

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, February 7, 2001, 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, Gerry Krieser, Patte Newman, Cecil Steward and Tommy Taylor (Greg Schwinn absent); Kathleen Sellman, Ray Hill, Mike DeKalb, Jennifer Dam, Ed Zimmer, Jason Reynolds, 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 to approve the minutes of the regular meeting held January 24, 2001. Steward moved approval, seconded by Krieser and carried 8-0: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Steward and Taylor voting 'yes'; Schwinn absent.

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

February 7, 2001

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3303; PRELIMINARY PLAT NO. 00013, ASPEN RIDGE; and STREET & ALLEY VACATION NO. 01001.**

Street Vacation No. 01001 was removed from the Consent Agenda at the request of the applicant and scheduled for separate public hearing.

Steward moved to approve the remaining Consent Agenda, seconded by Hunter and carried 8-0: Bayer, Carlson, Duvall, Hunter, Krieser, Newman, Steward and Taylor voting 'yes'; Schwinn absent.

**STREET & ALLEY VACATION NO. 01001**  
**TO VACATE THE EAST 5' OF SOUTH 2ND STREET**  
**GENERALLY LOCATED AT SO. 2ND & F STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 7, 2001

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

Planning staff recommendation: A finding of conformance with the Comprehensive Plan and conditional approval.

This application was removed from the Consent Agenda and scheduled for separate public hearing at the request of the applicant.

Proponents

1. **Doug Kaiser**, 4401 So. 39<sup>th</sup> Street, Omaha, NE, testified on behalf of Carl Matthews, the applicant. This street vacation will allow the applicant to convert a derelict grocery store and warehouse building into a 2-family residence which abuts the property line along 2nd Street. This vacation is necessary so that there can be 5' of space between the building and the property line for doors and windows. The actual land vacated will not be physically used. It is only necessary for the spacing for the windows.

2. **Richard Hitz**, 3422 Woodshire, Lincoln, testified in support. He owns the property at 140 F Street, which is diagonal across from the Matthews property. In 1996, he and his wife applied for and received vacation of the west 14' of So. 2<sup>nd</sup> Street, and the 14' came about from a recommendation by the Planning Department. The Planning Department told him that in the unlikely event that 2<sup>nd</sup> Street was ever made four-lane, the maximum right-of-way required would be 17', which meant that 28' was surplus property, 14' on the west and 14' on the east side. Matthews wants to vacate 5' of this 14'. There would be absolutely no adverse impact on the neighborhood and precedent has already been set.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 7, 2001

Duvall moved to approve the Planning staff recommendation, seconded by Newman and carried 8-0: Carlson, Steward, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Schwinn absent.

**CHANGE OF ZONE NO. 3302**  
**FROM R-2 RESIDENTIAL TO O-2 SUBURBAN OFFICE**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 48TH STREET AND F STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 7, 2001

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

Planning staff recommendation: Approval.

Proponents

1. **Rolf Shasteen**, the applicant, appeared to answer questions.

Newman wanted to know how the property will be used. Shasteen could not answer because he sold the property yesterday and the purchasers did not care what the zoning was. The basement could be used for residential under this change of zone. The last he knew it would be some sort of low traffic use. The reason for the change is because of the businesses surrounding the property. There is no persuasive reason it should be zoned R-2 when there is O-2 zoning to the south.

There was no testimony in opposition.

Steward noted that the applicant states that there is business to the north and to the south, yet the zoning map shows R-2 zoning to the south. What is the circumstance for existing use and nonconformance. Jason Reynolds of Planning staff displayed the aerial photo. There is a medical office building to the south, and at the corner of 48<sup>th</sup> is another medical office building, all existing and approved under a special permit when the ordinance allowed medical clinics by special permit in any zoning district, pursuant to the 1953 zoning ordinance. They were under a special permit and that special permit was eliminated from the ordinance and they are now nonconforming uses.

Steward wondered whether it is in the city's best interest to take the same action on the nonconforming properties. Reynolds stated that the staff believes that the property owners themselves should come forward to request the zoning change. There are two properties residentially zoned between this one and the O-2 across the street; however, those property owners have not come forward with a request for change.

Carlson asked for the signage allowed in the O-2 district. Reynolds advised that generally, in the O-2 for each main building, the ordinance permits two on-premises wall projection signs not exceeding 25 sq. ft., or one on-premises wall non-projecting sign not exceeding 25 sq. ft. and one ground sign not exceeding 25 sq. ft. One ground sign not

exceeding 15 sq. ft. and 5' in height is permitted at each building entrance.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** February 7, 2001

Steward moved approval, seconded by Taylor and carried 8-0: Carlson, Steward, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Schwinn absent.

