

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, September 19, 2001, 9:00 a.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Mary Bills, Jon Carlson, Steve Duvall, Linda Hunter, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor; (Gerry Krieser absent). Kathleen Sellman, Ray Hill, 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 Greg Schwinn called the meeting to order. He stated that we are here for the planning of Lincoln and the future of our children and we will not be deterred by terrorist attacks. The Commissioner then observed a moment of silence in memory of those who have lost their lives and those that are missing.

Schwinn then called for a motion approving the minutes of the meeting held September 5, 2001. Carlson moved approval, seconded by Duvall and carried 7-0: Carlson, Duvall, Newman, Steward and Taylor voting 'yes'; Bills and Hunter abstained; Bills, Carlson, Duvall, Hunter, Newman, Steward and Taylor voting 'yes'; Schwinn abstaining; Krieser absent.

There was no Consent Agenda.

**SPECIAL PERMIT NO. 1929
TO STORE AND DISPLAY VEHICLES
FOR SALE AND RESALE IN THE FRONT
YARD ON PROPERTY LOCATED AT
702 WEST "O" STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION: September 19, 2001

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

Staff recommendation: Denial.

Tom Cajka of the Planning staff submitted a letter in opposition from the West "O" Street Business Association, and a informational handout listing seven different applications for similar special permits throughout Lincoln which have either been approved, denied or withdrawn.

Proponents

1. Bill Austin appeared on behalf of Red Star Auto Plaza and Vince Cornell, the owner. Red Star has made application for a special permit pursuant to § 27.63.700 of the Lincoln Municipal Code for authority to store vehicles for sale and resale in the required front yard in the H-3 zoning district. The establishment is located at 702 West "O" Street. Austin submitted a revised site plan which he believes resolves the technical issues, including the landscaping, surfacing and parking layout. Austin acknowledged that the staff has not had an opportunity to fully review the revised site plan; however, the applicant will make any adjustments that are required if there are any deviations to design standards on the revised site plan.

As far as whether Red Star is entitled to this special permit, Austin submitted that the area in question is zoned H-3 Highway Commercial. The preamble for that zoning district states: "This is a district for a redeveloping area intended to provide for low density commercial uses requiring high visibility and/or access from major highways." Austin pointed out that "parking" is permitted in the front yard of the H-3 district pursuant to § 27.63.030. If there are concerns about obstructions, the Commission should keep in mind that a 6' fence could be installed in a yard up to the property line. Austin does not believe there should be a concern about obstructions in this area because the obstructions can already occur. Austin also submitted that the type of storage of vehicles for sale being requested is better than what you would get from parking in the front yard. The applicant wants the area to be very attractive. The vehicles would be clean, low maintenance and properly positioned. The type of parking that could be allowed could be vehicles in some state of disrepair which could be placed in any sort of position.

Austin suggested that it would be disingenuous to say this type of use should not be permitted in H-3 at this location because it is a gateway to the City. He pointed out on the zoning map the red areas of H-3 zoning, which is almost by its nature the zoning found at all the gateways to the City. In 1997, the City Council indicated that this is an appropriate use in the H-3.

Austin referred to the letters in opposition, one from the neighbor immediately to the west and one from a representative of the West "O" Neighborhood Association. In response to the opposition, Austin submitted petitions in support from virtually everyone in the immediate vicinity. Austin also suggested that the Commission request whether or not the letter from the West "O" representative is from the neighborhood association with a vote, or whether it is expressing the personal views of the President.

Austin then referred to the staff report for the code provision in question which was considered by the Planning Commission and City Council in 1997. The staff report indicated as follows:

The City Law Department has issued an opinion that states that merely neighborhood opposition is not enough to deny a special permit. The Planning Commission has discretionary authority to deny a special permit but cannot do so arbitrarily. They must find that the application does not conform to the criteria in the Zoning Ordinance regarding the effect of the proposed use upon the surrounding neighborhood, the Comprehensive Plan, the community as a whole, and other matters relating to the public health, safety and general welfare. Since the Zoning Ordinance permits parking in the front yard, the question would be directed to any adjustments or waivers to the parking lot design standards and to the activity on the area.

Based upon that understanding and recognition and upon the fact that this applicant is not requesting any adjustments or waivers, Austin believes that Red Star is entitled to a favorable consideration. It is seeking no adjustments. Neighborhood opposition is not a basis for denial.

Austin also pointed out that there is a similar special permit that was granted to Lincoln Dodge at Capital Beach and West "O" Street. He also submitted photographs of the Lincoln Dodge operation showing that it clearly does not detract from the neighborhood, particularly in light of the fact that what was here before was clearly a detriment to the neighborhood. Red Star Auto has improved the property. It was basically a mud hole and used to be a car wash/truck wash with semi's parked on the property. Cornell has paved the lot and put an attractive building on it.

Austin believes approval of this special permit would be both fair and equitable given the fact that similar permits already exist in the near vicinity and the applicant is not asking for any waivers.

Hunter asked how much green space would be between the parking area and the street. Austin stated that there is significant green space that would remain, i.e. 18' from the property line to the sidewalk; then a sidewalk of 4'; and then another 6' to the curb.

Steward inquired whether the applicant agrees with the conditions of approval should the Planning Commission vote in favor. Austin stated that the applicant is in full agreement. Carlson believes that substantially the same permit was applied for in April of 2000. What is different now? Austin's response was that "this is a clean permit". At the time of the previous request there was also a request for parking in the side yard with a change of zone. Secondly,

Austin did not believe the landscaping was agreed upon. Cornell has installed a curb barrier adjacent to his west property line. Subsequently, Cornell has been parking 30' from the front yard. The adjacent neighbor has been parking in the front yard and obscures the Cornell property.

