 'yes'; Krieser and Schwinn absent.

**SPECIAL PERMIT NO. 1753A
AN AMENDMENT TO THE VAVRINA MEADOWS
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND VAVRINA BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 28, 2000

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

Planning staff recommendation: Denial of the increase in dwelling units; denial of the waiver of cluster density requirement; conditional approval of the waiver of the height requirement for the multi-family structures if parking is provided under the buildings; conditional approval of the concept plan for the early childhood care facility.

Rick Houck of Planning staff presented a letter from the applicant requesting a two-week deferral to allow further evaluation of the request with staff.

Duvall moved to defer, with continued public hearing and administrative action scheduled for July 12, 2000, seconded by Newman and carried 7-0: Newman, Taylor, Steward, Hunter, Duvall, Carlson and Bayer voting 'yes'; Schwinn and Krieser absent.

SPECIAL PERMIT NO. 1846
FOR A PERSONAL WIRELESS FACILITY
ON PROPERTY GENERALLY LOCATED
AT NO. 9TH STREET AND "W" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 28, 2000

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

Planning staff recommendation: Conditional approval.

Jennifer Dam of Planning staff submitted two letters in opposition from property owners in the neighborhood.

Proponents

1. Stephen Forbes of U.S. West Wireless, presented the application. U.S. West is striving to be a new wireless provider in Lincoln with a concept for wireless coverage in the community of Lincoln beginning with an initial number of sites for initial launch, followed by some refining later. This is their first application in Lincoln.

The proposal is to erect a 78' pole located on an industrial parcel of land which they attempted to locate away from residential uses, while still accomplishing their coverage needs. The coverage needs in this area are dual coverage--for Memorial Stadium, the new ballpark complex as well as I-180 traffic. This system does not extend to heights frequently seen as their equipment is different.

Forbes stated that Lincoln's wireless ordinance is a sensible approach to try to manage the industry and its impacts on the community and U.S. West will endeavor to obtain sites that are preferential under this ordinance. Often times they will not have to erect a pole, but in this case they are. Forbes displayed pictures of a silhouette style pole, with a unipak (three antenna panels of about 4' high and 7" wide, wrapped in a way to appear as an extension of the pole). At the base of the pole, there will be base equipment, a 42" x 42" x 20" box, differing substantially from a lot of the larger compounds. This would fit in the back seat of a car. There are wall mount type units as well. This application would require the ground unit.

2. Corby Dill, of U.S. West Wireless, also testified. He is in charge of the system design. In general, over the next few months, U.S. West will be bringing some applications forward to cover the City of Lincoln with general coverage. They will then come back later to fill in

areas where there are weak spots and do more “in building” type coverage. This particular site is one that is of great importance—the UNL campus is populated nine months of the year; the football stadium is a very high point of coverage, even though used minimally during the year; and the addition of the baseball complex. I-180 in and out of town is very heavily traveled and is an area that needs coverage. This site would allow the best coverage on all three of these facilities to obtain the objectives of U.S. West with this site.

Steward asked whether the applicant had investigated putting this on an existing structure like the scoreboard at the stadium. Dill indicated that dealing with the University has been another step. Getting UNL approval for something like that would be more difficult. He has not personally had discussions with the University, however. There would be interference issues if the antenna were placed on the scoreboard. Steward suggested that it is general policy to thoroughly investigate existing structures in the area or planned structures. If University-related activities are the primary target, he believes there should be some possibility of negotiating with UNL. Dill responded that U.S. West did investigate other structures in the area, i.e. the billboards on I-180; LES structures such as light poles. They have not come to any agreement for installation of the antenna on any other structures. They did investigate in this immediate area before deciding to erect a pole.

Forbes concurred that they have not visited with UNL. In researching the billboards and LES poles, in both cases there were complications. They would not achieve the isolation needed on the LES poles which were in the right-of-way. They would have to create an extension to the billboards that would have drawn more attention to the billboard and increased the adverse effect that people have towards billboards. All other potential locations in this area tended more toward the residential uses.

Hunter noted that one of the Commission’s goals is to reduce the number of poles. Is there a reason why U.S. West did not want to build this pole with another carrier option? Forbes clarified that this pole has been designed for the possibility of collocation. They do have pole designs of 55' in a number of their other markets where the property owners have the preference for a more slender, sleeker appearance. This pole design is not their sleekest because they want to respond to collocation possibilities. A more slender, sleek appearance that is less distracting is feasible.