**CHANGE OF ZONE NO. 3263  
FROM B-1 LOCAL BUSINESS AND R-3 RESIDENTIAL  
TO B-2 PLANNED NEIGHBORHOOD BUSINESS;  
USE PERMIT NO. 130,  
FOR 142,000 SQ. FT. OF COMMERCIAL, RETAIL AND RESTAURANT USES;  
and  
PRELIMINARY PLAT NO. 00016  
PIONEER WOODS,  
ON PROPERTY GENERALLY LOCATED  
AT SOUTH 70TH STREET AND PIONEERS BLVD.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:** February 7, 2001

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

Planning staff recommendation: Approval of the change of zone; and conditional approval of the use permit and preliminary plat. The staff recommends that the waivers on the use permit not be granted.

Ray Hill of Planning staff submitted a report from the Building & Safety Department pointing out that the general notes 26 and 28 will have no effect because projections from the buildings must remain within the lot lines. The Building & Safety Department also points out that a portion of the project is within the 100 year floodplain and within the floodway, thus there must be compliance with the 404 permit regulations. Hill believes that the conditions of approval cover these requirements.

Proponents

1. **Mike Rierden** appeared on behalf of the applicant. There is only one reason that this application is back before the Commission. This development was approved in October; however, after the approval by the Planning Commission, it was discovered by Public Works that the intersection on 70<sup>th</sup> at Pioneers Woods and 70<sup>th</sup> Street was too steep and posed a safety concern. After several meetings with the staff, the developer was able to

adjust that by means of moving the intersection further to the north so that it was in a flatter area and the safety concerns were taken care of. That is the only adjustment. However, as a result of moving the intersection, the interior road was moved further to the north which gave this development about 7,000 sq. ft. of additional retail space, to which staff agrees.

Rierden advised the Commission that the developer had meetings with Hyde Observatory back in October with regard to lighting and they will continue to work together on the appropriate lighting. The developer has also had meetings with Parks & Recreation and the Friends of the Dog Run, which is in this area, and have discussed deeding some of the property to the east in the drainageway, and they will continue to have these discussions.

The developer also met with three abutting neighborhood associations and, to Rierden's knowledge, there are no objections.

Rierden stated that the developer also submitted an architectural theme for the buildings. Rierden assured that this developer will comply with what was presented.

Rierden agreed with the conditions of approval on the preliminary plat.

With regard to the use permit, Rierden submitted an amendment to Condition #1.1.3: "Limit the total amount of floor area for restaurants to 30,000 sq. ft." He believes that staff is agreeable to this amendment.

This is probably the second project that Rierden knows of in Lincoln where the developer has agreed by Executive Order to go ahead and do the improvements for the widening of Pioneers from 70<sup>th</sup> Street east to the drainageway. They will continue to work with staff to continue to do those improvements. It is unusual for a developer to do the improvements for an arterial.

Rierden further pointed out that on 70<sup>th</sup> Street, this developer was required to give up some additional right-of-way. One of the waiver requests is to allow a reduction of the front yard setback from the required 50' to 42'. In addition, the developer is requesting a waiver to be able to put signage in that particular area because of the loss of the front yard. Rierden submitted that this is not an unusual request. It was done at South Pointe and is usually done in situations where additional right-of-way is given up by developers.

Carlson asked for the net effect of the sign location. **Gary Bredehoft of Olsson Associates** indicated that they have not made an exact determination yet. He stated that they would agree to put them in the center of the setback that is established. **Don Linscott of Mega Corporation**, one of the applicants, stated that he would not object to having the sign a certain distance from the back of the curb, i.e. 10'.

Bredehoft explained that they have only requested the waiver to allow the signs for visibility purposes. He stated that they have asked for this same waiver in other situations. There is a drop-off from 70<sup>th</sup> Street, especially down towards Lots 3 and 4, and it would be difficult to see a ground sign. The intent is to get the sign up the slope a bit.

Carlson was curious about the floodplain issue. Bredehoft advised that this application does not touch the 100 year floodplain.

There was no testimony in opposition.

Staff questions

Carlson asked staff about the position of the signs. Ray Hill advised that the signs are not allowed in the front yard, so that is why they are asking for the adjustment. In the B-2 district, if you have the ground sign inside the front yard, you have to be within 30' of the building. With the way this project is laid out, the ground signs cannot be within 30' so that is why they are asking for the waiver. The requirement is that the ground sign must be within 30' of the building. There is more than 30' and they are also asking to be in the front yard. If the waiver of the front yard and the sign waiver are granted, the sign could be 12' away from the street. The conditions of approval recommended by staff would allow the sign, but it would be outside the front yard and closer to the building, i.e. in the parking lot. The front yard setback in the B-2 district is 50'.

