MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, April 16, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Jon Carlson, Steve Duvall, Roger Larson, Patte Newman, Greg Schwinn, Cecil Steward and Mary Bills-Strand (Gerry Krieser and Tommy Taylor absent); Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Duncan Ross, Tom Cajka, Greg Czaplewski, 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 and requested a motion approving the minutes of the meeting held April 2, 2003. Duvall moved to approve the minutes, seconded by Bills-Strand and carried 6-0: Carlson, Duvall, Larson, Schwinn, Steward and Bills-Strand voting 'yes'; Newman abstaining; Krieser and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING AND ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: April 16, 2003

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3402; PRE-EXISTING USE PERMIT NO. 3AB; FINAL PLAT NO. 03000, SUNSHINE HILLS ADDITION; and FINAL PLAT NO. 03005, LEE'S PLACE 5TH ADDITION.**

Steward moved to approve the Consent Agenda, seconded by Larson and carried 7-0: Carlson, Duvall, Larson, Newman, Schwinn, Steward and Bills-Strand voting 'yes'; Krieser and Taylor absent.

Note: This is final action on Sunshine Hills Addition Final Plat No. 03000 and Lee's Place 5th Addition Final Plat No. 03005, 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.

Schwinn requested Rick Peo of the City Law Department to explain the opinion he has rendered regarding “ex parte” communications. Peo explained that his memorandum attempts to explain the operation of the ex parte communication rule set forth in the Planning Commission’s Rules and Regulations. The purpose of the rule on ex parte communications is to maintain a level of fairness. In particular, when looking at quasi-judicial positions, it is an attempt to maintain fairness so that both sides have equal opportunity to present the case without excessive lobbying or undisclosed information being used to get an opinion on a case. Peo offered that his opinion is a conservative proposal designed to attempt to eliminate the opportunity for ex parte communications from occurring in most instances. We can control ex parte communications by 1) controlling closure of the public hearing, e.g. not closing the public hearing and then taking a recess which offers the Commission to be confronted by the other parties as to how to vote; 2) if action is deferred, the public hearing needs to be kept open to receive new material; and 3) most importantly, sometimes we get into procedural difficulty where we close public hearing and a motion does not carry, requiring that the case be carried over. Peo suggested that the Commission not close the public hearing until there is a combined motion made to close the hearing and recommend approval or denial. Then if the motion does not carry, the case is automatically continued to the next meeting and the public hearing has not been closed and there is no need to readvertise.

Peo acknowledged that we cannot necessarily avoid ex parte communications. The idea is that any ex parte communications should be disclosed on the record and the general nature of the contents should also be disclosed. If ex parte communications occur after the public hearing, it should be disclosed on the record that the decision is not being based on information that came after the public hearing was closed.

Peo clarified that these are guidelines to maintain fairness in the procedures.

Schwinn suggested that he will not close the public hearing and once a motion is made for approval or denial, it would be assumed that the hearing is closed if the motion carries. Everyone concurred that this would be acceptable.

Chair Schwinn then announced that Commissioner Larson is leaving at 2:40 today and that he would entertain a motion to change the order of the agenda, moving Item No. 5.1, Special Permit No. 1998, as the next item of business. Duvall made the motion to move Item No. 5.1 as the next item of business, seconded by Bills-Strand and carried 7-0: Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting ‘yes’; Krieser and Taylor absent.

SPECIAL PERMIT NO. 1998
FOR A RECREATIONAL FACILITY
ON PROPERTY GENERALLY LOCATED
AT SO. 84TH STREET AND SOUTH STREET.
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: April 16, 2003

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

Staff recommendation: Denial.

Ex Parte Communications: Bills-Strand stated that she visited with Dennis Van Horn of LPS and with J.D. Burt of Design Associates. She discussed with LPS the schools' interest in having use of the facilities and the possibility of cooperation between the applicant and LPS with regard to land to the south of the facility. Van Horn indicated that with the opening of North Star, LPS is going to be hurting from the standpoint of accommodating the tennis schedule with the extra highs schools. It appears that LPS has some interest in working with the applicant and the possibility of selling them some of the property to the south.

Bills-Strand has also talked with Lynn Johnson of Parks & Recreation about the use of Seacrest Field. It appears that there are some issues regarding land and water conservation funds which would require a conversion process. This would take a long time and would not be feasible.

Bills-Strand stated that she also discussed some of her questions and the LPS land to the south with J.D. Burt.