Opposition

1. **Peter Katt** appeared on behalf of the property owner immediately adjacent to the west, **Popeye's Chicken**. As noted in the staff report, Katt pointed out that this is an identical application that was brought before the Planning Commission and City Council about a year ago. After that permit was denied, 1) the building permit which Mr. Cornell received to develop this property would indicate that he was aware of the required setbacks when he made his investment and built the building; and 2) instead of complying with the requirements, vehicles continued to be parked in violation and, despite repeated requests by the City to come into compliance, that was not the case. Katt acknowledged that Cornell is entitled to make this application again; however, the applicant's counsel would have the Commission believe that we should write off the special permit requirements that exist. If you take the argument made by the applicant's counsel regarding the ability to park in the front yard, there is no reason for the special permit. Therefore, Katt believes that when the City Council created this provision for a special permit to allow the display of vehicles in the front yard, there had to be some places where it would be granted and some places where it would not.

Katt's client believes there is a significant difference between customer parking in the front yard and the continuous display of vehicles in the front yard. Customer parking in the front yard generally occurs only at peak periods of time and the primary impact on his client is the visibility of his property in this area, which is one of the purposes to be served by front yard setbacks. This is one of those circumstances where a special permit should not be granted and it is one that requires the Planning Commission to exercise its discretion and say no.

Katt did request a copy of the enforcement file from the Building & Safety Department and apparently it is somewhere between the City Attorney's office and the Building & Safety Department. Katt has not been able to review this file.

Steward inquired as to the land use and business function on the other side of Popeye's. Katt stated that directly to the west of Popeye's is a car wash and then the Dairy Queen. Steward believes there is an opportunity for front yard parking in that property as well. Katt agreed. There is nothing wrong with parking. It is an allowed use in front yard in the H-3. But customer parking is different than the continuous display of vehicles. His client has no objection to customer parking in the front yard and it is an allowed use.

2. **Richard Wiese**, Chair of **West "O" Area Business Association**, testified in opposition. The association meets every third Tuesday of the month. These meetings are advertised in

the newspaper. No one appeared at last Tuesday's meeting to discuss this permit. Wiese testified that Red Star Auto parked as close to the street as possible for a long time. The Codes Department had been asking them to set their automobiles back since the denial of the special permit, and they have done a fairly good job of that and it is attractive. But, it is only proper that the H-3 zoning be kept to make the street unified for the entrance coming into the City. The West "O" Area Business Association has worked hard to update the area. Red Star Auto has had cars with flat tires and trunk lids open on "P" Street right up to the street curb. We need to maintain the 30' front yard setback on "O" Street. If not, it will hinder the appearance and entrances to other businesses. We welcome automobile dealers but we want to see an orderly fashioned growth of West "O" Street. None of the automobile dealers will allow trees to be planted in front of their businesses. They do not have planted and watered grass in their front yards either. There will be several other car dealers asking for this same special permit if this one is approved.

Response by the Applicant

Austin addressed the written citation submitted by Katt, pointing out that the citation was dismissed after the owner discussed the issue with the city prosecutor. The owner contended that he had cars in the front yard that were not for sale. He has since removed the cars from the front yard. He is and was and continues to be entitled to park cars in the front yard. Customer vehicles, leased vehicles and other titled vehicles could be parked there without a special permit. The intrusion into the front yards already exists with the parking that is allowed in the front yards. Austin then displayed the 1997 aerial photograph which shows customer vehicles located in the front yard. To say that well-spaced vehicles will detract from this area does not seem to be the case. The city just wanted to be sure there were some limits on it by the special permit.

Austin went on to suggest that this is such a small additional intrusion, if an intrusion at all. It is not detracting from what is already out there and what was intended in the H-3 to begin with. The record consists of a list of neighbors in favor of this special permit—28 owners/businesses on West "O" and West "P" Streets.

As far as the nature of the vehicles on the Red Star lot, Austin submitted that it is a well-run car lot with attractive vehicles.

Lee Vincent Cornell, 9201 So. 53rd, testified as the owner in support. He has been a business owner on West O since 1985. He has made numerous changes to the property. He is doing his best to have an attractive lot, but parking cars in the front yard is very important to his business.

Staff questions

Steward inquired whether the revised site plan submitted today changes the staff recommendation of denial. Tom Cajka of Planning staff stated that he has not had an opportunity to review the revised site plan closely and would not want to comment one way or the other at this time.

Schwinn indicated that he would like to defer taking action because he wants to go back out and take a look at the area.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 19, 2001

Duvall moved to defer action until October 3, 2001, seconded by Hunter and carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

This application will be scheduled for administrative action on October 3, 2001. Public hearing has been closed. There will be no further public testimony other than questions by the Commission to staff.

**STREET & ALLEY VACATION NO. 01014
TO VACATE THE EAST 20' OF SOUTH 7TH STREET,
GENERALLY LOCATED AT SO. 7TH & "N" STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 19, 2001

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

Staff recommendation: A finding that the proposed street vacation is not in conformance with the Comprehensive Plan.

Becky Horner of Planning staff submitted a memorandum for the record providing additional history on the ordinances that vacated adjacent right-of-way and a copy of the petition to vacate.

Ray Hill of Planning staff brought to the Commission's attention that this area is within the 100 year floodplain and to be in conform with Comprehensive Plan, the city would be asking for a conservation easement over the vacated street right-of-way. The easement would restrict any use of the property and prevent any fill on the property.

Proponents

1. **Rex Schultze**, appeared on behalf of **Midwest Steel Works**, the applicant, and requested a two-week deferral to have further discussions with the Planning staff regarding the impact of this additional request for a conservation easement and the viability of going forward with the street vacation.

Duvall moved to defer, with continued public hearing and administrative action scheduled for October 3, 2001, seconded by Newman and carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

Carlson stated to the applicant that it would be helpful for the Commission to know the future plans associated with the street vacation.

