

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 27, 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, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor (Steve Duvall, Linda Hunter and Gerry Krieser absent); Kathleen Sellman, Mike DeKalb, Ed Zimmer, Jason Reynolds, Becky Horner, Kay Liang, 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 regular meeting held June 13, 2001. Schwinn made a motion for approval, seconded by Carlson and carried 5-0: Bayer, Carlson, Newman, Schwinn and Taylor voting 'yes'; Steward abstaining; Duvall, Hunter and Krieser absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

June 27, 2001

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

The Consent agenda consisted of the following items: **CHANGE OF ZONE NO. 3326; SPECIAL PERMIT NO. 572E; SPECIAL PERMIT NO. 1226B; SPECIAL PERMIT NO. 1342A; SPECIAL PERMIT NO. 1778A; SPECIAL PERMIT NO. 1916; SPECIAL PERMIT NO. 1917; FINAL PLAT NO. 00011, VINTAGE HEIGHTS 9TH ADDITION; FINAL PLAT NO. 00028, LONG VIEW ESTATES; FINAL PLAT NO. 01003, PINE LAKE HEIGHTS SOUTH 2ND ADDITION; AND FINAL PLAT NO. 01006, LEE'S PLACE 1ST ADDITION.**

Item No. 1.3, Special Permit No. 1778A; Item No. 1.4, Special Permit No. 1916; and Item No. 1.5, Special Permit No. 1917, were removed from the Consent Agenda and had separate public hearing.

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

Note: This is final action on Special Permit No. 1226B; Special Permit No. 1342A; Vintage Heights 9th Addition Final Plat; Long View Estates Final Plat; Pine Lake Heights South 2nd Addition Final Plat; and Lee's Place 1st Addition Final Plat, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 1778A
AN AMENDMENT TO CHANGE THE
RENEWAL PERIOD AND EXPIRATION
DATE FOR THE EXCAVATION OF
SAND, GRAVEL AND SOIL,
ON PROPERTY GENERALLY LOCATED
AT NO. 56TH & ARBOR ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 27, 2001

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

Planning staff recommendation: Conditional approval.

This application was removed from the Consent Agenda at the request of Commissioner Steward and had separate public hearing.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant to answer any questions.

Since this is in the entryway corridor, Steward is especially concerned about the excavation nearest I-80. He asked Hunzeker to describe the nature and magnitude of this excavation adjacent to the corridor. Hunzeker stated that there is a substantial amount of excavation on the site but the general requirement is that they match up the grades that exist along the property line of the Interstate right-of-way. By looking at the proposed contour map, you see that all the way along the property line at the north end the contours are matched and a slope is brought down on the applicant's own property that matches the grades of the right-of-way.

Steward inquired whether the original approval of this permit required replacement of landscaping. Hunzeker answered in the affirmative. There are requirements that require

reseeding and cover and conservation practices that go with the permit. Note #16 on the plan requires that seeding be done in accordance with the Lower Platte South NRD erosion and sediment control stormwater management standards.

Steward understands that the addition of the one year is primarily because of the paving of Arbor Road. Hunzeker concurred. The idea was that the permit was approved subject to not being able to start excavation until Arbor Road was paved. It turned out that the paving did not occur until over a year after approval of the permit. The applicant used the permit last year, and when they requested renewal, it was discovered that they should have requested a renewal before they ever started pursuant to the provisions of the original permit. Hunzeker believes everyone was in agreement that the intent was to have two years from the date they started.

Newman inquired whether the three years was specified or whether that is a standard. Hunzeker indicated that the three years was the standard at that point so that we would be able to renew annually by administrative amendment. If it goes beyond three years, it has to come back to the Planning Commission for approval. The three years was something we just agreed upon.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

Steward moved to approve the Planning staff recommendation of conditional approval, seconded by Schwinn and carried 6-0: Newman, Taylor, Carlson, Steward, Schwinn and Bayer voting 'yes'; Duvall, Hunter and Krieser absent.

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

SPECIAL PERMIT NO. 1917
TO ALLOW PARKING OF VEHICLES FOR
SALE IN THE FRONT YARD SETBACK
ON PROPERTY LOCATED AT NORTH 27TH
STREET AND WILDCAT DRIVE
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 27, 2001

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

Planning staff recommendation: Conditional approval.

This application was removed from the Consent Agenda at the request of Commissioner Steward and had separate public hearing.

Proponents

1. Mark Hunzeker appeared on behalf of **Husker Auto Group** to answer questions.

Steward referred to that portion of the property between Wildcat Drive and I-80 and the abutting treatment of the property. He is concerned that Condition #2.1.2 has been deleted by the staff which talks about landscape screening. Hunzeker explained that the reason Condition #2.1.2 has been deleted is because the finished grade of this property is substantially below the grade of the Interstate and the grade will match. Any vehicles parked in this area will be behind a substantial berm. There is a landscape plan along the interior public streets, i.e. Wildcat Drive.