Steward reported that he had received a voice mail from Mike Marsh who encouraged him to drive out to view the site and to change his position relative to the comments made previously about the improper location and scale and circumstance. Steward stated that he had already done this exercise.

Newman also reported that she had received a call from Mike Marsh reporting that they had met with the neighborhoods. Newman asked Mr. Marsh to give this information to the Planning Commission. She received another call from Mr. Marsh this past week but she did not speak with him.

Brian Will of Planning staff submitted a letter in support from Jim Fram, President of the Lincoln Chamber of Commerce.

Schwinn inquired of Rick Peo whether it would be possible to send this application forward to the City Council without a Planning Commission recommendation if the Commission is deadlocked again today. Peo stated that he would discourage that type of action. The

Planning Commission is supposed to send a recommendation forward. There is a procedure in the special permit ordinance allowing the applicant to appeal to the City Council to direct the Commission to send forward a recommendation if the Commission has not made a decision within an allotted or reasonable time.

Larson expressed concern that the City might lose this facility entirely if it is denied at this location.

Motion. Duvall moved approval, with the conditions as set forth in the staff report, seconded by Bills-Strand.

Carlson stated that he will make a recommendation based on planning principles. He acknowledged that there has been other testimony involving community and school impact, but he believes those are important arguments for the City Council. He is supportive of this use but he is making his recommendation on planning principles and he will not vote to approve it.

Steward agreed with Carlson. He does not disagree that the project may be valuable to the community and he acknowledged that it is an expensive and large investment in the community if brought to conclusion, but he considers the role of this Commission to be to defend and promote the Comprehensive Plan. This project is not in conformance with the Comprehensive Plan, and the Comprehensive Plan has been out long enough for persons interested in development to know the limitations. He believes that there has been ample evidence presented that due diligence of site search has not been performed. He believes this is use is indeed valuable to the community and he is hopeful it is not the case that if not approved it will go away. He believes there is ample land available and more appropriate locations. This is not an appropriate facility for a residential neighborhood.

Larson stated that he is generally in favor of this kind of thing and he thinks it is important for the community, but he will vote against it in consideration of the neighbors. He cannot see that kind of structure--that huge balloon type structure--out there in that neighborhood. In spite of the fact that he really, really wants this facility in the community, he will be voting no.

Bills-Strand expressed that she has very mixed feelings. She wants the facility and knows we need the facility. Woods Park is also planning to expand but that is also further down the road. She agrees that there is a strong need for tennis throughout the community. She does not think that Woods Park is a huge ugly eye-sore but it is far enough away from the residences so that the screening can take place. She believes that this project will have an impact on the abutting residential properties.

Newman commented that this is a great project but it is in the wrong location. We need to follow the Comprehensive Plan.

Motion for approval, with conditions, failed 2-5: Duvall and Schwinn voting 'yes'; Larson, Carlson, Bills-Strand, Newman and Steward voting 'no'; Krieser and Taylor absent.

Carlson moved to deny, seconded by Steward and carried 5-2: Larson, Carlson, Bills-Strand, Newman and Steward voting 'yes'; Duvall and Schwinn voting 'no'; Krieser and Taylor absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 03003
TO REVIEW THE PROPOSED DECLARATION OF
SURPLUS PROPERTY AT LEWIS AVENUE & SUPERIOR STREET
AS TO CONFORMANCE WITH THE COMPREHENSIVE PLAN.
PUBLIC HEARING BEFORE PLANNING COMMISSION: April 16, 2003

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

Staff recommendation: A finding of conformance with the Comprehensive Plan, subject to landscaping and screening, retention of easements, retention of 10' of land along the north for right-of-way and relinquishment of access to Superior Street.
Steve Henrichsen of the Planning staff submitted a letter in support from Dave Vorovka, the property owner of two lots directly to the west of Goodrich Middle School. He is in support of the east/west configuration but would also like a 6' privacy fence extended on the north side of his property.

Henrichsen also explained the revised site plan submitted by LPS in response to the letter in opposition from Mark and Laura Klute. Henrichsen showed the location of the Vorovka and Klute property at the map. The revised site plan also proposes a 6' privacy fence along the west line to the Klute property. There is also landscape screen along the west side. The westernmost parking stalls have been eliminated at the request of the Klutes to provide a 35' setback. Klute had asked that the parking lot be oriented north/south and Vorovka supports the east/west orientation. LPS has met with the property owners and adjacent neighbors. After reviewing both site plans, LPS has determined that the east/west orientation works best. The main issue is the large green space on the northwest corner, with Goodrich Middle School immediately to the east. This open space would be a place for students to go after school. With this plan, the green space will be immediately adjacent to the school for observation. Vorovka is in favor of the open space at this location.