Carlson observed that the neighbors wonder why this could not be moved further to the west. Dill stated that they did examine some areas to the east of this location towards 14th Street on the north side of the railroad tracks. This particular area caused problems for coverage on I-180 headed north and would necessitate another site around Cornhusker Highway. Moving toward the University resulted in issues with I-180 and interference issues. Dill does not believe there is much on North 10th Street. They did examine a gravel parking lot between the railroad and UNL property, but it would have caused problems with coverage on I-180 because of the trees and foliage.

Opposition

1. Sheryl Burbach, President of North Bottoms Neighborhood Assn., testified in opposition. The neighborhood is currently working with Urban Development on a focus area plan which looks at the strengths and weaknesses of a neighborhood and tries to capitalize on strengths and work on weaknesses. The strengths of the North Bottoms Neighborhood are close proximity to downtown, UNL and the baseball complex. They need to attract more homeowners to the neighborhood. At a recent board meeting, the members walked down to the area and they did look at this cell tower location. It would be nice if Capital Steel could move somewhere else. They want to preserve the neighborhood and want to look forward to improving the neighborhood so they do not want to accept any unattractive towers to this neighborhood that would block the vistas. This would defeat the goal of improving the looks of this neighborhood.

U.S. West did not contact the neighborhood.

Carlson noted that some different locations in this area have engineering problems and some were aesthetic problems. If we were to assume there needed to be a tower somewhere in that proximity, would the neighborhood have an interest in discussing a different location? Burbach's response was that the neighborhood is trying to preserve what they have now. They have hope for the future that it will look better. A site that takes this neighborhood out of the equation would be their goal. They would not be opposed to incorporating it with something else that is already there, but putting up another structure is not acceptable to this neighborhood.

Bayer inquired as to the number of towers already in this neighborhood. Burbach stated that they have received information on another cell tower going up on 14th & Military and the 911 tower is being relocated over by the baseball field. She suggested that U.S. West share with the 911 tower.

2. Wynn Hjernstad, Urban Development Department, stated that Urban Development is not opposed to this tower location. However, she is working on the Focus Area Plan for this neighborhood. There are a number of proposals going on in North Bottoms. Urban Development thought this tower was in a different location when she wrote the letter dated June 9th; however, Urban Development does support the neighborhood. Cell towers are not always a very welcome addition to a neighborhood and they are not great architectural features for neighborhoods, but Urban Development also understands the necessity. Hjernstad noted that U.S. West is requesting to waive the landscaping requirements. Hjernstad had suggested that the applicant be required to provide landscaping in some other area of the neighborhood if the waiver is granted; however, the Law Department has

indicated that such a condition is not appropriate. If it is agreed that the landscaping for the tower site should be granted, then the City does not have the authority to require the landscaping at some other alternative location. It cannot be made a cost of doing business. Hjermstad suggested that cell tower companies might want to consider something like this on a voluntary basis.

In regard to the future thinking and planning for this neighborhood, Steward observed that the proposed location of this tower is adjacent to railroad tracks, adjacent to a major overpass thoroughfare and in the midst visually of an industrial area. Although the tower would be within the boundaries of the neighborhood, from a visual standpoint it is Steward's opinion that this tower would never appear to be an intrusion on the neighborhood unless there is real opportunity for change in the land use of this immediate area. What is Urban Development's prospect, from the city's point of view, of that little industrial corner changing? Hjermstad responded that the neighborhood's biggest concern initially is the encroachment—that it not encroach any further into the residential area. Whether that industrial area is likely to change is more of an economic consideration for Capital Steel. One of Urban Development's goals will be to stop the expansion of more industrial into the neighborhood. They have not yet talked with Capital Steel. They have just begun the Focus Area process. She does not believe it is likely that that land use will change, however.

Rick Peo of the City Law Department advised that it is not an appropriate condition to include the requirement that the applicant put landscaping in a different location. The purpose of the landscape screen is to avoid the impact of the tower at this location. You cannot require any exchange. Therefore, Condition #2.1.2 should be deleted from the staff recommendation.

Bayer inquired about collocation on the 911 tower. Jennifer Dam of Planning staff stated that the new 911 tower will be located at 14th & Military Road with a variety of equipment on it. It does have a couple of slots for future cell tower locations; however that site is outside the search ring for this particular location. U.S. West uses a tighter search ring. She is concerned that it would not help them enough to avoid another tower.

Bayer inquired whether a cell tower could also be an electrical wire pole. Dam responded that there are a lot of possibilities. In fact, there are several companies working with LES. However, in this particular location with wooden utility poles, they have not found an application that works real well.