Bayer asked whether the sign and front yard waiver were approved in this application in October. Hill believes that the Commission denied the sign waiver.

Hill explained that the staff rationale to deny the waivers requested in the use permit is because this project is getting a lot more zoning than what was shown in the Comprehensive Plan land use plan. The staff has agreed to adjust the zoning, but does not believe the front yard should be reduced.

Hill agreed with the applicant's proposed amendment to Condition #1.1.3 of the use permit.

Carlson observed that the applicant believes dropping the ground signs down in elevation might prevent people from moving to that area and there is no point to have the ground sign. Bredehoft stated that the ground sign would only be visible from inside the parking

lot. Bredehoft did not believe the developer addressed the sign issue in the last application.

Dennis Bartels of Public Works advised that on 70th Street there is approximately 12' to 14' from the pavement to the new right-of-way. Linscott advised that the buildings along 70<sup>th</sup> Street will all be one-story with a very low profile. People coming along 70<sup>th</sup> or Pioneers will see the top of the roof. As we move to the north along 70<sup>th</sup>, the buildings then come closer to grade, so as you get to the very last building (Walgreens), it will be almost level with the street.

Bayer asked whether this development has some sort of development sign. Linscott advised that there is one right on the south side of the intersection of Pioneers and then another on the left hand side of Stacy Lane along Pioneers. They would be identification signs, i.e. the "Pioneer Woods Retail Center".

Linscott suggested that the reason they are asking for the reduction of the front yard setback is that 70<sup>th</sup> will be five lanes. They had originally thought it would only be four lanes. This developer has agreed to allow the 5<sup>th</sup> lane which requires giving up some right-of-way. This development is a major project to relieve some of the traffic pressures in this area. The developer has worked very hard with the staff to make this compatible with what's happening in this area. With the five lanes, this developer is being asked to give up property, so we are trying to get back to the same point we were before.

Hill clarified that in the sign section of the zoning ordinance it makes reference to how you measure the height of a sign. In those situations where the property is lower than the adjacent roadway, the height is calculated from the street grade at a 90 degree angle. If the ground is 5-6 feet lower than the street, you don't measure from the ground but from the elevation of the street. It could be a really tall ground sign. The height of the ground sign will be measured from the grade of 70<sup>th</sup> Street. If they do not get the ground sign in the front yard, they have to be 50' from the road. If they are granted the waiver to go up the slope, it would be a shorter sign.

Bayer wondered whether roof signs are allowed. Hill did not believe so. He would have to double check.

Public hearing was closed.

**CHANGE OF ZONE NO. 3263**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** February 7, 2001

Steward moved approval, seconded by Newman and carried 8-0: Carlson, Steward, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Schwinn absent.

**USE PERMIT NO. 130**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** February 7, 2001

Steward moved to approve the staff recommendation of conditional approval, denying the waivers to reduce the front yard and to allow ground signs in the front yard, with amendment to Condition #1.1.3 as requested by the applicant, seconded by Hunter.

Bayer moved to amend to change Condition #1.1.11 from 50' to 42', seconded by Duvall. Bayer is not excited about the tall signs, but they need to have the ability to advertise. This puts the tall ground sign closer to the road.

Hill clarified that if the Commission wants the parking lot to be 42' from the new right-of-way line, the waiver of the front yard setback would be granted. If the Commission is interested in allowing the signs where they are proposing, then the waiver of the sign requirements should be granted.

Bayer wants to give them a 42' front yard so they can put a sign 43' away from the street. This allows them to put the sign 8' closer.

Steward made a technical observation. In reading the contour lines, the worst case situation is that they are only about 6' lower than the elevation of the roadway at a 90 degree angle for these building pads. It is not like you're looking down on the roof.

Bayer is attempting to give them some advertising without destroying the view from the road.

Motion to amend Condition #1.1.11 from 50' to 42' carried 5-3: Carlson, Taylor, Krieser, Duvall and Bayer voting 'yes'; Steward, Hunter and Newman voting 'no'.

Main motion, with amendment to Condition #1.1.3 and #1.1.11, carried 8-0: Carlson, Steward, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Schwinn absent.

**PRELIMINARY PLAT NO. 00016**

**PIONEER WOODS**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 7, 2001

Steward moved to approve the Planning staff recommendation of conditional approval, seconded by Duvall and carried 8-0: Carlson, Steward, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Schwinn absent.