There was no testimony in opposition.

Bills-Strand made a motion to find the proposed declaration of surplus property to be in conformance with the Comprehensive Plan, with amendment to the site plan to add the 6' privacy fence on the north side of the Vorovka lot, seconded by Steward.

Schwinn believes this is a great idea for this property being on the hard edge of Superior

Street, taking cars off the neighborhood streets and providing a place for the students to congregate.

Motion carried 7-0: Larson, Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'; Krieser and Taylor absent.

WAIVER NO. 03002
TO WAIVE THE REQUIREMENT FOR A
PEDESTRIAN EASEMENT AND ELIMINATE
THE CONSTRUCTION OF A SIDEWALK,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 40TH STREET AND PINE LAKE ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 16, 2003

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

Staff recommendation: Denial.

Greg Czaplewski of Planning staff submitted an email and photographs from Public Works Department regarding ability for the developer to pave this easement. Generally, the conclusion of Public Works is that the grade is less severe than other areas of pavement. The photographs show the neighborhood trail behind the applicant's house looking toward South 40th Street; and looking from the trail back up toward the cul-de-sac where the applicant lives. There is also a view from 40th Street back toward the applicant's property. The adjacent cul-de-sac, Leesburg Court, has a similar pedestrian easement which has been connected to South 40th Street.

Czaplewski also showed where the easement is located, which was filed with the original plat. Public Works has determined that this easement could be paved. It would not line up with the sidewalk from Leesburg Court, so potentially it could be altered to connect.

Proponents

1. Michael Patterson, 3821 Old Dominion Court, the applicant, referred to an email which he sent on April 10th enumerating the reasons for not wanting the sidewalk constructed. (***Editorial Note*:** This email was not submitted for the record and the Planning Department did not receive a copy). Patterson also referred to the letter submitted by Robert Hampton dated April 10, 2003, in support of the waiver request, reiterating the same points that Mr. Patterson has made. From a personal perspective, Patterson stated that if the sidewalk was to have been constructed, it should have been done in 1995 when approved, instead of 8 years later. There are access points to the path approximately every 1/10th mile around the neighborhood. He fails to see why this sidewalk is necessary. He believes the sidewalk is redundant. As Robert Hampton points out, there is almost no demand for

access from 40th Street since 40th Street has become a 4-lane highway and three corners of Pine Lake Road are basically commercial uses.

Bills-Strand believes there is a connection provided by the sidewalk off the west side of 40th that goes down to Leesburg Court.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: April 16, 2003

Carlson moved to deny, seconded by Steward.

Carlson is not sure he understands the argument that the sidewalk is not used because the sidewalk is not there. 1/10th of a mile is probably at least a couple of blocks. It is his opinion that it makes sense to have a pedestrian way to get from Old Dominion Court out to the trail. There are two sections that need to be put in. Both sections are supposed to be constructed. We need to have a way for people to access the trail and have a way back to the street.

Steward agreed. Title searches should have revealed that this was a dedicated easement approved with the original plat, and there was logic behind that decision. We have one letter from Hampton that says they are prepared to construct the sidewalk in two weeks, and then we another letter from Hampton that says it is impractical to construct. He believes it is an economic issue and not a planning issue.

Schwinn will support the neighbors on this issue. He does not believe the street is that far away in terms of getting to the bike path. This is not a serious mode of transportation like getting to and from work. Most of the people will be walking for exercise anyway, so walking around the block instead of straight through the block will provide more exercise.

Motion to deny failed 3-4: Carlson, Newman and Steward voting ‘yes’; Larson, Bills-Strand, Duvall and Schwinn voting ‘no’; Krieser and Taylor absent.

Bills-Strand moved approval, seconded by Duvall and carried 5-2: Larson, Bills-Strand, Duvall, Steward and Schwinn voting ‘yes’; Carlson and Newman voting ‘no’; Krieser and Taylor absent.