Opposition

1. **John Woollam**, owner of the Woollam Co., Inc. and Cotswold, L.L.C., owner of the building at 645 M Street, testified in opposition. The Cotswold building has a number of tenants and 108 parking spaces which are generally full. He requested that this vacation be denied because of the very serious situation with trucks that block the traffic on L Street and M Street. The steel company has very long trucks and they completely block the street. The milk company across the street has trucks all the way around the building. He is concerned about the traffic flow and emergency vehicles. Vacating this street would further aggravate that problem. Woollam showed photographs of the parking situation in the area. Potentially the Cotswold could be completely surrounded by trucks. The 40' that would be remaining would make for a dangerous situation.

**WAIVER OF DESIGN STANDARDS NO. 01017
TO WAIVE UTILITY SERVICE TO PROPOSED LOTS
IN THE FAIRVIEW CEMETERY 2ND ADDITION
ADMINISTRATIVE FINAL PLAT, GENERALLY
LOCATED ON THE NORTHWEST CORNER
OF ADAMS STREET & NORTH 84TH STREET.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 19, 2001

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

Planning staff recommendation: Approval of the waiver of sewer and water, provided that the equivalent cost of the water and sanitary sewer is paid at the time of connection.

Proponents

1. **Lynn Johnson, Director of Parks & Recreation**, presented the application, explaining that this waiver acknowledges existing use of the property as cemetery and golf course. There is a proposed condition that Fairview Cemetery would agree to pay connection fees if and when there is some development of the property that requires utilities. Johnson has discussed this with the cemetery and they have agreed to that condition.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 19, 2001

Duvall moved approval, as set forth in the staff report dated August 31, 2001, seconded by Hunter and carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 01002,

DECLARATION OF SURPLUS PROPERTY;

ANNEXATION NO. 01006;

CHANGE OF ZONE NO. 3285,

FROM AG AGRICULTURAL TO B-5 PLANNED REGIONAL BUSINESS;

CHANGE OF ZONE NO. 3320,

FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;

PRELIMINARY PLAT NO. 01006, APPIAN WAY;

and

USE PERMIT NO. 140,

ON PROPERTY GENERALLY LOCATED

AT SOUTH 84TH STREET & HIGHWAY 2.

PUBLIC HEARING BEFORE PLANNING COMMISSION: September 19, 2001

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

Planning staff recommendation: A finding of conformance with the Comprehensive Plan for Comprehensive Plan Conformance No. 01002; approval of the annexation, subject to an annexation agreement; approval of the changes of zone; and conditional approval of the preliminary plat and use permit.

Proponents

1. **Kent Seacrest** appeared on behalf of **Eiger Corporation**, the developer of the 84th & Hwy 2 commercial center project. This will potentially be Lincoln's largest commercial center; the most planned commercial center; a project requiring the most amount of energy to get to this stage; Lincoln's largest private sector contribution for public improvements; and the largest neighborhood outreach program. The mailing list for neighborhood meetings included almost 600 people.

Seacrest gave a brief history of this planning effort. The developer started acquiring the property in 1994; the property was put into the Comprehensive Plan as commercial in 1994. There was difficulty in how to quiet Pine Lake Road. They did the first traffic study back in 1994. This project has ended up with four different traffic studies. Also early on, they developed the first peace treaty with the neighborhood groups and relocated a power line running up and down 84th Street. The first set of buffering schemes were worked out with the neighborhood. In 1997, the first subarea plan was shown at a large neighborhood meeting, and there have been a lot of smaller meetings. The developer entered into a second peace treaty with the Pine Lake neighbors in 1998 and worked out a road network. They then worked on moving Pine Lake Road and 84th Street away from the neighborhood which involved shifting that road about 150' to provide more protection to the Pine Lake neighborhood. They also talked about more buffering and how to do the public safety aspects. The second traffic study was done in 1999. In September of 2000, a year ago this month, the official applications were submitted. Last winter and spring the 84th & Hwy 2 Subarea Plan was adopted. During the subarea plan process, we came to consensus and this developer shrunk the commercial area down considerably.

This developer has also heard from the Cheney residents and worked with them, resulting in another traffic study to look at new traffic assumptions. This review has also involved looking at a new sewer solution. Public Works was not comfortable with 30' deep sewers—the community standard is 15'. As a result, the city took the responsibility to say to Cheney that we cannot gravity flow and sewer Cheney. The city did communicate with the Village of Cheney representatives and they will have to wait for the Stevens Creek plan. This developer was asked to look at the Cheney connection. This developer originally abutted the land that would provide the Cheney connection but chose not to exercise an option; however, this developer paid for ½ of a road to get the people of Cheney in and out of their neighborhood.

Seacrest noted that they have had months and months of negotiations with the city staff and have an annexation agreement showing the private sector paying 6.4 million dollars worth of off-site improvements to help build public arterials, public water mains, transmission lines, etc. The city is also paying a considerable sum because this area does not have much infrastructure.

The planning process and negotiations have left Seacrest speechless. He does not want to have to go through that process again. "We all tried hard and we are here today united except for two minor conditions".

Seacrest stated that they moved 84th Street and Pine Lake Road to help the neighborhood; this development is giving 100' of open space along Hwy 2; this development has a low FAR of .14. The Comprehensive Plan calls for .25 FAR.

Seacrest submitted proposed amendments to the conditions of approval on the preliminary plat:

--Condition #1.1.1 - staff is requiring sidewalks on both sides of the private roadways. Maybe that's a good idea but it is over \$400,000 of extra sidewalks. Seacrest believes that staff is now agreeing to sidewalks on one side of the private roadways. Seacrest showed photographs of other sidewalk patterns in other shopping centers, i.e. Gateway, Edgewood, SouthPointe. This center puts sidewalks at every ring road and to all the key commercial buildings.