There was no testimony in opposition.

Carlson clarified that the conditions imposed upon this applicant will make the cars for sale similar to the adjacent use, Anderson Ford. Becky Horner of Planning staff explained that Condition #2.1.1 requires that the hoods of the cars remain closed. Both dealerships have the ability to display cars in the front yard setback.

Response by the Applicant

Hunzeker pointed out that while this permit does allow the display of vehicles in the front yard, without this permit or any requirements, there could be parking in the entire front yard setback. The result of the special permit is that there is a 15' landscaped area that would not otherwise exist.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

Steward moved to approve the Planning staff recommendation of conditional approval, seconded by Carlson and carried 6-0: Newman, Taylor, Carlson, Steward, Schwinn and Bayer voting 'yes'; Duvall, Hunter and Krieser absent.

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

SPECIAL PERMIT NO. 1916
TO REPLACE AN EXISTING 50' CHURCH TOWER
WITH A NEW 65' CHURCH TOWER
ON PROPERTY LOCATED AT
1015 LANCASTER LANE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 27, 2001

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

Planning staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing.

Proponents

1. **Kevin Hittle of Schoenleber, Shriner and Hittle**, appeared on behalf of **St. Andrew's Church**, the applicant. The church is requesting to reconstruct an existing tower that has been around since 1965. The original tower was removed for expansion of the existing facility and the church would like to rebuild the tower essentially exactly as originally designed and constructed at a new location, with the exception that it would be 15' taller. The staff originally suggested that the applicant allow for the possibility of it becoming a communications tower. The church is looking at a very small antenna that could be hidden behind the cross portion of the tower with a small box attached so you really would not know that it is a communications tower.

Opposition

1. **Susan Stokes**, 7336 York Lane, testified in opposition. York Lane runs immediately to the west of this property. She lives one block away. She knows that the church proposes to put up a telecommunications tower, but she doesn't know what they might put on the tower. The concern of the neighbors is what they might do in the future. They are concerned with what might happen to their television reception. She went door-to-door around that church and

roughly 20 people in that area were not aware of what might happen in the future. The specific location of the property is not clear. There is an elementary school directly to the south of this property and there is concern about a 65' tower. The neighbors would like more information. Why aren't they putting something on the tower at this point rather than in the future? We also question if this is the appropriate location for the tower since it is zoned for residential.

Stokes also raised an issue about drainage off this church parking lot. They are doing a new addition and over the last 10 years the residents on the west side of the parking lot have had problems with drainage coming off the parking lot. The church has not addressed this situation.

Carlson inquired whether there is a scenario under which communication antennae could go on the tower without a public hearing. Kay Liang of Planning staff indicated that it would require a separate review process to become a telecommunications tower. It could not be approved administratively.

Bayer clarified that today it is going to be a tower simply to hold the cross. Liang explained that the review of this application is only about the relocation of a church tower of 15' additional height.

Steward inquired as to the rationale for the change in location from what he would have considered to be more at the front of the church to the rear. Liang understands that because of the addition to the church, they have to relocate the tower. They are filling in the courtyard where the tower was originally located with the new addition to the church.

Response by the Applicant

Hittle assumes that the reason they are asking for a combination of the church tower and the communications tower is just for the height. That is a standard height for telecommunications in the future if anyone wanted to utilize that. If we were going to come in with a telecommunications system on the tower, we would have to submit a separate application. We do not intend to adorn this with any type of ugly communications system.

The drainage issues brought up by the opposition are not a part of this application, but Bayer requested that Hittle visit with the neighbors about it.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

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

Carlson clarified that this approves a church tower—not a telecommunications tower. Someone could apply for a telecommunications tower, but this action is only for a church tower.

Motion for conditional approval carried 6-0: Newman, Taylor, Carlson, Steward, Schwinn and Bayer voting ‘yes’; Duvall, Hunter and Krieser absent.

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

**CHANGE OF ZONE NO. 70HP
FOR A LANDMARK DESIGNATION
AT 1545 “S” STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 27, 2001

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

Planning staff recommendation: Approval.

Ed Zimmer of Planning staff and Historic Preservation Planner, presented the application and showed photographs. This sorority house has a prominent location at the corner of 16th and S, being built in 1925. It is within the Greco National Register District and is the third of which has applied for local landmark status. The purpose is that the University Foundation has been working with individual chapter corporations to establish funds and the University Foundation has asked those chapter houses to work with the local landmark procedure. We are using existing procedures and cooperation between the owners, University and the city to try to enhance the voluntary preservation of these houses. While the name of this organization is a fraternity, that name applies in this case to a sorority.

The more prominent side is its back side toward 16th Street. It is a colonial revival style building of red brick. A certain number of the interior features are also identified for preservation at the request of the owner and the University Foundation. The main parlor, a secondary parlor and a first floor library space have been identified in the guidelines. The Historic Preservation Commission has recommended unanimous approval.