STREET VACATION NO. 03003
TO VACATE "X" STREET FROM THE
WEST LINE OF NORTH 10TH STREET
TO THE WEST LINE OF NORTH 11TH STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 16, 2003

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

Staff recommendation: A finding that vacating "X" Street between the east line of 10th Street and the west line of 11th Street conforms to the Comprehensive Plan; vacating "X" Street between the east and west lines of 10th Street does not conform to the Comprehensive Plan.

Proponents

1. Frank Sidles of Capital Contractors presented the application as the initiator of this request to vacate X Street. Currently, Capital Contractors owns a portion of X Street which was vacated some years ago. Capital Contractors is now requesting that X Street be vacated from the west line of 10th Street to a point that is 35' west of the main track of the Burlington Northern. The description in the staff report of what is being requested to be vacated is not accurate with what has been specified, i.e. Burlington Northern has agreed to vacate up to the point where their right-of-way line is located. They want to go 35' west. They do not want to get into the position where someone is owning part of X that may come into their property. The application filed indicates that the vacation only goes 35' west of the BN right-of-way line.

Sidles explained that Capital Contractors is interested in owning the property underneath 10th Street from the west all the way up to 35' west of the centerline of Burlington Northern. The City has said, no, they don't want to relinquish or vacate the property that is under 10th Street because if the railroad is gone and the viaduct is gone in the future, the city does not want to have the responsibility of coming back in and not having that property if they need to construct a street straight down 10th Street. Burlington Northern has been there for about 120 years already and Sidles does not anticipate that they are going to be moving. Capital Contractors wants to purchase the right-of-way, get it on the tax rolls and give the city an easement for care and maintenance of the bridge. X street is 100' and the parcel would be 100' x 100'. Sidles does not believe this is unreasonable. It may not meet the Comprehensive Plan; however, Sidles believes there are other instances in the City (such as the K and L viaducts) where the city has land over vacated streets. Capital Contractors would like to have all of X Street vacated from that west line to the point 35' west of the BN railroad track. Capital Contractors would be purchasing the property. The other property owners (Chris Caudill and Burlington Northern) have joined in this petition to vacate.

Opposition

1. Becky Schenaman, 817 Y Street, ½ block from Capital Contractors, testified in opposition. She is not against Capital Contractors' use of the property at all, but she would like to keep the land as city land as long as Capital Contractors has their business there. If Capital Contractors would sell the property, she wants it to be city land. Who knows what can happen in 10 years? She is glad that Capital Contractors stays in the neighborhood, but she would like the land to remain as city property.

2. Ed Caudill, President of **North Bottoms Neighborhood Association,** who lives 1 ½ blocks from Capital Contractors, testified in opposition. He submitted copies of the North Bottoms Focus Area Action Plan that has been developed along with the Urban Development Department. "We're working very hard over there." North Bottoms is an area that is in transition with Antelope Valley to the east and a huge ballpark complex to the west. It is an area that is right in the middle of everything. It is in the middle of the I-180 corridor and North Bottoms will be viewable from the new Antelope Valley roadway which will start exactly across the railroad tracks. There have been a lot of improvements with this land. The city has recently repaired all of the sidewalks; the alleys have been rerocked; and they are installing lights and getting ready to put in a soccer field. North Bottoms is also working on the possibility of a historic district designation and trying to survive as a neighborhood. The North Bottoms Neighborhood has lived next to Capital Steel at least 70 years and the North Bottoms Neighborhood would like to continue to keep the balance between the industry and the residential in the neighborhood. If this street vacation is approved, it connects two pieces of industrial property that are not now connected and may create something that will require a lot of money to buy back in the future. We all remember what happened over by Sunken Gardens where the city sold some property and it resulted in a fast food restaurant. Anyone familiar with the area knows there is potential for something to happen in the future, i.e. with UNL, the ballpark, Antelope Valley, State Fair Park. This is prime real estate and it would be wise to keep a check on the industry from expanding there. Caudill suggested that Capital Contractors be allowed to continue to use the property, but that it not be sold off and at some point in the future someone having to pay an exorbitant price for a big assembled piece of industrial property (i.e. UNL or the City)

3. Randy Stramel, 4330 Sumner, a former 8-year resident of the North Bottoms Neighborhood until 6 months ago, testified in opposition. He continues to work with the neighborhood to achieve some of their goals. Stramel also serves on the Antelope Valley Citizens Committee and the Neighborhood Revitalization Subcommittee for Antelope Valley. He believes there are several things about this vacation request that potentially run into direct conflict in terms of redevelopment opportunity in the North Bottoms. About 30% of the property running along the north line of the railroad right-of-way is already public use and earmarked for redevelopment opportunity as part of Antelope Valley. The connection underneath 10th Street could be a critical connection to give a pedestrian bicycle path to the neighborhood. The ability to package up a strip of ground on the north side of the railroad property at the south side of the neighborhood will help this neighborhood. Losing this street is contrary to that possibility and in contradiction with the Focus Area Plan. The

property is now being used by Capital Contractors and has been for years. He does not know of anyone that has any objection to Capital Contractors' continued use of the property. It is public property and best used as public property. There is a greater benefit to a greater number of people if it remains as city property as opposed to selling it to one company.