**CHANGE OF ZONE NO. 3292**

**AND**

**MISCELLANEOUS NO. 00011**

**TEXT AMENDMENTS TO THE ZONING ORDINANCE**

**AND DESIGN STANDARDS REGARDING**

**THE "ENTRYWAY CORRIDORS DISTRICT",**

**AN OVERLAY DISTRICT FOR CORRIDORS**

**IN THE VICINITY OF INTERSTATE 80 AND**

**INTERSTATE 180.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 7, 2001

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

Planning staff recommendation: Approval.

Proponents

**1. Ed Zimmer** of the **Planning Department**, distributed correspondence received and a summary of telephone and email contacts regarding this proposed legislation. The staff is requesting continued public hearing in two weeks. The staff has scheduled an open house for February 12<sup>th</sup>, at 7:00 p.m., at Goodrich Middle School. The continuance will allow the staff to incorporate changes resulting from the community input.

Bayer noted that this open house is the same evening as an open house on the 84th & Hwy 2 Subarea Plan and he wondered whether that is a concern. Zimmer's response was that the staff is trying to provide several opportunities. He sees this public hearing and the next meeting of the Planning Commission as valid opportunity for comment as well, and the open house is an opportunity for more extended contact before the next meeting.

Steward stated that he has a timing concern of a different nature. Why would we in normal circumstances have the public open house before we have a formal public hearing on a major planning issue in the City? Zimmer explained that the Planning Department had been requested to bring this matter forward and engage in the public discussion and he

sees these hearings as part of the public discussion. Zimmer does not believe that we would have had such response if we had not started the formal process. Steward believes the sparseness of the attendance at today's meeting on such a major issue for the visual condition of the City is indicative of very few people knowing about it. Zimmer advised that the Planning Department mailed 455 letter notices and the Department has been getting a significant response back. The open house was scheduled for further opportunity. The notice was also mailed to the Planning Department's neighborhood contact list, development interests, the Urban Design Committee and Neighborhood Roundtable.

Duvall moved to continue public hearing on February 21, 2001, seconded by Carlson and carried 7-1: Carlson, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Steward voting 'no'; Schwinn absent.

### Opposition

**1. Art Althouse**, Route 1, Box 115, Waverly, testified. Although he does not live in the City, he did receive notice of this proposal. It is not clear to him exactly where the district is. He is outside the jurisdiction of the City and the letter said it pertained to businesses and property within the jurisdiction of the City. If this proposal goes beyond the jurisdiction of the city, he is opposed because it would put restrictions on his property. It should not be applicable clear across the county.

Zimmer clarified that the proposal is for the city zoning jurisdiction, which is inside the city limits, plus the three-mile jurisdiction outside the city limits. It appears that the Planning Department "over-notified" on the Waverly end. If property is outside the three-mile limit, it does not apply and he apologized for sending the letter.

**2. Tom Huston**, 233 So. 13<sup>th</sup> Street, testified on behalf of two clients to ask for a minimum of four weeks to consider this proposal. He became aware by two clients that did receive the letter of January 29<sup>th</sup>, but they only notified him yesterday. **Molex**, with 47 acres with direct frontage onto I-80, is undergoing a large expansion which is scheduled to be finished in June, and Huston could not tell Molex the true effect of this ordinance on their property.

Huston was also testifying on behalf of the **University of Nebraska Foundation**, with the Technology Park near the Highlands fronting onto North I-80. That was a long elaborate process with a generic use permit and a special sign district and he does not know what future effect this overlay district might have on the Technology Park.

**3. Peter Katt**, 1045 Lincoln Mall, Suite 200, testified in opposition. The biggest problem with this is the "process". It is a terrible process. There is inadequate time. This is a huge planning issue. He has not had time to make contact with all of his clients that are affected. He does not know how to respond yet because it is a bad process. There is no

process other than “jump, run and shout”. Everyone is agreeable that perhaps something could be and should be done to preserve the primary entryway corridors, but the question is what? This first thing out of the box does not fly. It attempts to have “one size fits all”, and it can’t. This corridor has a whole lot of different needs and you can’t craft one simple 150' wide thing that is going to fit the whole area. This is not good planning. It destroys plans. With a good process we will have something much more tailored to the corridor as it exists today and as we wish it to grow into the future. Katt believes it should be a 6-month timeline if you listen to people and try to build a consensus in the community.

**4. Rob Otte**, 201 No. 8<sup>th</sup>, appeared on behalf of **High Pointe Development and Anderson Ford** in opposition. He agreed with the previous testimony in opposition. This process is way ahead of itself. He is surprised and maybe even shocked that we are discussing this legislation. He has met with staff informally and there are hundreds of questions that come out of reading the legislation. He agrees that you cannot put this shoe on every foot. Anderson Ford has already started its dealership out there. You can’t just rig up something that might fit. In terms of city planning, there are so many issues that need to be addressed. He agrees that we can do things to beautify the corridors, but this is an approach that is too broad, too big and too fast. As an example, he referred to some of the Subarea Plans that have been developed. The scope of these ordinances are much bigger than the Subarea Plans that have been developed. We need time to work on this legislation. There has not been enough public input. There are people that are literally surprised that this proposal has been brought forward without more input. He already has a laundry list of questions.