Steward wondered how many other properties Zimmer believes will ultimately qualify for landmark designation. Zimmer believes there are about 2 dozen contributing properties within this district. He has had further inquiries from a couple more. He anticipates that we may see a continued one or two per year for some time to come.

Carlson clarified that the district has historic designation but does not have local landmark designation. Zimmer explained that it was started as a national historic district, which does not impose conditions on individual owners. It was a method to identify the overall resource--that it is a strong district and does contribute to the unique character--but guidelines were not imposed on individual houses unless they sought and accepted those.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

Schwinn moved approval, seconded by Newman and carried 6-0.

CHANGE OF ZONE NO. 3323
FROM R-2 RESIDENTIAL TO R-3 RESIDENTIAL;
and
SPECIAL PERMIT NO. 1733B,
AN AMENDMENT TO THE MUFF 2ND ADDITION
COMMUNITY UNIT PLAN;
and
PRELIMINARY PLAT NO. 01005,
MUFF 2ND ADDITION,
ON PROPERTY GENERALLY LOCATED
AT S.W. 8TH STREET AND WEST "C" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 27, 2001

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

Planning staff recommendation: Approval of the change of zone and conditional approval of the community unit plan amendment and preliminary plat.

Jason Reynolds of Planning staff submitted a letter in support from the Lincoln Action Program.

Proponents

1. J.D. Burt of Design Associates and Bob Stephens of Park Ridge Apartments, presented the application. Burt overviewed the project which is north of West "A" Street in line with Trimble Street, which is the northerly extension of S.W. 9th as it extends north from A. This street was platted as part of Muff Addition and extends north. This application is nothing more than an expansion of the existing Muff Addition. We are visualizing similar type of residential construction. The original Muff Addition has a 24-unit apartment building currently under construction. This application includes the extension of Trimble Street which will become Hannah Drive as it extends to the east with three additional buildings similar to the building currently under construction. On the south side we will end up with 10 townhouse units, retaining the existing single family on SW 8th and West C. We tried to concentrate all the construction along the southerly edge to avoid the floodplain and wetland. We wish to minimize fill in the floodplain and totally avoid any construction even close to the wetlands.

Burt agreed with all conditions of approval, except for Condition #1.1.4 of the community unit plan. Staff is requesting the deletion of one garage unit to provide additional trash facilities. The applicant's market research has indicated the need for nothing less than 40% of the units without a garage. We are proposing 40 garage units in 5 structures located along the north side which we feel is a minimum beneath the market demand. To remedy the dumpster situation, we are proposing to add three parking stalls along the west side of the building currently under construction. We will still be a significant distance north of the front yard setback. We have taken three parking stalls out of the north side and will extend a dumpster enclosure on the ends of three of the garage buildings to satisfy this concern. He believes that staff supports this change and he requested that Condition #1.1.4 be amended to read: "Provide additional trash enclosure. Three additional parking stalls will be provided in the west parking lot."

There was no testimony in opposition.

Steward asked staff to respond to the requested change to Condition #1.1.4. Jason Reynolds of Planning staff agreed. The three parking stalls remain behind the facade of the apartment building, they are still well outside the front yard setback and would be required to be screened according to design standards.

Bob Stephens expressed appreciation to the staff for their cooperation on this project.

Public hearing was closed.

CHANGE OF ZONE NO. 3323

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

Steward made a motion to approve, seconded by Carlson and carried 6-0: Newman, Taylor, Carlson, Steward, Schwinn and Bayer voting 'yes'; Hunter, Duvall and Krieser absent.

SPECIAL PERMIT NO. 1733B

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

Steward moved to approve the Planning staff recommendation of conditional approval, with the amendment to Condition #1.1.4 as requested by the applicant, seconded by Schwinn and carried 6-0: Newman, Taylor, Carlson, Steward, Schwinn and Bayer voting 'yes'; Hunter, Duvall and Krieser absent.

PRELIMINARY PLAT NO. 01005

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

Steward moved to approve the Planning staff recommendation of conditional approval, seconded by Schwinn and carried 6-0: Newman, Taylor, Carlson, Steward, Schwinn and Bayer voting 'yes'; Hunter, Duvall and Krieser absent.

SPECIAL PERMIT NO. 1873

**FOR A PERSONAL WIRELESS COMMUNICATIONS TOWER
AND BASE EQUIPMENT ON PROPERTY GENERALLY
LOCATED AT 4700 ANTELOPE CREEK ROAD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 27, 2001

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

Planning staff recommendation: Conditional approval.

Proponents

1. **John Hertzler** of the Everest Group presented the application on behalf of Sprint PCS for the installation of a wireless facility generally at 48th & Normal. This is proposed to be a stealth flag pole wireless facility, at 90' total height and built to accommodate a second carrier. This facility is needed to address the significant demand for wireless service in Lincoln. These are very expensive sites and often-times approval is hard to get and each site has a very specific demand. This site is specifically to address a coverage hole in the area of 48th

& Normal and south to Van Dorn, caused by topography and distance. This will also add capacity to the area. Once the need for a site is established, the goal is to try to find the best possible location from a land use perspective that will still meet the coverage objectives.