Schwinn inquired whether there is currently a way to get underneath 10th Street. He believes that X Street terminates at 9th and Y Street goes down to industrial uses as it turns around on 11th. Stramel believes there is probably 30' between the west property line of 10th Street and the actual bridge construction retaining wall. It is actually part of the dedicated street that comes north/south down to X Street. From the other side, this is not possible, but it is very close to being able to make that connection. Stramel then showed a map of piece-mealed partial vacations of city right-of-way in this neighborhood. This is just one more step in the same process. If we lose the 11th Street connection, then we have a problem getting a bike trail through there. The piece-meal selling of city right-of-way is not a good precedent.

Bills-Strand wondered whether a bike trail on that land would satisfy the neighborhood. Stramel believes that could be considered and might be a possibility, if it were tied into the sale for a permanent easement.

Newman was curious as to whether the city has a policy of leasing this land on a long-term lease instead of declaring it surplus and selling it outright. Dennis Bartels of Public Works stated that there is a provision in the Lincoln Municipal Code where public right-of-way can be leased for private use. Bartels then clarified the Public Works comments. Public Works is concerned about the 100 sq. ft. parcel underneath the bridge. He acknowledged that some of K and L is located over easements, but that is not the preferable way. Public Works prefers to maintain it as right-of-way for jurisdictional purposes and safety concerns. Public Works would be amenable to considering something like a long term lease for the right-of-way from the east line of 10th to the railroad.

Steward presumes some of those public right-of-way concerns also involve police activity operating on private property and public property. Bartels agreed that there are some differences, but he believes the city's ability to control the area is stronger with right-of-way as opposed to an easement.

Steward referred to the map and presumes that all of the platted lots where the railroad is running through are in railroad property rights, even though they don't conform to the right-of-way line of the railroad. Bartels explained that if we are going to vacate, Public Works would prefer that the railroad take ownership of the triangular piece. He presumes the Burlington Northern would take ownership of the piece that they occupy if the street is vacated.

<u>Response by the Applicant</u>

Sidles pointed out that Capital Contractors has been using this X Street property to bring in steel. There is an easement to the Burlington Northern to come down the street. From the standpoint of some kind of bicycle lane, Sidles suggested that it's not going to go anyplace. Capital Contractors intends to continue to use the property for the purpose of bringing in steel. There is a triangular piece that used to be owned by UNL which Capital Contractors purchased last year. Capital Contractors owns the property to the south of X Street and to the west of the proposed vacation. This is an active railway line and Capital Contractors intends to keep it for the purpose of bringing in steel. He can assure that the railroad would not approve a bike path.

Larson inquired whether the railway goes under the viaduct. Sidles stated that the easement has been right down the middle of X Street. The MoPAc has given their easement up but the Burlington Northern has not.

Carlson inquired as to when the railways went in. Sidles explained that the MoPac used to go right straight through past the University. Carlson inquired as to how it works where we have railways on the city street right-of-way. Bartels suggested that there are multiple ways, i.e. the railroad has the ability to use it or the City Council gave them the ability back in early history so that they have a right to use it. He is not sure what the process would be to take it away from them. Some of the rights-of-way were vacated but the railroad has a license agreement/easement to use it for railroad purposes. Bartels also suggested that a bike path would not be feasible because of the railroad. There would be a lot of safety concerns. The track is pretty much down the center. Sidles clarified that it doesn't go any further than the Capital Contractors buildings.

Carlson inquired whether Capital Contractors needs this vacation to be able to continue bringing the steel in. Sidles stated that the issue is that Capital Contractors would just prefer to own the property. It would provide additional revenue for the city. Capital Contractors does not intend to move. The purpose of the vacation is to give Capital Contractors a little bit more control over the property.