Bayer noted that the staff is recommending approval, with conditions; however, we are dealing with a very fragile neighborhood. Is there anyplace else? Dam observed that there has been a lot of talk about the billboards, but those are already very sensitive and the antenna would have to go above the billboard which might draw more attention to it. It would be staff's concern that a cell tower on top of the billboard might cause the billboard to remain in place longer than we desire. Dam agreed that this is a very fragile area.

However, the proposed area is zoned industrial and surrounded by industrial uses and it is a very slim tower. Capital Steel's operations are right in the area. The base equipment is very small. She believes this application is suitable for this area. She would have considered it differently if it had large base equipment and the large antenna mounting bracket.

Bayer suggested that cell towers are a lot like railroads—you can maybe adjust them to where they go but not stop them. Lincoln now has six wireless providers. At what point can the city limit the number of providers? Dam indicated that it is illegal to limit the number of providers. The number of providers is based on Federal law and licenses granted by FCC. Dam suggested that the Commission could defer this hearing so that additional locations can be considered. She suggested that there might be a possibility for collocation on the lights for the baseball stadium.

Dam also observed that the UNL process is different than a zoning process; however, the staff could ask the applicant to make contact with the University to explore that option.

Hunter knows that there is a mandate of the Commission to protect the environment, including the visual environment. This is all going to come to a crossroads where we are in conflict with an FCC regulation and she is fearful that it is going to become a legal issue. Dam assured the Commission that as the project planner, she considers the design of the tower and the impact it would have based on the surrounding uses.

Hunter noted hearing "our technology". What's the reality of getting some consistency in terms of their technology? Dam responded, stating that a big part is digital versus analog technology. Digital has a smaller coverage area, thus the need for more sites.

Response by the Applicant

Forbes assured the Commission that U.S. West does take the neighborhood seriously. As far as Urban Development and the scenario described, U.S. West would not have a problem with posting a bond for landscaping in an alternate location. They would contribute \$500 to \$1000 for the purpose of providing landscape to suit the needs of the neighborhood. They do have situations where ground units are a preference to the owners without landscaping because the landscaping tends to encroach more.

Steward asked the applicant whether they would agree to a two week deferral in order to give the applicant more time to convince the Commission that they've done due diligence on all the site possibilities as well as meeting with the neighborhood association. Forbes stated that he has been making attempts to meet with neighborhood associations in the community; however, in this situation, he did not have the opportunity to do so. The applicant did explore all the options in the search area and this seemed to clearly be the best location. He does not know whether the University would entertain discussions, but he does not believe that a location on campus will accomplish their objectives here.

With regard to U.S. West search rings, to move back south to the University is going to cause them engineering difficulties and coverage issues that they are trying to eliminate with this location. This location will give them the best coverage for what they can work out with the city and the neighborhoods. Dill could investigate going to places like UNL, but he believes it will result in two poles as opposed to one. He does not know what issues would arise with putting a pole to the south. There are visual corridors. He has reviewed many options over the past six months in this search ring and this ended up being the best location that they could agree upon with the Planning staff in terms of minimal impact without compromising coverage.

Steward moved to defer for two weeks, seconded by Carlson. Steward understands the process of the engineering search and he believes there has been a lot of discussion with the staff. However, if it is primarily a University-related market that is being sought, then they have not performed due diligence in exploring locations on University property. Steward stated that he also understands the apprehensiveness of trying to ask that question, but two weeks to ask that question and meeting with the neighborhood association would give him more comfort that there actually is no other alternative.

Carlson agreed. If cell towers are going to move into something where our hands are tied, we owe it to the community that we've investigated every single option. He believes they have done due diligence with the staff, but he believes they need to bring more people to the table. Carlson encouraged the applicant to meet with the neighborhood association. It could be an issue of mitigation with the neighborhood as opposed to an alternative location.

Hunter stated that she is very encouraged by the posture that the Commission is taking; that is, that there needs to be a protected environment with regard to the number of cell towers. She cautioned that the Commission will be considering these very carefully so that we don't wind up with a sea of cell towers as the landscape for this city.

Taylor stated that he is "pro-neighborhood", but he also looks at the necessity of having this type of equipment in the area. He does not have any problem with the location they are proposing. But he wants to be sensitive to the neighborhood association. He agrees that they need to take a due diligent approach and seriously consider some other alternatives.

Steward commented that the Commission knows from experience over the last couple of years that technology changes and designs change. Among the towers he has seen before the Commission, this appears to be the best looking one. So, as an object in the environment, he would be far less concerned about this tower ultimately. We also know that technology changes and we are in conflict with the aspirations of the neighborhood more than the existing circumstance. He believes there may be opportunity for discussion with the neighborhood.