Sprint began searching for a site in the fall of 1999. In order to be most friendly to the community, our first goal is to look at any and all large structures in the area. We looked at Bryan Hospital and ran into some problems because the building is quite tall and would interfere with a facility to the north. Also, the Hospital decided not to open their rooftop space to non-health related entities.

The Community Playhouse on 56th Street was also considered, but the mature trees between the building and the targeted area rejected this location.

Sprint's goal is simply to find the best site from a land use perspective. We took the search area and expanded it and went through every single possible parcel and rejected each one based on a combination of leasing problems, constructability and land use issues. In general, the problem faced is that while this is a rather heavy commercial area (which was the target for the facility), it is somewhat narrow and surrounded by residential. Any site that might be appropriate that would meet the setbacks and not conflict with traffic or parking was basically behind or next to commercial buildings or right on the border with residential.

The proposed site that we called a dental office is more set back into the commercial area. It does not border residential areas directly and it does not interfere with traffic, parking, etc.

Hertzler went on to state that Sprint made the application, provided significant documentation eliminating all other parcels and staff concurred. They also approached the neighbors and called a meeting in early October. The proposed site was not met with the enthusiasm they had hoped for. The day after the neighborhood meeting, Hertzler requested to place this application on hold to address the concerns raised at the meeting, i.e. more interior to the commercial area. Efforts were focused at Van Dorn Plaza, but again, they were unable to locate on the north side because it would be right next to residential; they could not locate in the parking lot due to the owner's objections; they attempted a location closer to the corner of 48th & Van Dorn which is more set back from residential, but it was rejected by the landowner. They pursued several other options, including a site north of Antelope Creek that was rejected by the landowner. After exhausting all other alternatives, the applicant returned to the dental office option.

Hertzler believes that Sprint has made significant efforts to relocate the site. However, the proposed location is in a heavy commercial area; it is set back from residential; and it will not interfere with the parking or traffic. There are trees to the southwest to buffer the site. Sprint agreed with the Planning staff to propose a stealth flag pole to lessen the impact on the area and it will accommodate a second carrier.

Steward asked who will raise and lower the flag. Hertzler did not recall that this specific issued had been raised or discussed, but he believes it would be the responsibility of the owners of the property. The owner knows that it is a flag pole and has not raised any objections. Steward cautioned that the flag should not be left up all night unless it is lighted.

Steward inquired whether this site will require adjacent ground support technical equipment. Hertzler advised that there is a 20 x 40 fenced compound with outdoor radio equipment cabinets located inside. The compound will match the existing building. All three cabinets together are about the size of a refrigerator and placed on a steel platform. The fence will hide the view from the street. It is a 15 x 15 equipment platform, with other equipment, and then there is room for future expansion should the site become overloaded and need more radio equipment.

Carlson wondered whether they had considered the flag pole at the post office. Hertzler indicated that they had considered this option, but the post office is further away from the search area and is not high enough. There is also limited space on the ground and there is some residential right across the creek. The post office location was rejected by the staff.

Carlson noted that the equipment size seems to vary from provider to provider. Hertzler explained that to be because of the different technologies having to do with the philosophy. Smaller equipment handles less traffic. It ultimately means fewer facilities in a network. Sprint currently has 20-30 facilities in Lincoln. The majority are rooftops and collocations. They have put a real emphasis on collocations on existing towers and rooftops. Because of the collocations, Sprint has not had to come before the Commission for a year. The spacing of sites really depends on capacity.

Opposition

1. Topher Hansen, 2601 So. 46th Street, two blocks west of the proposed location, testified in opposition and submitted two letters in opposition. Approximately 9 people in the audience also raised their hands in opposition. Hansen urged that the Commission not approve this application. The neighbors have not had cooperation from the Planning Department in that the neighbors have not been consulted about their opposition except by the applicant. The neighbors have not received any notification letters. They did meet with the applicant and made their views clear. They do not know what the conditions of approval are and they do not know what conversations have taken place.

Hansen believes that it appears that the necessity of business is to be borne by the aesthetic compromise. This site is in a buffer zone between 48th Street, park and residential settings down Antelope Creek Road. It is not the base of the facility that is so much in opposition, but rather it will be the height of the tower that is viewed by all the residents in the immediate

vicinity. He will view this from his kitchen. The trees and buildings are not tall enough to block the view of this tower. He finds “stealth” to be an ironic name for the tower because it would stand out in the open space of this park environment. The sky is currently not cluttered with any obtrusions and this is a proposal that would begin to do that. The neighbors are also concerned about the future and what a collocation would do to the view. Hansen reiterated that it is not the base of the facility that is so much of a concern—it is the park environs that are a part of the enjoyment of this neighborhood. The area where it is suggested for location is in a buffer zone. A large tower like this is far from being a reasonable part of any buffer area. It is more appropriate in a commercial area.