--Move Condition #1.1.9 from Site Specific to "Prior to City Council".

--Amend Condition #1.1.9 in order to get the trail network to work near the intersections.

--If Condition #1.1.1 is amended as requested, Condition #3.6 should be amended to include a waiver of sidewalks along one side of the private roadways.

--Delete "and plants in the median and islands" from Condition #4.2.5. In the public way corridors, they will be doing the Nebraska natural landscape features in the wide medians, and it is the city's responsibility to maintain that natural landscape.

With regard to the conditions of approval on the use permit, Seacrest requested the following amendments:

--same amendment to Condition #1.1.1 as in the preliminary plat regarding sidewalks.

--1.1.3. Revise Note 9 to indicate 50 feet, not 100 feet, as long as the location of a public street or private roadways is not being moved. This gives the applicant the right to shift some lots 50' so long as they are not moving roads.

--delete Condition #1.1.4 to provide at least one area for recycling drop off facilities. Seacrest suggested that if the public wants a recycling drop-off facility, and if the city is willing to pay for it, it could be accommodated. There is no legal requirement that

this developer provide it. There is money in the CIP for a recycling center in southeast Lincoln. (Staff disagrees to the deletion of this condition).

--1.1.9 has to do with exterior construction of buildings. Seacrest pointed out that there are two buildings on 91st Street and they are set back 50', but we internally put the parking lots on the back side and the reason we are doing that is eventually we are going to move an LES power line that will go between the back of the building and the back of the parking lot. As a result, we want the parking lot up against the power line. Staff is worried that these buildings would be unattractive, but there is a 50' setback and the developer is willing to commit to a standard in the I-3 ordinance, with no galvanized buildings on public streets and that 30 percent at least be glass or things of that nature. Staff is wanting an R-T standard here and the developer believes that is overkill.

–delete #1.1.10, #1.1.11, #1.1.12. Staff agrees.

–amendments to Condition #1.1.13, #1.1.20 and add Condition #1.1.23.

–add Condition #3.1 to provide an architectural theme prior to approval by Council.

Newman observed that we talk about mixed use and all sorts of transportation systems including public transit. Where would a bus stop in this area? Seacrest stated that they have advised StarTran that this is coming and StarTran has seen the plans. He believes that StarTran does not believe there to be enough rooftops for a bus network, but we would assume they would come out 84th and do the loop road and go back out 91st. We have good access on 84th, Hwy 2, and two places on 91st. We have multiple access potential to the north. Whatever way they can bring the bus to us, we can get them in and out.

Steward inquired about sidewalks on 84th Street. Seacrest confirmed that they are providing sidewalks on both sides of 84th and 91st. They are not showing a sidewalk on Hwy 2 because that is not the proper place for pedestrian experience. There are internal sidewalks.

Steward asked whether there is any provision for a trail connection. Seacrest pointed out that the trail network is coming up the valley, following and hugging the east side of 91st Street and crossing at a light and then goes further down into Jensen Park. We originally tried to put the trail in the middle of the center but it was becoming too complex. It was a better experience to have it on the residential side of the development.

Steward asked Seacrest to characterize the landscaping attitude. Seacrest responded, stating that one of the major principals of this development team is the owner and developer of South Pointe. Along Hwy 2 and the medians, we will go with the Nebraska natural landscape feature. If we can afford it, we might look at water systems. Within the center there will be a high amenity aspect.

Although not an element of requirement, Steward inquired about the philosophy from a design standpoint that gives the client confidence in the continuing big box pattern of an employment center versus connected, more monolithic and indoor environment kind of context. Seacrest stated that new urbanism standards and connectivity work well on a certain scale, but when you start to talk about 1.9 million sq. ft., it gets problematic. We're trying to do a mixture. You're just seeing the first big push. The only way we will survive is through the car until there are rooftops out here. It is not before the Commission today, but Seacrest believes that in the future it will be a South Pointe type facility planned with more pedestrian orientation and more of a local neighborhood feeling. This phase is further from all the rooftops and the closest to Highway 2. The market has responded well wanting those large experiences. Consumers tend to get in their cars to get the best buy.

With regard to the recycling center, Steward asked whether the developer would be willing to "identify" a site on the site plan for a city-owned location. Seacrest would prefer to verify with the city between now and City Council whether they have looked in southeast Lincoln because he is not sure a regional center facility works as good as a neighborhood size center. But, Steward believes there is also a huge generation of recyclable materials in this kind of center. Seacrest agreed, but many of these big boxes do their own recycling. Seacrest does not want this to be a condition of approval. He thinks south of the highway makes more sense and that area is not before the Commission today.

Hunter expressed concern about looking at the increased traffic generation from a recycling center. Seacrest agreed because 90% of the train in this project negotiation was traffic. He will get grouchy if the city's project adds more PM trips.

Hunter asked for clarification of the condition regarding building construction. Seacrest suggested that most of the commercial and office buildings are painted metal. His amendment to Condition #1.1.9 welcomes the use of painted metal--just don't use raw metal--and when you do use painted you can fill up 70% of the space. It can only be used on the sides.

Newman inquired about the cost of moving the water tower. Seacrest explained that the city was planning to do a new water tower down by Jensen Park. This developer is paying the cost for the city to add four million gallons to the tank. At the end of the day, this developer is paying for four million gallons of extra storage of water. This is at the developer's cost.

Carlson noted that this area is identified in the subarea plan as a mixed use center. He is having difficulty envisioning how this proposal accomplishes that goal of a mixed use center. Specifically, within the subarea plan, it talks about buildings relating to one another; parking facilities should not dominate the design; provide contemporary equivalent of business district. He's missing these features. Seacrest acknowledged that they do probably have a larger percentage of retail in this first phase. What's in front of the Commission today includes some office buildings and there will be more office buildings to the north in the next phase.