Newman sees a traffic safety red flag glaring when she hears that they want to attract the I-180 driving population. When she thinks of people coming on that six-lane corridor it terrifies her. If we located the tower on the other side of Memorial Stadium and just catered to University students, she would be happy.

Bayer informed the Commission that he had two neighbors from the area call him in opposition.

Motion for continued public hearing and administrative action on July 12, 2000, carried 7-0: Newman, Taylor, Steward, Hunter, Duvall, Carlson and Bayer voting 'yes'; Krieser and Schwinn absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 00004
FOR A PERMANENT CONSERVATION EASEMENT
and
COUNTY SPECIAL PERMIT NO. 182,
HAWK'S POINTE COMMUNITY UNIT PLAN,
and
COUNTY PRELIMINARY PLAT NO. 00015,
HAWK'S POINTE,
ON PROPERTY GENERALLY LOCATED
AT WEST RAYMOND ROAD AND NORTH 1ST STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 28, 2000

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

Planning staff recommendation: A finding of conformance with the Comprehensive Plan on Comprehensive Plan Conformance No. 00004; and conditional approval of County Special Permit No. 182 and County Preliminary Plat No. 00015.

Mike DeKalb of Planning staff submitted two letters in opposition with concerns about smaller lots. It puts too much pressure on the environment, county roads and county water supply. Drainage flows to the saline wetlands. This kind of development hinders the agri-business of the area as well as the quality of land. They do not want to see farm land sold and used for housing.

Proponents

1. **Eric Pavey**, the developer, presented the application. This land has been in his family for 80 years. He returned to Nebraska in 1991 from the West Coast. Nobody had looked after this property for about 40 years. He helped his uncle clean it up. It had basically been a dumping ground. There are some environmentally sensitive areas on this property. His grandparents farmsteaded this area in 1922. They cleaned up and restored the Class

4 saline wetlands. There are two spring fed “buffalo” ponds. The 21.62 acre parcel is his home now. The whole idea behind this proposal is that he saw the growth rate of Lincoln and that there was going to be a time when he did not have the opportunity to do the type of development which might create an atmosphere where people could appreciate this kind of beauty. The purpose of developing the proposed area is to create an environment where people can live in nice homes and still have the enjoyment over an area which, by necessity, needed to be preserved. These saline wetlands are very rare. He is proposing a community unit plan of six lots--two are already existing and there would be 4 additional single family residences, for a total of 6.

With regard to Condition #1.1.5 - “Lot 1 does not have any access to a public road”, Pavey explained that there is a road that leads from the existing house to Wylie Circle. He would propose an easement between the two lots to accommodate the existing road. There is also no need for Condition #1.5 - “Revise Lot 1 to abut and take access to Wylie Circle”.

With regard to Condition #1.6 - “Add a note that the owners of all the lots will have rights and access to Outlot A.”, Pavey would propose an easement running from the top of Wylie Circle down to the border that would allow people access to Outlot A. What is not wetlands in the Outlot is used for agricultural purposes--pasture and alfalfa, which they wish to maintain. He could delineate an area of Outlot A that would be accessible to all owners of the lots.

Pavey requested that Condition #1.1.16 be deleted - “Revise Lot 1 so it is outside the 100 year floodplain and wetlands.” The house on the lot is already built at the top of the hill 40' above the floodplain. He wants to keep more than 20 acres for this lot for himself.

Pavey also requested that Condition #1.1.18 be deleted - “Note that a conservation easement will be filed on the revised Outlot A for the protection of the floodplain, wetlands and native prairie and grass.” He and his parents have taken huge steps toward actually preserving this land themselves. He has spent the last 10 years renovating the area so that the flow of the wetland has been restored, all with money out of their own pockets. Pavey has educated himself on the ecology of wetlands. He believes the owners have exhibited the willingness, ability and means to maintain it as well as any third party could. He believes they should have the right to do this.

Pavey noted that water has typically been an issue in this area of northern Lancaster County. The water report is included that states that there is enough quantity and quality of water. They may have to do some reverse osmosis and he will recommend this to any of the lot buyers. There has never been a quantity issue. He further proposes to limit the amount of lawnscapes that is put around each house simply because all of the land is native prairie. The whole idea of the concept is to preserve as much of the natural land as possible.

Pavey advised that there is a functioning air strip immediately to the west and he would agree to put a statement in the buyers agreement reflecting the existence of this air strip.