Hansen also believes that this has precedential value. Several years ago, the company owning the Eagle radio station applied for a permit for their tower for their radio stations and it was denied by the City Council as being inappropriate for that site. It was not a “stealth” tower but had the same impact and the same issues were at hand. This is not an area that should have to bear the burden of the fact that a business cannot find another location for this tower. It will be an eyesore for the residents in the community and anyone enjoying the park.

Carlson asked Hansen whether he felt the shopping area at 48th & Van Dorn would be more appropriate. Hansen agreed. There are currently light towers in that area and he believes it would blend in there more reasonably. There is nothing of that height in the proposed location.

Steward acknowledged that the opposition is describing this as a buffer zone, but the map in the staff report shows five commercial buildings between 48th Street, Antelope Creek and Normal Blvd. Hansen acknowledged that between 48th on Antelope Creek Road there is a Blockbuster Video, then the dental office and then an office building before you get to the park. The pizza facility is on 48th Street to the north. The proposed location is in the cluster of commercial buildings at the end of the buffer zone. It is behind one two-story building. Steward then suggested that it is not like it is sitting in a buffer green space—it is commercial. Hansen clarified that the base is not as much the issue as the height required by being in a creek.

2. Amelda Chronister, 2637 Antelope Circle, and her sister **Elizabeth Breeding**, 2635 Antelope Circle, are in opposition. They have invested a large portion of their life savings in their homes and the construction of this tower decreases their property values and deprives them of a peaceful area in which to live. It is wrong for a huge corporation to ruin a peaceful residential area.

3. Lois Hansen, 2611 So. 46th Street, testified in opposition. She suggested that the photograph is deceptive because it is taken from the corner of 48th & Normal. Along Antelope Creek Road there is no commercial property except the dental office that faces the road. The dental office and building next door buffer the park and the residential across the street. From

the west and the south, once off 48th Street, and the east, there really is not any interference with the trees and the park land area. The only things that are there are a couple of billboards and a large flag pole. From the bike path from the swimming pool, and all that area in Antelope Creek Road, anything that is more than 1 ½ story would definitely be an intrusion on visibility. She understands the problem of locating cell towers, but these residents are very concerned about protecting the aesthetics of what has been a very pleasant residential neighborhood.

4. Norman Nelson, 2646 So. 46th Street, testified in opposition. He clarified that this location is not 48th & Normal—it is 47th Street. All of you have been to 47th & Van Dorn. You start down by the post office and go way up the hill. He does not understand the purpose of this location other than economics. He suggested that Sprint does not want to spend the money to reinforce a building to put the tower on top.

5. David Ocshner, 4550 Stevens Drive(?), testified in opposition. His concerns are compatibility of use and setting a precedent. This location is not compatible because the proposed tower would be sitting right at the beginning of a residential area. It is not at 48th & Normal. The neighborhood is very low rise with most of the structures being one-story. He is concerned about the way development like this would affect the fabric of this neighborhood. Seeing a tower like this upon entering the residential area just gives a signal that this is a neighborhood that doesn't care about the way it presents itself. He is also concerned about the base equipment structure. It is essentially a compound and very unsightly. Encountering something like this next to residential tells people that this is a neighborhood in decline. There are other places for this kind of visual pollution.

6. Dick Hill, 2625 So. 46th Street, testified in opposition. This sounds like a very high tower and no one has told us how high it is going to be. (Bayer clarified that it will be 90'.) Hill noted that Bryan Hospital has a helicopter port on top of it and they come across our neighborhood every day. He is fearful they might collide with the tower.

Staff Questions

Kathleen Sellman, Director of Planning, introduced the newest planner in the Planning Department, Abby Davis, who has handled this project in Jennifer's absence.

Newman inquired whether there was an attempt to notify the neighbors. Davis advised that the file indicates that there were letters sent out to the neighbors in September. The staff also recommends that the applicant notify the neighbors at least within 200' and as far as 600'

Steward inquired whether the staff is comfortable that every reasonable option within the technical requirements of the applicant and the provider have been explored for other locations. Davis did not write this staff report. It was written by Jennifer Dam who is no longer

with the Planning Department. However, Davis stated that she reviewed the staff report and the file. There were a considerable number of sites that were reviewed and analyzed—over 35 sites—and that documentation is included in the Planning Department files. She suggested that the applicant could answer the detailed questions about those sites.

Carlson was interested in the course of the history of sites chosen. He was curious about 40th & Van Dorn and Van Dorn Plaza. Davis indicated that that site was not proposed in the application. It is outlined in the applicant's documentation. They were thinking about locating behind the Radio Shack and there was a problem with parking and the owners were opposed. Carlson is trying to get a sense of the staff analysis. Davis explained that a site is not available if the owners are not willing to participate.