Newman asked Otte whether his clients would consider a 6-month moratorium of building or development. Otte suggested that his clients might consider that if the city would like to help them plan the financial way to do it. These are people who have made plans with millions of dollars worth of property and to require them to wait six months is very difficult.

Bayer inquired whether this hearing is the first time the development community has been involved in this legislation. Otte indicated that a few attorneys and clients met with staff last week and that was the first substantive meeting they have had, but that was more about the sign ordinance issue.

**5. Laura Bell**, 3721 Timberline Court, testified as a concerned citizen and experienced commercial real estate broker. She does not own any of the property affected. While she is sure the intent is good, she believes that the proposal is unnecessary, expensive and unfair to landowners. The developers and owners around the corridors have already spent millions of dollars in the area, meeting the current requirements and regulations. The formation of the overlay district is way too late in coming. If it is going to be adopted, it should have been adopted years ago. Many of the owners at 27<sup>th</sup> & I-80 have been in the process of developing for 3-5 plus years. The infrastructure is in, the streets are in, a lot

of ground has been moved, and the area is finally becoming populous with some homes. This is a very expensive undertaking for the city; there would be a lot of dollars needed to compensate these owners because many of the properties would be unusable and unsaleable. While she believes the intent is good, the city is way too late with this idea. Too much of the property has already been developed in some of the corridors. We already have interstate green space in the form of the right-of-way. Please leave the areas as they exist today.

As far as leaving the areas as they exist, Steward suggested that if we could, that would be a desirable situation because much of the interstate corridor is not developed. He asked Ms. Bell's opinion of the Interstate from the Greenwood exit to 72<sup>nd</sup> Street in Omaha. Bell thought that it was primarily farm ground, but it will be developed. Steward disagreed--it is signs, metal buildings and industrial activity crowded up to the interstate and if we don't do something, that is exactly where we are headed. Bell agreed that the Ashland Greenwood exit has been that way for years and it is not desirable, but she does not have a problem with the Gretna exit. If we want to keep our real estate taxes low, we need to develop. Why not develop right off an access instead of large amounts of money spent by the city to build the infrastructure and the roads to get there? She believes the interstate was meant to have development around it.

**6. Bob Hampton, Hampton Development Services**, owns several pieces of property along the interstate, many of which are already zoned H-4 and approved, and he has two currently in process. He is concerned about how this may impact his property and use and he is very disappointed at the lack of notice. He is an advocate of good landscaping and buildings and an entryway, but the proposed standards go way too far. They are very bad for economic development. The city has zoned a lot of this property along the interstate as H-4 and H-3 for specific reasons. He pointed on the map to property located between I-80, West O, west of the West Bypass and an on-ramp to I-80. Out of 20 acres, 8 acres would disappear with the proposed setback. He would lose two full lots which almost makes the site economically unbuildable. He purchased this site for small business users, warehouse and distribution. What a better location? In Lincoln, currently 50' is the maximum setback in any zoning district, and the I-80 corridor already has a very large right-of-way designed for a six-lane roadway that has a lot of berms and landscaping in it. The businesses that use these buildings are not used to building brick warehouses and brick distribution centers. It would totally price out the small business man and these type of users. If they are not allowed along the interstate and primary roadways, where do we put them? There are no other locations in this city. The suggestion of having 15-20 ft. berms is ridiculous. 65% to 100% buildings built out of brick and concrete is simply unaffordable for the small business person. Is a semitruck and a garage door that ugly? Hampton encouraged the Planning Commission to put this legislation off for at least six months. This is a big major issue that the community needs to work on together--how do we continue to foster economic development in this community? A lot of this stuff coming forward is very, very bad for business.

**7. Ms. Smith, 842 Malcolm Court,** understands that this legislation means that the city would be telling her what she can and cannot plant in her back yard because it faces the interstate, and if she builds a shed she will be told what type of materials she can use. If this is the case, she is opposed. She works to live. One of the signs of achievement is to own your own property. To have someone come in and tell her what she can and can't plant, etc., is disconcerting to her. She understands there may be some provision for existing properties brought forward. She asked the Commission to please take into consideration that she spent time planning her own property.