Steward asked how much of Lots 1 through 5 are in native prairie—do you literally mean never been broken? Pavey stated that all but Lot 5 is virgin soil—never been turned since 1922, to his knowledge. Lot 5 is in alfalfa. Steward commended the applicant for his sensitivity about the wetlands, but if the applicant had the same sensitivity about native prairie, we would not be looking at this proposal. Pavey's response was that in light of the reality of the growth of Lincoln, he sees it as an inevitability that something will get built out there and he wants to take this opportunity to do it in a sensitive manner. All of the homes will be designed and built by this applicant with a mind to use of solar passive energy. His new home is an earth home built into the ground.

Steward inquired whether the applicant had considered putting the entire area in a conservation easement. Pavey advised that he is only one-third owner with his parents. His parents understand that legislative bodies and nonprofit organizations are subject to the same whims of change and they feel they can protect it as well as any other third party. But, Steward wondered about the next owner. Pavey is the next owner and he would have no problem putting it into a conservation easement at that time. His parents would rather preserve it themselves.

Bayer confirmed with Pavey that he is not supportive of the conservation easement. Pavey concurred.

Nicole Fleck-Tooze of the Planning Department advised that the Comprehensive Plan Conformance application reflects the conditions in the staff report for the community unit plan and preliminary plat to preserve the outlot permanently in a conservation easement. It is actually according to state statutes that the local Planning authority determine that the conservation easement is in conformance with the Comprehensive Plan. There is a large area shown as being category I saline wetlands, the highest quality, which has potential to have endangered species. There is native prairie and floodplain. According to state statutes, the conservation easement is permanent and cannot be released. It is a way to more permanently protect the property. There is a lot of flexibility and could be written to allow for other uses. Fleck-Tooze believes this attempts to achieve the same thing that the owner intends to do.

Hunter wondered whether the Commission should consider a deferral so that the staff can work with the applicant on the conservation easement issue.

Steward questioned the boundaries of the conservation easement. Fleck-Tooze explained that it was suggested that the easement be the same as the boundaries for the outlot, but it would not be limited to that and those boundaries could be revised to include native prairie that is on buildable lots. This action is simply to determine whether establishing a permanent conservation easement to protect these resources is or is not in conformance

with the Comprehensive Plan, and whether it should or should not be a condition of approval on the community unit plan and preliminary plat. The details would be worked out through the process of the actual easement.

Carlson wanted to know what rights the owners lose with the conservation easement. Fleck-Tooze advised that it would depend on what body would accept the easement. The owner can retain the maintenance and access. When the NRD has accepted easements they have accepted maintenance responsibilities. These things can be worked out in the agreement itself.

Bayer asked whether the staff visited with the owner of the property before bringing forward this conservation easement. DeKalb indicated that he did.

2. Kim Wheeler, 13401 No. 14th, testified in support. He is in a similar situation as the applicant. His family privately restored saline wetlands, and they were the first in the United States to do it. They did not grant an easement. They maintain the property themselves. They have received awards and have been on television for it. He noted that the Pavey property has a tributary of the Little Salt Creek that goes directly into his property and this applicant's work has benefitted his work. The Pavey family has taken care of that property. The native grasses are there because there is a layer of boulders. What this applicant is proposing to do is absolutely perfect for that property.

Bayer confirmed with Wheeler that he is opposed to the conservation easement but is in favor of the community unit plan and plat. Wheeler concurred. They did not give a conservation easement on their property. They did not want to have to rely on the NRD or someone else to put them on their schedule. Wheeler has six acres, five of which are wetlands. He lives within 10' of the 100 year floodplain. There are six other homes living on this wetland that do nothing about it. Wheeler's property is not part of a community unit plan.

Opposition

1. The property owner at 15801 N.W. 27th (Fox?), testified in opposition. When she purchased her acreage, she had to have 20 acres. She believes that if you want to be in a 3-acre subdivision or anything less than 20 acres you need to be closer to town. If the applicant allows three little acreages to be built on that prairie, the native grasses won't be preserved because building the house will wipe it all out. The more houses you put on an area, the more wastewater that he has to take care of. He cannot have a septic system since it is already wetland. Then you have lagoons that are not very attractive. She farms 13 of her acres. In addition, she pointed out that 20 acres gives a tax break. She believes it comes down to economics. She is not opposed to subdividing, but the 20-acre limit needs to be maintained.