Response by the Applicant

Hertzler advised that Sprint sent letters to the neighbors in October with the intent to notify the neighborhood of this proposal. It was recommended that we notify everyone within 600' so we notified business and residential owners.

Carlson inquired about Van Dorn Plaza. Is there no way to accommodate the desires of the owners? Hertzler stated that the owners would not give up any ground space. We narrowed it down to two-three parking spots. It was not a monetary issue but simply a ground space issue. If we can't lease the ground space, we can't put it in. You lose signal through the cable if the support equipment is located further away; however, they could locate it 50-100' away if absolutely necessary. Sprint did try to do this at the Radio Shack location, but the owners would not go for it.

Carlson inquired about the height of the flag pole at Station 5. Hertzler believes it is 80-85'. Sprint's proposal was for 80' with the additional 10' for a second carrier.

Rick Peo, City Law Department, clarified that the notice that goes to property owners within 200' is an obligation of the Planning Director to send out 10 days prior to hearing but that is not a jurisdictional requirement. The only jurisdictional requirements are posting of the property and publication in the newspaper. The letter is just additional notice.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

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

Schwinn believes that the neighbors need to understand that we have very specific rules that handle the siting of cell towers. There are also federal laws that give them justification to come into the neighborhoods to put in these towers and we have tempered those rules with our own rules. Schwinn believes that the applicant has done a good job with the stealth application; they tried collocation; they listed it as a flag pole; he believes they have gone out of their way to make this have the least impact as possible. The Van Dorn Plaza has parking issues that exist today so he understands why they were not able to find a location there. Sprint needs this ability to handle their customers.

Steward's comments were that the city has had great difficulty with cell towers and cell providers in this community. It is a technology that the community has to contend with, not only because it is popular but because there are more than 500,000 users of cell phones in this state. It is something that we cannot deny, either from popular demand nor from the FCC requirements that we make provision for the offering of this service. When the technology is specified and when they've done due diligence to find the least objectionable site, we have almost no choice but to approve it. We have put together a very good set of community regulations that allows the staff to deal with each one of these applications. Steward stated that he has every confidence in the person who has been handling this application in the Planning Department. He believes that she was looking at the least impact to the community and he has faith both in our regulations and our staff work. He just thinks this is one of those cases that none of us want to see at all, but since it has to be, this appears to be the best we can do and he is convinced that it is.

Carlson expressed admiration for Sprint because they are not here very often because they are getting administrative permits. He does like flag pole mounts, especially when attached to a facility in a larger commercial area. The point that needs to be made is that the regulations regarding infill sites are different than the regulations regarding startup sites. This is not a startup company and not a startup site. These are infill sites to increase capacity to their system. The question is, to what degree does the community wish to bear the brunt of their own cell phone usage, and to what degree can the technology be modified to handle additional capacity without additional towers? At some point, we have to decide where to draw the line and which direction we want to push things in. We need to push people towards the more appropriate technology. He thinks there is more work to be done on this site.

Bayer stated that he will vote in favor. We have given the applicant all sorts of rules to follow; they followed them; and he applauds what they did at the fire station. He thinks the scare of a tower is real but he thinks they have mitigated as best as possible.

Taylor really empathizes with the neighbors and their concerns, and he really kind of questions that they were really properly notified. He agreed with Schwinn, Steward and Bayer, and he has voted in favor every time we have had this situation. He believes that cell towers are very important--they are as important as the telephone poles around the community. But, in this

instance, because he does not sense a strong comfortable level, especially with the outcry he is hearing today, he will vote against the tower.

Motion for conditional approval failed 3-3: Steward, Schwinn and Bayer voting 'yes'; Newman, Taylor and Carlson voting 'no'; Duvall, Hunter and Krieser absent. This application is held over for administrative action by the Planning Commission on July 11, 2001. Public hearing has been closed. There will be no further public testimony.

SPECIAL PERMIT NO. 1918
FOR SALE OF ALCOHOL FOR CONSUMPTION
OFF THE PREMISES
ON PROPERTY LOCATED AT
338 NO. 27TH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 27, 2001

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

Planning staff recommendation: Denial.

Jason Reynolds of Planning staff submitted three letters in opposition.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant, Kabredlo's, Inc. This is a store which is located in an area which has historically been a service spot for this neighborhood. It used to be a 600 sq. ft. building that was ½ donut shop and ½ dairy store. Kabredlo's purchased the property and opened it in 1991 as a convenience type grocery store. The new store that exists today was opened in 1996.

Hunzeker urged the Commission to visit this store. The image being portrayed by the opposition is that all they sell is beer and cigarettes. This is absolutely not the case. It is a small grocery store selling produce and meats, with 18 different cooler doors within the facility, only two or three of which are alcohol. This is a neighborhood grocery store. The city just finished spending a lot of our money encouraging a redevelopment of the block north of 27th and Vine in order to facilitate redevelopment of the old Walgreens store into a grocery that is similar to this. It serves the neighborhood primarily to walk-in traffic--there is very little drive-in traffic. It has a parking lot which meets city design standards. This new store and the parking lot were built and reviewed in accordance with the design standards in 1996, two years prior to the initial application for the alcohol permit which was subsequently litigated. This store sells everything that you would see in HyVee, only less variety and quantity.