**8. Walt Pepper, P.J. Morgan,** Omaha, represents a client looking to develop on No. 27<sup>th</sup> Street. He understands what the city is trying to do, but the process is a little flawed. He attended a meeting last week as to the sign ordinance and the meeting was more of us telling them how we felt and there was no feedback. This is not the planning process he is used to. He encouraged the Commission to take time on this issue to make sure we do the right thing. We are talking about a lot of money and a lot of people have a lot at risk here.

**9. Dwaine Rogge, President of DOS Properties, Inc.,** which is owned by he and his children, testified in opposition. He owns property at the intersection of 56<sup>th</sup> & I-80 (the southwest quadrant of the intersection). He purchased the property three years ago with H-1 zoning. He has spent over a hundred thousand dollars in dirt work getting the land ready to sell, and prospective purchasers are not interested if this proposal is adopted. He submits that the city is confiscating 2.8 acres out of 13.6 acres, without payment. With the additional 50' it is 30% of the property that is affected by this legislation. He paid good money for the land and he wants to resell it. He recommended that the Commission not have the ordinance apply to property that is already zoned. It changes things and confiscates property. This proposal makes it so the interstate driver can't see what is there and this may make the property undevelopable. H-1 Interstate Commercial is intended to serve highway travelers where hotels, service stations, garages and restaurants should be available. If you can't see them, how do you know they are available?

Steward disagreed that Rogge's property cannot be seen from the interstate. He believes it is downhill in both directions, and from either direction you can see all four quadrants of the interstate. Rogge does not believe that is true if they are required to put up a 15' high berm. Steward believes the hill is higher than 15' either direction.

**10. Mark Whitehead, Whitehead Oil Company,** testified in opposition. It all boils down to visibility. If the Commission took this to a public vote in the city, it would be a very popular idea. It is a beautiful idea, but we as business people are talking about something critical to the survival of interstate usage--interstate services. If you cannot see it, they won't get off the interstate. Similarly, the other retail needs exposure as well. There might be some areas of compromise. Whitehead donated 100 acres of saline wetlands in order to restore the wetlands back to a saline wetlands and we hold that as a great example of what businesses and public interests and development interests can do when they work hand in hand. But none of this is possible, including the sign ordinance. Visibility is not a matter of something nice and aesthetic but simply a matter of survival. He agrees that some of the interchanges in Omaha are unsightly, but we would not be having this same conversation with the Omaha Planning Commission. He thinks they would laugh this proposal out because they recognize the viability and importance of the visibility issue.

Hunter suggested that there is some loss in perspective here because 100' is no longer than a ranch style home with a two-car garage. 100' is not a half mile; not even an eighth of a mile. She is at a loss of perspective if a highway driver is not seeing a business with 100' setback. Whitehead believes the issue of that 100' is screening. The only place that Cracker Barrel locates is on interstate exits. They look at visibility from a triangular position; they advertise with billboards; they also like to have the blue signs; and they need to have the exposure, including the high rise sign. It is a key question of visibility. The 100' buffer also includes the large berm or the screening of trees which are visibility issues. From a Whitehead Oil perspective, he does not know whether the view would be blocked with the berming, but the signing is an issue and the screening of retail locations is critical.

Hunter noted that Cracker Barrel is a lot further than 100' from the interstate. Whitehead was using Cracker Barrel as an issue on their philosophy. He does not know how the bermings will affect his location or Cracker Barrel. However, in general, the screening of retail facilities and/or interstate service facilities is a critical survival issue, and the high rise signage issue is likewise another critical but related issue.

Taylor asked Whitehead whether he would agree that visibility is more important for interstate travelers to service stations as opposed to retail, such as restaurants and automobile dealerships. Whitehead would take restaurants out. It is a different application. No one is driving down the interstate from Des Moines to Denver and whipping off the interstate to buy a new car, but with Cracker Barrel, H-1 is the type of interstate service we're talking about. Restaurants, gasoline locations and motels are pretty much restricted to those types of businesses. The west side of 27<sup>th</sup> is zoned differently. Taylor thought visibility would be more important for gas stations. Whitehead agreed, from his own point of view, but all three of those type services need identification for the interstate traveler. The visibility is critical.

Steward stated that since the sign ordinance issue came up two weeks ago, he has driven the interstate three times and his attention has been peaked about visibility and signage. He believes that the interchange at 27<sup>th</sup> gives Whitehead and any others on the 27<sup>th</sup> Street corners a distance advantage because there are hills coming into that territory from the interstate. Whitehead believes they do have a good visibility issue at 27<sup>th</sup>. They also have two signs located at the Whitehead facility on 27<sup>th</sup> Street which are clearly visible and would be grandfathered or nonconforming.