2. Brent Lathrop, Director for Platte/Rainwater Basin Project Office of The Nature Conservancy of Nebraska, testified. The Nature Conservancy is an international private nonprofit conservation organization working together with local communities to protect natural areas. The mission is to preserve the plants, animals and natural communities by protecting the lands and waters they need to survive. The Conservancy currently owns about 80,000 acres, with another 14,000 acres of easements. The Nature Conservancy pays property taxes on all its property and leases land to neighboring landowners for grazing or farming. The Conservancy now owns 176 acres to the north of the Pavey property. It is a mitigation project designed to protect existing salt marshes. The conservation community sites this as the most threatened environment “hot spot” in Nebraska. Fragmentation of remaining wetlands and associated grassland is the main concern. Grassland bird losses is also a concern. The Conservancy is also concerned about water quality issues from septic systems and sedimentation from construction and roads. Water runoff increases are due to loss of grasslands and other absorbent landscapes. A road requiring ditches causes runoff to be channeled in certain directions. The loss of percolation effect in the groundwater impacts the groundwater. Noise and light pollution are also a concern. They do not know how these pollutants affect our animals, but believe there is some impact.

Lathrop stated that while the Conservancy would prefer that the tract remain agricultural, they are impressed with the planning that has gone into this development and like the conservation easement. The Conservancy is interested in who will hold the easement and would like the opportunity to comment before its completion. The Conservancy’s recommendation is to “go slow”. They would be glad to help the landowner and the Planning Department to arrive at a solution.

In addition, the Conservancy suggests that the city and county consider a new district for the low salt watershed. We need to look at 80-160 acre tracts as a minimum size. If not careful, the city and county will lose an excellent opportunity for a greenbelt that could run from the city of Lincoln all the way up to Raymond.

In summary, Lathrop stated that restoration and protection of wetlands are a cheap contribution to the flood control problems of the city. Maybe it is time to take a look at how the area is being managed from a zoning standpoint.

3. Lori Hostettler, 14003 No. 14th, testified in opposition. Her parents sold over 100 acres of wetlands to the Nature Conservancy Board. When you build houses, you rip up the wetlands. The Commission should consider how much wetlands there are in the world. This is an area that should be preserved and protected. There are birds, animals and insects that do not live anywhere else.

Well water is a concern for her. There are farmers that irrigate around the area. Everyone in the area has fairly shallow wells. The James Arthur Vineyard is in this area and irrigates; there are several farmers that irrigate; and there are other housing areas. She is concerned that the wells will turn to salt. A neighbor to the south of her experienced this.

The more houses that you put out there, the more crime there will be, the more noise there will be, and the more pollution to the wetlands there will be. The subject area runs down into the 100 acres that her mother sold to the Nature Conservancy. People cause pollution, the lagoons overflow, etc.

There are several elderly people in the area that are struggling to survive. With another development area, it will raise everyone's taxes and it will put these farmers out of business. They are hanging on by a thread right now. Hostettler requested that the Commission take some more time and think about the issues at stake.

4. Wayne Woldt, 3707 West Raymond Road, is not sure where he stands on this. There are a number of issues. The water issue remains. He has lived on West Raymond Road for 13 years and has seen a house built right by him with people moving in from Omaha who planted a grass lawn and proceeded to water it and watch it turn brown and lost it because of the high salt content of the water. Wastewater is another issue. He does not know that the soils would be amenable to septic systems. Lagoons tend to be undesirable in terms of aesthetics, so you find people trying to slip in septic systems in places that are not appropriate. He is uncertain about waiving the stormwater detention. With regard to transportation, with the developments coming out that way, Lancaster County is going to have to consider traffic and the movement of people. North 14th has become much busier. This would add to the traffic load. Public awareness is a concern. The zoning sign was posted some time ago and it slowly disappeared, falling over. He called in to register his concern about the sign and he was informed that the obligation is that the Planning Department place that sign and that's all they have to do. He believes it is incumbent upon the individual making the request to make sure the zoning action sign stays in place. As part of any deferral, he suggested that the sign be reposted to make sure it is visible.

Support

Sandy Meyers, Pavey's neighbor to south, 12143 North 1st Street, testified in support. Her property was in crop, pasture, native prairie and swamp land. They did subdivide but when they did so, they had strong covenants to control the use of the land. All of the land that was previously agricultural is now tall grass prairie. The swamp lands have been cleaned up and are now in two lakes. The wooded areas have been cleaned and are much healthier. With sensitive development you can take land and improve it. Pavey has been a very good neighbor and she has seen the improvements he has made. She believes the intent is there. The development is as sensitive as it can be. Pavey could have divided it into 20's without coming before the Commission. She believes that this applicant is being very sensitive to the property. Her lots sold immediately. The density is going to happen.