Hunzeker alleged that the so-called negative impacts attributed to the sale of alcohol are impacts which existed prior to the initial application in 1998, and those negative impacts will continue whether this permit is denied or not. The impacts identified in this report have nothing to do with the sale of alcohol, but doing business on this site. Without the sale of alcohol there would be trucks bringing in the produce; there would be people using the alleyway to access the site; and there would be a lot of walk-in traffic just like before they sold alcohol. There is nothing in the police report that indicates that alcohol has created or is a problem with respect to this site. A lot of people who use this facility do not have a phone and come to the store to use the phone.

Hunzeker also suggested that the comments of Urban Development with respect to economic development on North 27th are somewhat naive. This is economic development on North 27th Street. These young entrepreneurs took a run-down building, started their business there, expanded the business there, and are serving that neighborhood in a way that is needed and wanted.

Hunzeker purported that the only issue that has any bearing on this special permit is whether there is 100' separation from this store to the adjacent residential. Hunzeker pointed out that they cannot get 100' of separation from the adjacent residential zoned land because it is right up against Kabredlo's. They can't get 100' of separation from the residential house that is next door because it is right up against Kabredlo's. Hunzeker posed the question: What is more of an adverse impact? This store or that house? This store has not had an impact on that house that is any greater or worse than the used car lot on the corner of 27th & R or the junk cars behind the building immediately north of the house, and certainly no more or less than any of the other activities other than the sale of alcohol that occur on this site.

Hunzeker noted that the staff report cites a lot of reasons that this is an adverse impact, but Hunzeker purported that virtually zero impact is a direct result of the sale of alcohol on this site.

Hunzeker went on to state that the liquor special permit ordinance was probably ill-considered in its origin. We should really consider the fact that this is a site/business which is providing a good service to the neighborhood and the sale of alcohol supports the ability to continue some of that service.

Steward asked Hunzeker to provide the history about the fact that Kabredlo's has been selling beer for three and one-half years. How did that occur? Did they understand the ordinance in the beginning? Hunzeker responded, stating that there was a prior application that was made for this special permit which was denied; an application for liquor license was made anyway, and that application was recommended for denial by the City Council; however, it was granted by the Liquor Control Commission. The City appealed the liquor license to the District Court. The District Court upheld the issuance of a license. The Court of Appeals upheld the District Court ruling, and then the Supreme Court accepted review and overturned that ruling. So

Kabredlo's is back here to apply once again for the same permit. The sale of alcohol has been going on legally and, in Hunzeker's opinion, the Supreme Court chose to change the law substantially in its ruling. It is important to note that the issue of the validity of this ordinance was really not in front of the court because it was pled on appeal to the District Court and thrown out because it had not been part of the record at the Liquor Control Commission hearing.

Opposition

1. Anthony Bonelli, President of the No. 27th Street Business & Civic Association, appeared on behalf of several people in the association, on the Board and the neighborhood associations that are opposed. Although they are empathic to how difficult it is to run a business today and how we encourage local champions of the neighborhood in using their own private money to invest, most of the people that belong to the association believe that the sale of alcohol does have a negative effect on the neighborhood.

Schwinn inquired as to how many of the association members sell alcohol. Bonelli could not think of any that do that are active in the association. There may be some members that do sell alcohol but they are not active in the association.

2. Nicky Morrell, 601 No. 28th, President of the Hartley Neighborhood Association, testified in opposition. There is an effect on the neighborhood with this business selling beer for three and one-half years against the city ordinance. She is a frequent user of the shops in this neighborhood and she agrees that it is a small grocery store but she is leery going there at night because of the clientele. She does not like to confront people that have been drinking in the parking lot when she gets out of her car. It can be very noisy at night and intimidating. It doesn't just affect the house next door—it affects the houses that are across the alley and down the alley. There are plenty of places to buy alcohol and she does not believe that a small grocery store is the place to do it.

3. Ruth Johnson, 819 No. 33rd, Past President of the Hartley Neighborhood Association, testified in opposition. She also testified in opposition the last time this special permit was before the Commission. Nothing has changed. People have called her and are really upset that Kabredlo's has applied again.

Staff questions

Schwinn asked whether the houses within 100' are owner-occupied. Jason Reynolds of Planning staff stated that the house directly north is owner-occupied but he was not sure about the others. There are a number of owner-occupied houses on the block. The house directly north is zoned B-3.

Steward clarified with the City Attorney that the Supreme Court action has had no impact on the city's liquor ordinance. Rick Peo of the City Law Department concurred. The city was appealing the grant of the Liquor Commission's license to sell alcohol when there was provision in the statute that required them to give consideration to the city zoning code requirements. Since the special permit was denied, the Law Department believed that was a mandatory consideration to follow and that issue had to be appealed to the Supreme Court. The Supreme Court affirmed the city's determination. So we are back to whether or not the application under zoning restrictions is appropriate or not. If the permit is denied, they may choose to challenge the zoning code. They did not appeal the denial of the original special permit.