Carlson wondered about placement and functionality. We would hope that these buildings would relate to each other and that the customer would be encouraged and facilitated to move from store to store. Carlson sees oceans of parking in between the buildings and building backs to building backs. There is a long way to travel to pad site restaurants. It just does not strike him as an urban functional grouping. Seacrest believes there are three blocks from the office user to go to the restaurant. It's a different urban experience than downtown but it's not like you have to get in the car to travel. We've connected everyone with the sidewalk network. Hwy 2 traffic is geared more towards cars in this phase. The second phase is more envisioned to be the collective cluster that Carlson has in mind. That collective cluster—that wonderful experience—usually means higher end retail because there needs to be the money to pay for it. Seacrest suggested that it is going to be awhile for the market to need more high end retail.

Carlson is concerned because the next phases are not in front of him at this time. He wanted to see the master plan and master group. It looks like the traditional No. 27th Street placement of these buildings and the subarea plan is something different. He anticipated big boxes, but he doesn't see how this is relating functionally to each other. It is a big car trip generator and a big pedestrian problem. Why is there not more information in front of us if we are master planning this? Seacrest stated that they do not have tenants for the next phases. We do have infrastructure agreements for the 1.9 million for traffic, sewer, trail, water, and the transportation network. As far as the layouts for the parking and the buildings, technology will be different by the time the next phases come forward. We tried to plan Edgewood and then the market didn't come. We had to replan it and it ended up being the most hodge-podge. Rather than specific buildings and parking, we chose to look at the road network.

Carlson explained that his question is not to the external road network. The 1.9 million is fine. But he is talking about the internal circulation and the internal pedestrian experience. He objects to not having a landscape plan, architectural theme design or the master plan in front of him. He is concerned that this design is not satisfying the entryway goal of the subarea plan. Seacrest pointed out that there has been no development set back 100' on any of the entryways before—no one has done the 100' setback before. We do have in front of you a landscape plan that shows the Nebraska aspect up and down the Hwy 2 corridor. We were not asked for the landscape plan until we saw the staff report last Wednesday after working on this for over a year.

Carlson is referring to the goals listed in the Subarea Plan. He is not talking entryway design standards but the goal for this parcel that it would be a key component as you came into the city with architectural features and elements that would announce itself in a pleasant and attractive way. Seacrest again pointed out that this development exceeds the record on setback; it follows the requirement for a Nebraska landscape on Hwy 2; and we have open space with the .14 FAR. There is not another center with this low of FAR. It was hard. Staff struggled and we struggled. We chose the open space features as being more important. He believes it has been master planned.

Carlson reiterated that he is having difficulty without the design in front of him. Seacrest apologized for not having the architectural features before the Commission.

Hunter commented that one of the things we've all gotten extremely sensitive about is creating an environment that looks like the sea of parking lot that goes in front of Walmart. She thought it was going to be more of a situation like South Pointe where there is a good amount of parking around the box buildings but in the back so that the architectural design of those buildings was more street front instead of having the sea of asphalt. Seacrest suggested that the difference is that No. 27th sits there with no berms and with 40' setbacks. This development has berms and a 100' setback. But, Hunter noted that No. 27th does have pad site tenants along both of those roads and then you have this massive parking lot with the buildings set back. She agrees with Carlson—she thought we were going to be looking at something that looked like a lot less parking and more architectural building in the front. Seacrest noted that South Pointe is .22 FAR. The parking requirements are very similar. This development has a lot more open space than South Pointe and the parking areas are very comparable. The retailer wants the parking in front of the store. We've put berms up and down so that the parking lots are well screened. Hunter observed that South Pointe may have a good amount of asphalt but they have done a much nicer job of landscaping. Looking at a flat plan and not seeing the landscaping plan makes it difficult to see.

2. Julie Southwick, Cheney Community Organization, testified in support; however, she had concerns because the Cheney community left the subarea plan process with the understanding that they would be annexed. Now they are being told that it will be “beyond the planning period”. That means the year 2025 and beyond. They were told 5-7 years during the subarea planning process. The city of Lincoln is encroaching upon Cheney. Cheney is not moving its boundaries into Lincoln. Therefore, it is very important for pre-planning. She could have guaranteed that the Cheney annexation project would not fall in the City's criteria, so what is the solution? Cheney is unique, approximately 130 years old and will continue to survive. However, the economies of the current residents are very limited. Therefore, it is in the best interests of both Lincoln and Cheney to do some pre-planning. Will it be cheaper today before everything is built or cheaper beyond 2025? During the subarea plan process, the Planning Department implied the problems that would need to be addressed for Cheney to be annexed, i.e. sewer, water and schools. Cheney is not a developer or a neighborhood. It is a unique

community that is encountering issues from the extension of Lincoln. Perhaps we should see if Lincoln fits into their village criteria. She expressed appreciation to Andermatt for keeping the future services to the surrounding areas in their plans.

Steward asked whether Southwick is satisfied with the subarea plan. Southwick stated that Cheney is definitely satisfied with the Subarea Plan, but we get a letter in June to one of our SID boards and the door was shut. We're not coming to you with a silver platter, but she believes they can work together. Steward thought the subarea plan opened those doors for that cooperation.

3. Lonnie Athey (Athey Painting), 9400 Yankee Hill Road, bought the property with the idea that Cheney would be annexed. We need the sewer and water. Our fire hydrants no longer work because we only have a 2" water main coming to them. He was hoping that the City of Lincoln would try to help them.