Newman asked whether Sidles would be willing to work out a lease agreement with the city. Sidles does not believe that would make a whole lot of business sense. The street is a public street. The railroad has an easement. Why should he pay for it if the railroad can continue to bring the steel in? Newman believes it is another option. Sidles suggested that if only a portion is vacated as being suggested by the city staff, Capital Contractors may or may not agree to purchase the right-of-way.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION April 16, 2003

Bills-Strand moved approval as requested by the applicant, seconded by Larson.

Bills-Strand suggested that if the use is going to continue, why not have it on the tax rolls?

Duvall does not see how the neighbors are affected. There are ordinances to enforce keeping the property cleaned up.

Carlson suggested that if the street is not vacated, Capital Contractors is still able to bring the product in and continue their business. He believes the value of the property will be very, very small with the railroad located there. It might be worth it to retain the future use of that strip of property. While there may be an upside to selling it, he believes that the small amount of tax might be worth retaining the future possibilities of that piece of property.

Newman agreed with Carlson. The example at Sunken Gardens is a great case on point.

Schwinn does not believe this is going to make any difference in any redevelopment plan of the area. A community unit plan would have new streets and new infrastructure. He can go either way, but he will support the motion.

Motion for approval failed 4-3: Larson, Bills-Strand, Duvall and Schwinn voting 'yes'; Carlson, Newman and Steward voting 'no'; Krieser and Taylor absent.

This application is held over for two weeks, with continued public hearing and administrative action scheduled for April 30, 2003.

COUNTY CHANGE OF ZONE NO. 211
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
and
COUNTY PRELIMINARY PLAT NO. 02029,
THE PRESERVE AT CROSS CREEK,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 68TH STREET AND ROCA ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 16, 2003

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

Staff recommendation: Deferral until completion of the rural/acreage studies set forth in the Comprehensive Plan.

Ex Parte Communications: Newman disclosed that months and months ago, she and Brian Carstens, the applicant's representative, served on a task force where they talked about

efficiencies in acreages. Her biggest concern about this project was that Hickman had not come forward in support. Carstens contacted Hickman and has received their approval.

Proponents

1. Brian Carstens appeared on behalf of the developers to answer any questions.

Opposition

1. Doug Hunter, 16700 So. 72nd Street, testified in opposition. It has been about 2 years since 33 houses were approved south of Roca Road. At that point, the neighbors had concerns about traffic in the area. Those concerns will be addressed by a widening project in 2004. The concerns he has with this project are environmental and public safety. 68th Street is north/south, a main thoroughfare going into Lincoln. In the morning between 6:00 and 8:00 a.m., 68th Street is a hot bed for traffic. Northbound traffic is very difficult. You are asking these people to cross 68th Street to get into northbound traffic. The widening project will not address this, except for a turning lane. They will then be forced to cross two lanes of traffic to get into the northbound lane. When the development went in south of Roca Road, the traffic problems were an issue and promises were made that never developed, including turning lanes.

Hunter is also concerned about public safety. This project does not conform to the Comprehensive Plan of Hickman and does not conform to the Lancaster County Comprehensive Plan. This project goes into a 100 year floodplain and some of these lots are part of that floodplain and we don't know whether they can have a septic tank. On a scale of 1-10, this land has been given a 5 as far as being prime land to be developed. There is a runoff area through the middle of this land being natural grass and trees. He does not want to destroy the natural grass and trees. We can say they will be preserved, but with what went on on South 68th Street, we know that won't happen. The developers don't take the time to follow up on their promises. We need to slow down development on 68th Street until there is a plan in place to take care of the traffic on 68th Street. Hickman's Comprehensive Plan is to go north, so there will be more and more traffic on 68th Street. With these houses going in, you have 32 more families driving into Lincoln and possibly to Norris Public School. A traffic study was not submitted with this application.

Response by the Applicant

Carstens clarified that the letter received from the City of Hickman indicates that this property is outside of their one-mile jurisdiction and almost entirely outside of their 2-mile Horizon Plan.

Carstens also pointed out that this development creates building envelopes that preserve the floodplain. They are not building in the floodplain other than the road crossings. The

developer assumes that the homeowners will keep the trees. There will be rural water. There is nothing this developer can do about the traffic on a county road. He believes it will be a safer roadway with improvements in the future.

Newman asked Carstens to explain the difference between the floodplain that is shown and the FEMA maps. Carstens clarified that the floodplain was interpreted for this development by the state. It is possible that the Building & Safety maps were not current. This issue will be coordinated before the project goes to the County Board.