**11. Dennis Placke, Capital Sign Company,** agreed with the testimony in opposition. This proposal is for highway commercial use. That zoning is specific for business to be out by the interstate and attract business from the interstate. Gas stations, hotels, restaurants, auto dealerships--they all need this visibility. When we work with a business that goes up near the interstate, we do "flagging" to determine the visibility. In his opinion, the existing ordinance is what these customers need and if we do anything different, they will not have visibility sufficient to attract business off the interstate. There needs to be more time spent on this proposal.

Zimmer clarified that this is not the sign ordinance. However, within the language of this proposal, some of the setbacks would impact signs.

Hunter takes issue with the auto dealerships needing the visibility because they are a destination business. Placke advised that the auto dealerships do a lot of elaborate studies with regard to traffic flow, etc. Placke knows from dealing with some of the car dealerships, that they all try to get on either a major highway or an interstate because it is the best property for them to be on and signage is very important for them to draw in business.

**12. Brian Carstens** testified in opposition and showed a project at N.W. 40<sup>th</sup>, Interstate 80 and O Street. The 150' corridor impacts 5.13 acres of this project, 24% of the site. The 100' setback as proposed, with no buildings and no parking, equates to 3.42 acres, or 16% of the site not being buildable. The purchaser of this property did not anticipate this situation. Carstens pointed out that just along I-80 and 180, there are approximately 845 acres that will be impacted just in the 150' strips. At \$3/sq. ft., that is \$110 million dollars. Carstens also believes that there are a lot of areas left open to interpretation between the staff, developers, owners and consultants that could be contentious at the time of building permit. There needs to be more specificity before this legislation is adopted.

Steward asked Carstens, from his engineering and calculative perspective, for a city of 220,000 people, what price do you put on green space and aesthetic conditions? Carstens does not believe you can put a dollar amount on it. Thus, Steward suggested that Carstens' price argument is one sided.

**13. Jack Thompson, Director of Marketing for Nebraska Neon Sign Company,**

testified in opposition. Nebraska Neon has been in Lincoln for over 50 years. Nebraska Neon and many of those they work with that are impacted are people who have concerns about the future of Lincoln, the attractiveness of its entryways and all the other parts of Lincoln. Most of the important issues have been brought forward by the other testimony. The interstate is a system of travel that brings a large number of people close to you and that has always been an attraction to businesses. The zoning has dictated that these types of businesses be in those areas and they are businesses that require a certain amount of visibility.

**14. Brian Beck** owns property along Interstate 80 at 2915 N.W. 9<sup>th</sup>, backing up to the airport interchange. He purchased his property four years ago, spent two years constructing his own home, and has a lot of time and finances wrapped up in his property. He is shell shocked about this proposal. He believes the intention is good, but he is concerned about his property. His property drops off toward the back of the interstate and on top of that his developer placed an additional berm behind the homes along N.W. 9<sup>th</sup> Street. He was hoping this spring to place a shed and swing set in his back yard which would sit up on top of that berm. With this proposal he will have to build a brick shed. He is not sure how this proposal will impact him. There are others in the neighborhood that are extremely concerned, also.

Steward commended Beck for having the interest to find out more about the proposal. He reassured that it is not the city's intention to damage his property's capability in any way but to try to work with the property development that has not occurred thus far. There is no malicious intent.

**15. Kent Seacrest**, appeared on behalf of **South View, Inc. and Ridge Development Company**, with property on the southeast corner of 14<sup>th</sup> and I-80. This property was rezoned pursuant to the Comprehensive Plan, with B-2 zoning. At the same time, there was a lot of development proposed up on No. 27<sup>th</sup> and the city was concerned about traffic. They wanted to do a big subarea plan. We had to wait a year for that traffic study process to get completed and we have now submitted our use permits. Seacrest submitted a proposed amendment--a grandfather clause such as was used on the recent Design Standards. Seacrest believes that this proposal is worth doing. We have an opportunity to have our cake and eat it, too. Seacrest commends the goal, but the devil is in the details and he looks forward to working with the staff. The Supreme Court has not helped this cause in the last five years and he is concerned that the public health, safety and welfare issue relied upon is primarily aesthetics and not traffic. He wants to be sure the City Attorney is advising the city well in this pursuit.

Seacrest believes the staff report and the actual text is confusing. He also did not see any setback waiver opportunities.

Steward asked Seacrest what he would recommend for a reasonable deferral period of

time or working period of time. Seacrest wants to hit the double home-run. Four weeks isn't going to do it. We do need a process that is more elaborate. His view is three to six months – definitely more than four weeks -- to do it right.