4. Herb Twiehaus, a business owner in Cheney, testified that the Cheney residents were more or less lead to believe that they would have access to their own community and that they would eventually be provided with sewer. He is now being told that the developer is willing to provide the sewer but the city is against it because of the depth of the line. There are lines in the city that deep. We can't wait for the Stevens Creek basin to develop to sewer Cheney.

5. Marlyn Schwartz testified in support. The developer has worked out a very nice plan and the developer had originally agreed to provide sewer into Cheney. It seems to him that in this time that we are living that somehow there should be a way to access the sewer of Cheney without making them wait 25-30 years. He knows that city staff had suggested that Cheney should hire an engineer to see how this should be done, but as stated before, this community is existing. It is unfair to grow around this community and leave them isolated without being able to be annexed into the City.

6. Gayle Hanshaw, President of Cheney Community Improvement Program, testified in support. His primary concern at the time of the previous meetings was the access road coming into Cheney. We have learned of recent that the subarea plan is now not the plan that is going to be exercised. It appears that someone is renigging on the original agreement. What he has been hearing is there will be a "temporary" road coming into Cheney. What is a temporary road? He would like to have an explanation of what has happened. It appears that the county was originally going to put the diagonal road in front of Yankee Hill Road to Hwy 2, and then after we got the approval, Andermatt did the traffic study and said there could be a staging area to handle the turning traffic, providing us with a left turn in. As he understands it, the county has withdrawn their offer to build that road. They say it's a city project. So now the argument is that the city wants the developer to pay for that road. Consequently, the forced

expansion of the original subarea plan has now been shrunk back to the original subarea plan proposed by the developer. Don't we deserve an explanation of why this has changed? How do we go about getting that explanation? It appears like we're being left out and our interests are not being considered.

There was no testimony in opposition.

Staff questions

Steward inquired about the force and the status of the subarea plan relative to previous agreements. Jason Reynolds of Planning staff stated that the major element section of the Southeast Lincoln/Highway 2 Subarea Plan recommends "the potential inclusion of the village of Cheney and SID in the city limits, if issues regarding sewer capacity, and impact on Cheney School District can be addressed." Later in the subarea plan, it talks about specific elements, i.e.

"The expansion of the Future Service Limit in the Cheney area will require further discussion in the future. It is possible that Cheney may be served by the city's sanitary sewer line once that line is extended into this area. There are numerous issues regarding the Cheney SID and Cheney School District to resolve before this area should be included in the Future Service Limit for potential annexation into the City of Lincoln. The proposed urban residential area north of Cheney, south of Highway 2, should not be developed until these issues are resolved."

Under the transportation section, it talks about how Cheney would access the relocated Yankee Hill Road northwest of the village between the railroad track and Highway 2, i.e.

"The details of this access point should be resolved prior to the commercial zoning south of Highway 2. Full turning movements into Cheney at this intersection shall be permitted".

Steward then asked whether there have been detailed discussions regarding the access road. Reynolds explains that the annexation agreement for this project outlines the road alignments. The subarea plan guarantees that Cheney will have access, although that location is not yet determined. With this annexation, the county acquired additional right-of-way, and with the relocation of 91st Street, it will curve out of Cheney. It is within currently purchased right-of-way. At some point in the future, before the south side of Hwy 2 is zoned commercial, that connection needs to be tied down. Steward commented that if the developer takes 20 years to propose that, then Cheney is held hostage. Reynolds explained that Cheney will still have the T intersection. The annexation agreement provides that the area south of the highway is a suburban cross-section.

Schwinn wanted to know where the Cheney residents get the idea that annexation is a 20-25 year process. Reynolds stated that this was information sent in a letter from the staff. They had asked for the timeframe for annexation. Cheney is outside the future service limits. The Comprehensive Plan identifies the Cheney area as phase 4, which is beyond the planning period, and the letter sent from Public Works in June regarding the sewer connection to Cheney said that connecting from the north would not be an option until such time as Stevens Creek is developed and the Stevens Creek sewer comes in. Schwinn inquired whether there has been any discussion about pumping from their existing treatment plant. Reynolds explained that the city has a longstanding policy against lift stations. But, Schwinn noted that there are lift stations in the city.

Steward asked Public Works to respond to the technical circumstances of sooner rather than later. Dennis Bartels explained that the village of Cheney is kind of on a ridgeline. The treatment plant or lagoons for Cheney are located in the Stevens Creek drainage basin. If we were to serve them today, we would have to build a sewer deeper than we would like to build, approximately 30' deep. When Public Works was asked for a recommendation, operating a gravity sewer at that depth was not recommended. The other option would be to pump from the area of the existing treatment plant up to the Antelope Creek sewer, which is proposed to serve the shopping center. In this proposed plan, if the sewer got built with the depth proposed, it would not preclude the option of pumping it to there, but it has been a longstanding policy to avoid lift stations because of the mechanical nature we're relying on for power. The gravity sewer system is the preferred way to do it and we have had a longstanding policy of trying to respect ridgelines. The pipe sizing has all been done based on the drainage basin size of Antelope Creek. Bartels does not agree with the characterization that we would be surrounding Cheney. The area immediately south of Hwy 2 and east of 98th will not be developed. If the city's position is that that general area should be served by gravity sewer, we've reached the edge of development in this vicinity until such time as the Stevens Creek sewer is extended.

If we were to annex Cheney, Schwinn wondered whether it would require complete rebuilding of their infrastructure since they only have a 2" water main. Bartels indicated that this has been discussed in general. The Rural Water District has some 6" mains, but a lot of them are 2" and 3". If we were to annex and provide fire protection, we would have to rebuild part or all of the system. We have not been supplied good records other than a schematic and a lot of the sizes are substandard. There would need to be extensive reconstruction of both their water and sewer systems.