Meyers stated that with treatment, the water can be good. They don't have to treat their water and people have found good water. She believes the lots will drain to the Raymond Road area. The traffic will empty on a road that is already paved. If Pavey works with the purchasers so that they know they are moving into a pristine area, she believes he will find good buyers.

Staff questions

Steward wondered whether additional time would accomplish what seems to be the desired direction for the conservation easement. Fleck-Tooze suggested that two weeks would allow staff to work with the applicant and try to see if we could come to an understanding about the conservation easement because it seems to be a common goal.

DeKalb advised that he had talked with the applicant a number of times and he did visit with the NRD and got some examples of how the conservation easements can be written; however, this applicant is one of three owners and his parents do not want the governmental regulation. We can talk about additional abilities to adjust it and to grant certain rights within the area, but his parents may not be in favor. Fleck-Tooze added that the NRD does accept maintenance responsibilities and often has an established system for setting it up. There are other options that might be palatable for the applicant.

Carlson noted that there are property owners in the immediate area arguing against the easement because they were able to maintain their properties. Is this situation different because there is a community unit plan? DeKalb agreed that it is different--this is a special permit for clustering, and through that mechanism we can add conditions to preserve whatever needs to be preserved. Where there is a bonus requested, we ask for the conservation easement for 99 years protection. In this case, they are not asking for a bonus but staff believes the condition for the conservation easement is appropriate to protect the wetlands and the floodplains. Carlson suggested then that the granting of the community unit plan involves other conditions that balance the benefits of the CUP to the applicant. In this case, the easement could be considered a big part of the balance. DeKalb agreed.

With regard to the zoning action sign, DeKalb explained that the Planning Department is required to post the property 10 days prior to this meeting. We tend to post it as soon as we get the application, which in this case was prior to May 7th. When he got the call about the sign being down, it was reposted that night and he believes it is still in place. The Department is also required to do a mailing to property owners within one mile.

Bayer commented that by right, the applicant could put in 7 lots and mow down the whole thing. DeKalb concurred that he could do seven 20-acre lots by right. He could do nine

if he asked for the bonus. He is proposing six. Under the 20-acres, he could carve it up into seven 20-acre parcels and gerrymander them around and it would not come before the Commission.

Bayer asked how the staff's interest in the saline wetlands came about. DeKalb explained that the environment sensitivity of the community has been increasing for 20 years. Saline wetlands and protection of environmental resources is in the 1994 Comprehensive Plan and the 1985 Comprehensive Plan. These wetlands were identified in the national wetlands inventory by University research. Whenever we have a special permit, we review for those environmental issues. Fleck-Tooze added that these wetlands are shown as category I saline wetlands on the resource maps that were developed by Games and Parks and the Corps of Engineers. In addition, this spring, the Game and Parks Commission added two species to the endangered species list that are only found in Lincoln and Lancaster County and are most likely to occur in the highest quality wetlands.

Response by the Applicant

Pavey indicated that there are some fiscal pressures for him to do this development. However, his primary concern is still conservation. It's just a matter of getting the language together where we can all come to a mutual agreement. His parents believe they have done as good a job of researching what is necessary to maintain these wetlands as a nature conservancy. He has hand-picked every musk thistle off the land for the last 5 years. This is a sincere love of this land. He will place covenants on the property in terms of preserving the grasslands, etc. The covenants he intends to put in place will limit the planting of lawns. They will be required to have native prairie. In terms of wastewater management, he does not have a problem with the lagoon. If maintained well they can be attractive. This will also be included in the covenants.

Hunter supposes that probably a good portion of the concern from the Planning Dept. is not necessarily the sensitivity of the original owner but any future owner. There is still 80 acres that someone can make into four 20's and the wetlands would go away. She understands the possession situation and the concern has been raised because the development is being proposed. The problem is the future owner. Pavey indicated that to be why he has come forward with the CUP--because he understands that the CUP prevents development on that 80 acres. Most of that is in the floodplain anyway and not buildable. He would not be adverse to setting up some kind of language that would create the conservation easement in the event that he is no longer the owner. His parents just feel like they are being painted into a corner. They have come forward to offer to protect this land and they feel like they are giving an inch and being asked for a yard.

There being no motion for deferral, public hearing was closed.

COUNTY SPECIAL PERMIT NO. 182

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 28, 2000

Duvall moved approval, with conditions, seconded by Bayer.

Bayer commented that this applicant could divide this into 7 dwelling units. They have demonstrated what they really want to do and this process indicates the sincerity of the proposal. We have an opportunity here to make this a pretty attractive arrangement and still not build it to the maximum potential.