Hunter wants to know how to stop a gold rush of permits trying to squeeze in under the wire prior to adoption of an ordinance. Seacrest believes that the cost of doing that development, i.e. a preliminary plat or use permit at \$20,000 to \$30,000 will prevent that. You are not going to arbitrarily get an application with that kind of money involved. Some of the zones are by right, but they are going to have to bring in some type of plan. He would rather err on the side of being prudent and let one or two get in, versus putting the wrong thing on the books and really screwing things up.

Hunter commented that realistically, the city did not plan on infrastructure being put out by the interstate at this point in time. It was thought that it would be years in the future. Now the problems associated with that have come to bear. Because of the numbers of proposals for uses on the interstate, doesn't it make good sense that the problem is presented because the property is being developed? Before it wasn't an issue because there was not a lot of new development being placed there. Seacrest's response was that hindsight is wonderful. The No. 27<sup>th</sup> Subarea Plan has been on the books for three or four years and maybe we should have done this then, but we didn't. We just have to be fair and make it work. 100' is a pretty significant distance. He cannot think of any zone we have now that has a 100' setback. He understands the concern about "a taking".

Hunter inquired about the setback on Hwy 2 at 84<sup>th</sup> Street. Seacrest stated that the right-of-way is about 200' wide. It is a similar right-of-way. On Hwy 2, that applicant developer has proposed a 100' setback voluntarily.

Newman wanted to know how to make sure everything gets out on the table. How do we make sure that everyone discusses something and compromises are made? Seacrest pondered that on the one hand you hear the private sector saying the system is too long; where is the magic line? What has happened is that we have set the standard informally. The staff has complied with the public laws. But as a community we want more process. But sometimes these same groups will argue that the Commission is delaying them. It is a magnitude issue. The bigger the impact, the more process you need. That kind of process might be a good topic for the Planning Commission to discuss at an informal meeting. This staff is very busy. It's a tough balancing act.

**16. Vicky Hessheimer**, 2901 N.W. 9<sup>th</sup>, stated that her back yard goes out to the interstate and there is a huge berm in her yard. She has already made some changes to the berm by adding a shed that sits on top of the berm, and it is not brick. She is concerned about the impact on the existing property owners. The city is terrible about taking care of the space behind her home. She has called and made complaints about the maintenance. There are weeds that grow enormously tall—as tall as the trees.

Bayer clarified that this legislation will not impact what property owners have already done to their property.

Duvall moved to reconsider the two-week deferral, seconded by Krieser and carried 7-0: Carlson, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Steward abstained; Schwinn absent.

Duvall moved to place this legislation on pending, seconded by Steward.

Steward believes that pending is much more reasonable than a date specific in this particular case because what we have heard from the business community is that they want more input. Steward expressed early on some concern for public input and the sequence. It seems like these things should happen together and staff is in the best position to determine when it is ready to come back forward. The Planning Director is the applicant so this puts it in that Department to bring back.

Motion to place on pending carried 8-0: Carlson, Steward, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Schwinn absent.

**COMPREHENSIVE PLAN AMENDMENT NO. 94-52;**  
**ANNEXATION NO. 00001;**  
**CHANGE OF ZONE NO. 3248;**  
**SPECIAL PERMIT NO. 1833, ASHLEY HEIGHTS COMMUNITY UNIT PLAN;**  
**and**  
**PRELIMINARY PLAT NO. 00005, ASHLEY HEIGHTS,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT N.W. 48<sup>TH</sup> AND W. ADAMS STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:** February 7, 2001

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

Planning staff recommendation: Approval of the Comprehensive Plan Amendment; conditional approval of the Annexation; approval of the Change of Zone; and conditional approval of the Community Unit Plan and Preliminary Plat.

Proponents

1. **Joe Bachmann**, 1400 U.S. Bank Bldg, appeared on behalf of M&S Construction, the developer. This plat was before the Commission previously; they have had a number of meetings and negotiations to reach agreement; and they are at a point of compromise; however, today an issue came up with regard to one of the agreements that is a part of that compromise that needs to be resolved. Therefore, Bachmann requested a two-week deferral.

In response to a question by Duvall, Bachmann indicated that R.E. Meyer has purchased some property and that is part of the compromise under discussion; however, the issue which needs to be resolved is not related to their purchase of the property. Bachmann believes it will get resolved within the two weeks.

There was no other public testimony.

Duvall moved to defer for two weeks, with continued public hearing and administrative action scheduled for February 21, 2001, seconded by Hunter and carried 8-0: Carlson, Steward, Taylor, Krieser, Hunter, Duvall, Newman and Bayer voting 'yes'; Schwinn absent.

There being no further business, the meeting was adjourned at 3:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 21, 2001.