Schwinn asked whether the city assesses the property owner for that construction. Bartels suggested that to be a legal question as to whether we can or cannot assess the costs. Schwinn commented that when he left the subarea plan decision, he did not think that the residents of Cheney were going to be precluded in this manner. Reynolds reiterated that the sections quoted from the subarea plan talked about the annexation of Cheney as something

to be investigated and that there are issues that need to be resolved before it could be included in the future service limits, including sewer design, water costs, and capacity issues. Based upon those issues, it was found that there was not a justification for including Cheney in the future service limit in reviewing this specific proposal.

With regard to the proposed amendments to the conditions of approval, Reynolds agreed with the amendment to Condition #1.1.1 regarding sidewalks; however, the staff would recommend additional language, "Sidewalk crossing points shall be located outside of the curb radius". This will provide a shorter walking distance for the pedestrian.

With regard to the recycling facility in Condition #1.1.4 of the use permit, Reynolds pointed out that the solid waste section of the Comprehensive Plan provides that mixed use regional centers are good locations for recycling facilities and Public Works has requested that a recycling facility be shown. Therefore, the staff would not be in favor of deleting this condition.

With regard to Condition #1.1.9 of the use permit, Reynolds suggested revising that condition to "Label both Lots 10 and 11, Block 3, as office uses.", rather than the amendment proposed by the applicant.

Reynolds agreed with the proposed amendment to Condition #1.1.13. This is to distinguish between this review and an administrative amendment. The intention is that Planning could track the total number of PM trips without the applicant having to go through administrative amendments. Carlson was concerned because there will be no knowledge by the Department of what those uses are. Reynolds clarified that on the perimeter pad sites, retail use could be converted to restaurant use provided they could provide the parking and the use does not increase the allowed trip traffic.

Response by the Applicant

With regard to the term "Temporary" for the Cheney connection, Seacrest pointed to the map and stated that the annexation agreement anticipates "this road" just like the subarea plan shows. What we are building is the first phase; we are then building a temporary connectiveness which is the T intersection. We once thought we were going to own all this land "over here" and it was logical for us to be involved in that road. But we don't abut it anymore and we are building the first part permanently. We thought that connection to Cheney should be back further to get it away from Hwy 2. But the Cheney people wanted to volunteer some of their land for that road to connect further to the southwest. All we could do to help was to be sure to start the solution and build the temporary to allow full turn movements.

As far as the sewer, Seacrest stated that the developer did price and design its sewer while they could pump. We've got capacity in our section of the sewer line but there is a bottleneck

further downstream. We could take the pump sewage if that is the vision of this community. We thought Cheney was being annexed. If they don't get annexed, there could be some potential blighting factors. We've been doing our best to help Cheney.

As far as the sidewalk Condition #1.1.1, Seacrest agreed with the additional language proposed by staff. He maintained that Condition #1.1.4 for the recycling center should be deleted. He would agree to discuss it with staff before the project goes to Council. He thinks it is illegal to make the developer put it in.

Seacrest does not agree with the staff suggestion on Condition #1.1.8 to show office uses.

Seacrest pointed out that there were 670 neighbors involved in the process and there is no one here against this project. There were 10 abutting neighbors and they're not here in opposition. Pine Lake SID and Pine Lake Assn. are not here in opposition.

Carlson moved to defer for two weeks, seconded by Newman. In Carlson's opinion, this plan and the information he has before him falls significantly short. If his criticism is large it is because his disappointment is large. His hopes were high based on the hard work and the diligence of the development team to this point. He fully expected to see the southeast Lincoln regional mixed use center and that is not what is in front of him. He wants to defer because his only other option is to vote to deny. The city and developer deserve to have this regional center done right.

Newman agreed totally. The other smaller issue is that there are a few details to work out between the developer and the staff. We need a better picture of the landscaping. It is absolutely no different than North 27th.

Steward believes we're trying to hold this developer to a standard that was not and is not clearly articulated. He questions the viability and the community asset of the disconnected box and the automobile oriented shopping center. He, too, was hoping for more. But the trouble he is having is that it is in conformance with the Comprehensive Plan; it is, in general, in conformance with the subarea plan previously approved; and it is what the current pattern for so-called employment centers is following. He does not agree with that pattern, but he believes they have satisfied, according to current requirements and statutory condition, the circumstances that are expected of them and have gone in some ways beyond that. He does not believe two weeks is going to satisfy the concerns that have been expressed. Will we all still have the same feelings of disappointment in two weeks and then have to act? He is ready to act on it now with the anticipation that in the detail design work there are more community values and community resolution that comes about. He is also concerned about the plight of the Cheney issue, but he believes that there is an opportunity in our current update of the Comprehensive Plan to work with that issue and to be sure that that community is in a stronger position.

Duvall will vote against deferral. When we approved the subarea plan we knew this was an area of big boxes and now we're seeing definition. Both sides have done a Herculean effort in developing this and he believes they have addressed all the issues.

Hunter commented that depending on the type of tenant, rear access may not be a reality. In order to set retail in a center location with parking all around really requires multi-uses on both sides. She does think that looking at the landscaping we are certainly not looking at another 27th Street. She also believes that they have addressed the issues. She is comfortable with the developer in terms of doing a beautiful development. She has a problem with the recycling location. She gets the feeling that we've got a great developer doing a great plan and it's like holding someone hostage until they give in. She thinks those locations for recycling centers are better planned on their own merit instead of attaching them to someone else's project. This project has been in the planning process for eight years. And it has taken this long to get to the point where there is actually the first phase of development. It is probably going to be another 3-4 years before the next phase comes forward. By the time this becomes a fully developed center it could be another 10-12-13 years. While we have to be sensitive to the areas that are out there, we have to be careful about leapfrogging development into a situation where it is not quite there yet. The property values that exist in Cheney are going to double and triple off the charts compared to what they are now. This development is not a negative for Cheney. It's coming. This development has been coming for a long time. The time for Cheney to be annexed is coming in time. She will vote against the deferral.