COUNTY CHANGE OF ZONE NO. 211
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: April 16, 2003

Carlson moved deferral, seconded by Steward and failed 2-5: Carlson and Steward voting 'yes'; Larson, Bills-Strand, Duvall, Newman and Schwinn voting 'no'; Krieser and Taylor absent.

Larson moved approval, seconded by Duvall and carried 5-2: Larson, Bills-Strand, Duvall, Newman and Schwinn voting 'yes'; Carlson and Steward voting 'no'; Krieser and Taylor absent.

COUNTY PRELIMINARY PLAT NO. 02029
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: April 16, 2003

Duvall moved approval, with conditions as recommended by staff, seconded by Bills-Strand and carried 5-2: Larson, Bills-Strand, Duvall, Newman and Schwinn voting 'yes'; Carlson and Steward voting 'no'; Krieser and Taylor absent.

COUNTY SPECIAL PERMIT NO. 198,
WYNDAM PLACE COMMUNITY UNIT PLAN,
and
COUNTY PRELIMINARY PLAT NO. 03000,
WYNDAM PLACE,
ON PROPERTY GENERALLY LOCATED
AT NO. 176TH STREET AND HOLDREGE STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: April 16, 2003

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. Kent Seacrest appeared on behalf of the applicants, Connie and Bernie Heier. This is an application for 16 acreage lots with a community unit plan cluster, preserving the balance of the property. The neighbors who are primarily acreage owners to the north and east are opposed to this application. The applicant has had two neighborhood meetings.

Seacrest went on to explain that the Comprehensive Plan map shows this site as being outside of the Stevens Creek drainage basin and it happens to also be outside of the 25 year growth area for our community. He showed a map that was in an earlier draft of the Comprehensive Plan, which was an attempt by staff to show where acreages should be located. On that draft map, this development site is shown in Zone B where the staff suggested acreages be located. Seacrest submitted that there is a better road network to serve the acreages and more opportunity for emergency services. This is where the groundwater is good and the septics are likely to succeed and there are probably acreages nearby. However, that draft map was not adopted in the new Comprehensive Plan. Instead, we went back to the 20-acre rule with clusters, and also provided the ability to divide two 3-acre lots per 40 acres administratively. The Comprehensive Plan also provides the right to do the 20-acre bonus by preserving the balance of the agricultural land.

Seacrest pointed out that this development is not the AGR fact pattern. This is the AG fact pattern. Staff concludes in the staff report that this application is in compliance with the Comprehensive Plan. The role of the Planning Commission is to defend and promote the Comprehensive Plan, and this is a rare situation where we have an acreage development that is in compliance with the Comprehensive Plan.

Seacrest pointed out that this proposed development is yellow in the Comprehensive Plan and the acreages are clustered up against the other acreages off to the east and to the north.

Seacrest then discussed issues involved with acreages. With regard to sewer, Seacrest has been told that about 2/3 of the neighbors are on lagoons and want their septic. Three sample perc tests were done for this proposed development and the samples passed the septic test on all three tests. The County Health Dept. Has concluded that this development will be able to meet the county standards on wastewater. With regard to well water, the Dreeszen report concludes that there is good quality and quantity of groundwater. The County Health Dept. reviewed that report and concurs that this development should be able to meet the groundwater abilities in this area. This developer also talked with the rural water district and even made application just in case that groundwater report is not right. Thus, this developer has permission from the rural water district to have rural water, if necessary.

With regard to the protection of prime ag land as required by the Comprehensive Plan,

Seacrest stated that the cluster has been located on the worst soils. The staff report concludes that these are not prime soils. The neighbors to the east have suggested that this development be shifted away from their acreages and closer to a potential cattle feedlot operation. Seacrest submitted that this would not be sound planning. They are asking us to provide an AGR buffer. Seacrest pointed out that moving the development to the west would put it on the prime ag land.

With regard to flooding, Seacrest assured that the homes will avoid the 100-year flood waters.

With regard to the traffic concerns, Seacrest pointed out the revised letter from the County Engineer. The site plan has been revised to remove one of the Holdrege Street accesses and come off the W. Holdrege Street access. The County Engineer believes this will work with six conditions. The County Engineer reports that the one hill coming out on Holdrege can be slightly cut and they will be able to meet the 50 mph county and state standards. This development will also donate additional right-of-way so that the neighbors to the north will not be bothered.