Response by the Applicant

Hunzeker agrees that nothing has changed. The conditions that existed in 1998 when this original application was filed still exist. There is nothing that ties any of the problems to the issuance of a liquor license. Kabredlo's stops selling alcohol at 9:45 p.m. and closes at 10:00 p.m. It is not the kind of business that is attributing to a lot of late night activity or noise in the neighborhood.

Hunzeker submitted a petition of several hundred signatures of people who live in the neighborhood who support this application. He believes there is a long line of Supreme Court cases pre-dating the most recent which have clearly said that you cannot treat alcohol sales as something that is separate and distinct or treat it in a way that you would not treat other commercial products. This ordinance is doing that, particularly in this case, and all the adverse impacts would be there whether they are just selling groceries or whether they have alcohol.

Bayer clarified with Hunzeker that he is arguing to the Commission that the ordinance is not appropriate. Hunzeker does not think the ordinance is appropriate but he is also saying that all the conditions in the code that pertain to those special permits are waivable. You can waive every single one of them. And they have been waived in many, many circumstances. There are lots and lots of these permits out there where the 100' distance requirement has been waived or other requirements have been waived because of conditions that exist in a particular location that are not going to be made any better just because you deny the permit. Hunzeker further observed that this store serves walk-in clientele. It serves the neighborhood well and it is appropriate for that condition to be waived under the circumstances.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

June 27, 2001

Newman moved to deny, seconded by Taylor.

Taylor commented that personally, he doesn't hear about car accidents because of bread sticks but he does because of alcohol. He thinks it is important to put our feet in other shoes and it bothers him. He believes that you should be able to conduct business and make a profit, but do I make a profit at someone else's expense? Those become ethical and moral decisions. All of us should be interested in the rebuilding of this area and he does not see that alcohol sales would be something that is going to contribute to the overall success of that neighborhood. He does not see anyone here with compassion testifying in support of this application.

Carlson believes that in the widest scheme of things, local control is the wisest course of action. We have an ordinance to reflect the individual needs of this community and the conditions in the ordinance mitigate the impacts. If the impacts are negative and not mitigated, then this application should be denied.

Schwinn was troubled. Yes, there is residential next door; however, it is zoned B-3, which means that house could be turned into a business anytime. He is not so sure the existence of Kabredlo's is much different than Russ's or HyVee in his own neighborhood located right next to apartment houses. We have a concerted effort to create these small shopping areas for walkable communities and here we have a convenience store in a high dense neighborhood that is walkable and fairly accessible. He has not seen anything in the paper that shows this to be a particularly bad spot. The letter from the Police Department made no reference to complaints about the sale of alcohol other than a delivery truck delivering beer, which isn't any different than the delivery truck at the Kwik Shop three blocks north. There are no compelling arguments. They have been selling alcohol for 3 ½ or 4 years and he does not see that it has been a problem source.

Newman agreed with Carlson. If we vote for this, it does set a bad precedent for other neighborhood associations.

Steward will support the motion to deny. It's really rather simple. We have an ordinance that says 100' distance from a residential area. It doesn't say anything about the zoning or the ownership or circumstances. He believes we have an obligation to support the zoning ordinance until and unless it is changed. If we in fact are going to create walkable communities in this city, we have to look at a number of public policies, and those policies need to be reconsidered to support the kind of services that people walk to rather than the kind of services built for the automobile. There very likely could be reasons for reinvestigating the policy, but it is not the Commission's position to change policy.

Motion to deny carried 5-1: Newman, Taylor, Carlson, Steward and Bayer voting 'yes'; Schwinn voting 'no'; Duvall, Hunter and Krieser absent.

**WAIVER OF DESIGN STANDARDS NO. 01008
AT 65TH AND YANKEE HILL ROAD.**

This application was withdrawn by the applicant.

**COUNTY SPECIAL PERMIT NO. 186
FOR A GOLF COURSE, DRIVING RANGE, CLUBHOUSE
WITH RESTAURANT AND MAINTENANCE FACILITY,
ON PROPERTY GENERALLY LOCATED AT
NW 140TH AND W. HOLDREGE STREET.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: June 27, 2001

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

Mike DeKalb of Planning staff submitted four letters for the record and a request from the applicant for an additional two-week continuance based upon the additional information he submitted on June 22, 2001, in response to the issues raised in the staff report.

Schwinn moved to defer, with continued public hearing and administrative action scheduled for July 11, 2001, seconded by Newman and carried 6-0: Newman, Taylor, Carlson, Steward, Schwinn and Bayer voting 'yes'; Krieser, Duvall and Hunter absent.

There being no further business, the meeting was adjourned at 3:10 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 11, 2001.