Newman still sees an enormous sea of concrete parking lot here. She believes what we have talked about in mixed use centers is that there is access to transit and a comfortable pedestrian zone. She believes there should be a couple more landscaped pedestrian corridors through that parking lot. Gateway was going to move their bus stop out towards the post office. We had vision-impaired people struggling to get through that parking lot. She does not see that this is any different than that sort of situation.

It has been stipulated that they've met the criteria in the Comprehensive Plan. Carlson stated that he respects the Commission's ability to read the plan--maybe it's interpretation--but page 67 sets forth the goals of mixed use centers and this plan does not meet those goals. In his opinion, this project does not meet the goals in the Comprehensive Plan.

Taylor is concerned about the Cheney people. He is confident that this will be a good development because he has confidence in the developer. All things considered, he does not believe that this necessitates a deferral.

Schwinn agreed with Steward.

Motion to defer failed 2-6: Carlson and Newman voting 'yes'; Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'no'; Krieser absent.

Public hearing was closed.

COMPREHENSIVE PLAN CONFORMANCE NO. 01002

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 19, 2001

Duvall moved approval, seconded by Steward and carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.

ANNEXATION NO. 01006

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 19, 2001

Duvall moved approval, subject to the annexation agreement, seconded by Bills and carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.

CHANGE OF ZONE NO. 3285

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 19, 2001

Duvall moved approval, seconded by Bills and carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.

CHANGE OF ZONE NO. 3320

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 19, 2001

Duvall moved approval, seconded by Hunter and carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.

PRELIMINARY PLAT NO. 01006, APPIAN WAY

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 19, 2001

Steward moved to approve the staff recommendation of conditional approval, with the applicant's proposed amendments, including the additional language proposed by staff in Condition #1.1.1, seconded by Bills.

Carlson made a motion to amend to change Condition #1.1.1 to require sidewalks on both sides of the private roadways, with the crossing points outside of the curb radius, seconded by Newman.

Duvall suggested that it is overkill to require sidewalks on both sides. In this sea of parking lots, he believes that one side takes care of it.

Bills concurred because she believes that the sidewalks will get very little use in a parking lot.

Motion to amend to change Condition #1.1.1 to require sidewalks on both sides of the private roadways failed 3-5: Hunter, Carlson and Newman voting 'yes'; Steward, Taylor, Duvall, Bills and Schwinn voting 'no'; Krieser absent.

Main motion carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

RECONSIDERATION OF PRELIMINARY PLAT NO. 01006,

APPIAN WAY

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Carlson moved to reconsider Preliminary Plat No. 01006, seconded by Newman carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

Motion made by Steward, seconded by Bills, to approve the Planning staff recommendation of conditional approval, with the amendments as proposed by the applicant, including the additional language in Condition #1.1.1 recommended by staff. Motion carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Newman and Carlson voting 'yes'; Krieser absent.

USE PERMIT NO. 140

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Hunter moved to approve the Planning staff recommendation of conditional approval, with the amendments proposed by the applicant, with the same amendment to Condition #1.1.1 as approved on the preliminary plat, seconded by Duvall.

Steward moved to amend to retain Condition #1.1.4 and to change the word "Provide" to "Identify" at least one area for recycling drop off facilities at a location acceptable to Public Works.", seconded by Duvall. Hunter asked whether the intent is that the developer is expected to donate land. Steward explained that his intent is that the developer identify a location on the site plan, taking the applicant on their word that they will discuss this between now and Council approval. His intent is that it not be a mandatory provision of property. Motion to amend carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

Carlson sought clarification of Condition #1.1.13 (now #1.1.9). Reynolds explained that the staff language, "review and approval", implies that if the land use table in the use permit were changed, the applicant would apply to the Planning Department, the Planning staff would send it out for review by other departments and it could be approved administratively. The applicant's proposed amendment to this condition ("verification that it complies with the

square footage and P.M. trip caps”) allows the developer to change those uses without going through an administrative amendment. Hunter inquired whether there is an opportunity to impose a restriction in terms of no restaurants, no banks, no liquor stores, or 19 Burger Kings. Reynolds explained that the use permit approves the amount of square footage and trip caps. As long as they stay under the 900,000 sq. ft. and under the PM hour peak trips, they are not required to go through an administrative amendment process to change from a restaurant to office or office to restaurant, for example.

Steward observed that what we are trying to assure is that the public has adequate transportation infrastructure, but we cannot hold the developer to a strict use requirement at this stage. Reynolds concurred. They cannot go beyond the amounts allowed by the traffic study. They are currently showing 803,000 sq. ft.

Carlson commented that he has seen use permits come forward that have the pad sites specifically identified. Not having that in this situation, he wonders if it can be put in front of a public body prior to approval of a project. Reynolds advised that the developer has identified the pad sites as restaurant, financial office, etc., and he will provide that information to the City Council.

Motion for conditional approval, with amendments, carried 7-1: Hunter, Carlson, Steward, Taylor, Duvall, Bills and Schwinn voting ‘yes’; Newman voting ‘no’; Krieser absent.

RECONSIDERATION OF USE PERMIT NO. 140

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: September 19, 2001

Carlson moved to reconsider Use Permit No. 140, seconded by Steward and carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting ‘yes’; Krieser absent.

Motion made by Hunter, seconded by Duvall, to approve the Planning staff recommendation of conditional approval, with the amendments proposed by the applicant, including the additional language in Condition #1.1.1 proposed by staff, except that Condition #1.1.4 is amended and retained concerning the recycling facility.

Motion carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting ‘yes’; Carlson and Newman voting ‘no’; Krieser absent.

There being no further business, the meeting was adjourned at 4:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 3, 2001.