Steward commented that this one really tears at his concerns in two opposite directions. On the one hand, he commends the applicant for his sensitivity to the wetlands and he is sure that as long as it stays in his hands it will be protected. But it is a fact that conservation easement conditions have been set up in order to act in perpetuity for the benefit of consistent and permanent preservation of sensitive areas. He wants to find a way to have the saline wetlands and the natural prairie be as carefully protected for as long a period of time as possible. This is a perfect example of our lack of design of environmentally sensitive areas within the county. If our Comprehensive Plan would reflect such, we would not be having this discussion. On the other hand, it brings in less than 20 acre lots, and that is the biggest part of the concern of the neighbors. And he thinks it is a very legitimate concern that the attempt to subdivide for economic purposes does negate the good intentions for conservation. Maybe it would have been better to not have seen this and then respect the nonbuildable areas that are in the floodplain. Being pressed to a vote, Steward stated that he will have to oppose, but he would like more deliberation to take place.

Steward would prefer to delay, asking staff and the applicant to return in two weeks after further discussion. He wants to hear from both the applicant and the staff.

Motion for approval, with conditions as set forth in staff report, failed 3-4: Duvall, Carlson and Bayer voting 'yes'; Newman, Taylor, Steward and Hunter voting 'no'; Krieser and Schwinn absent.

This application is held over for administrative action on July 12, 2000

COUNTY PRELIMINARY PLAT NO. 00015

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 28, 2000

Duvall moved approval, with conditions as set forth in the staff report, seconded by Bayer.

Upon further discussion in light of Steward's request for further discussion between the applicant and the staff, Duvall withdrew the motion.

Steward then made a motion to defer Comprehensive Plan Conformance No. 00004, County Special Permit No. 182 and County Preliminary Plat No. 00015 for two weeks, seconded by Taylor. Steward's rationale is that since the special permit did not pass and is being held for two weeks, there should be an intent both upon the staff's part and the applicant's part to extend the conversation and by keeping the hearing open, the Commission would have the benefit of that extended conversation.

Since the hearing had previously been closed on all three applications, Steward's motion was amended to reopen public hearing on July 12, 2000, seconded by Taylor and carried 7-0: Newman, Taylor, Steward, Hunter, Duvall, Carlson and Bayer voting 'yes'; Krieser and Schwinn absent.

Comprehensive Plan Conformance No. 00004, County Special Permit No. 182 and County Preliminary Plat No. 00015 will be readvertised for reopened public hearing and administrative action on July 12, 2000.

CHANGE OF ZONE NO. 3259
FROM R-8 RESIDENTIAL TO O-1 OFFICE,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH AND G STREETS.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: June 28, 2000

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

The Clerk announced that the applicant has requested that this application be placed on the Planning Commission's pending list until an associated text amendment as recommended by the Capitol Environs Commission is submitted and scheduled for hearing.

Duvall moved to place on pending, seconded by Carlson and carried 6-0: Newman, Taylor, Steward, Duvall, Carlson and Bayer voting 'yes'; Hunter, Krieser and Schwinn absent.

SPECIAL PERMIT NO. 1835
SAGE PRAIRIE COMMUNITY UNIT PLAN
ON PROPERTY GENERALLY LOCATED
AT NO. 124TH STREET AND HOLDREGE STREET.

REQUEST FOR RECONSIDERATION BY PLANNING COMMISSION: June 28, 2000

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

On June 14, 2000, the Planning Commission voted 6-3 to recommend denial of this special permit.

Newman moved to reconsider with new public hearing and administrative action scheduled for July 12, 2000, seconded by Carlson and carried 6-0: Newman, Taylor, Steward, Duvall, Carlson and Bayer voting 'yes'; Hunter, Krieser and Schwinn absent.

PRELIMINARY PLAT NO. 00007

SAGE PRAIRIE

ON PROPERTY GENERALLY LOCATED

AT NO. 124TH STREET AND HOLDREGE STREET.

REQUEST FOR RECONSIDERATION BY PLANNING COMMISSION: June 28, 2000

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

On June 14, 2000, the Planning Commission voted 7-2 to deny this plat.

Newman moved to reconsider with new public hearing and administrative action scheduled for July 12, 2000, seconded by Carlson and carried 6-0: Newman, Taylor, Steward, Duvall, Carlson and Bayer voting 'yes'; Hunter, Krieser and Schwinn absent.

There being no further business, the meeting was adjourned at 3:15 p.m.

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