Seacrest then addressed what the opposition will allege, i.e. legal nuisance. Seacrest pointed out that this development will bring in 16 new families. Legal nuisance is a non-physical trespass -- noise, odor, pollution. Seacrest suggested that the condition exists now and this developer is willing to comply and will not be a nuisance. This developer will advise the new homeowners that there are rural agricultural farm practices going on. Seacrest suggested that if we practice planning principles on “I was here first”, we would not see any changes in this community. We would not see a growing community. We would not see the Haymarket become what it is today. The Comprehensive Plan does envision change and specifically encourages acreages next to acreages. If one carries out agriculture on an acreage, then that acreage should have the duty to follow the normal customary agricultural practices or they should acquire more land to buffer themselves. If there are nuisances, there are plenty of acreages that could have sued by now. This is not the first acreage to show up.

Seacrest also observed that the applicant is a farmer and the rest of this land will be farmed by the applicant.

Seacrest then submitted motions to amend the conditions of approval in accordance with the County Engineer’s recommendations. The revised site plan deletes the East Holdrege access point. They have also added covenants--the developer will file covenants that run with the land that advises future lot owners that the surrounding areas are rural farm areas and that normal and customary farm activities, including cattle and hog confinements, are not a nuisance. This will begin the chain of title to put everyone on notice. Seacrest also noted that they are also requesting a cul-de-sac waiver.

*** Break ***

Larson left during the break.

Opposition

1. Dan Smith, Attorney at Law, appeared on behalf of a number of homeowners with property adjacent to the east and to the north of the subject application, including David and Melody Keele, Cliff and Jeanne Dill, Jerry and DeLoris Malek, Mark and Lori Sass, Dan and Vicki Creal, and Gary and Shelly Janssen. The neighbors will be submitting a petition with 40 signatures in opposition to the development as presently configured. Smith advised the Commission that the neighbors have had discussions with the developer's attorney and had hoped to continue those discussions and work towards a compromise because he believes there is a possibility that can be done. Smith suggested that this proposal should be deferred or rejected at this point.

The neighbors are concerned about the septic situation. Random tests of 3 of 16 lots did not give a definitive answer. There is still an outstanding possibility that the perc test would lead to the necessity of lagoons on a significant number of lots. These property owners are entitled to have a definite answer to this question before the Planning Commission approves this project.

The neighbors are also very much concerned about traffic. Holdrege is a very hilly road, so hilly that any sort of entrance or exit has risks associated with it. Traffic engineering will tell you that there will be 10-15 hits per house per day, so this development increases that number 16 times. The two entrances originally shown would be on one side or the other of a crest of a hill. The developer is proposing that in a westerly direction they are going to cut down a hill somewhat to increase the line of sight, but that is not going to improve the approach from the easterly direction which is still going to be a traveled road and exceedingly dangerous as people turn in or out of the entrances off Holdrege. Smith submitted that an entrance off Holdrege is unacceptable until such future time as the county sees fit to flatten and regularize that whole area of the road.

Smith stated that he has a hard time believing this will conform with a traffic engineer's idea of correct safety with this many new hits. The property owners routinely pull people out of ditches and help injured people. They pass a cross in the ditch which marks a fatality. Smith guaranteed that if this design is accepted, there will be deaths off Holdrege Street in the future. And defective design can lead to liability on the part of the county.

In addition, Smith spoke to the incompatibility issues. This is not a "nimby"" situation. The neighbors know that Mr. Heier does quality development and they know these are acreages, but they also know that conflict arises inevitably between homeowners using their properties or acreages primarily as homes and agricultural uses. All of Smith's clients have agricultural uses that abut upon this property. It doesn't matter what this developer puts in the development documents by way of notice to prospective homeowners–it doesn't bind those homeowners to anything. A nuisance is a private cause of action and nothing

that the developer does can take it away from homeowners. With nuisance cases, the property owners get more and more irritated over time by the same uses and it could ultimately be 3 to 5 to 10 years down the road when they file the nuisance case. Smith believes that the approval of this development condemns his clients to lawsuits in the future.

Smith suggested that a buffer zone could be created, and he acknowledged that there is compromise associated with that. It might move into some higher agricultural land, but there is compromise with everything. It would move the homeowners away to alleviate the incompatible use issue. And if there are going to be lagoons, they would be moved away from his clients' property.

Smith pointed out that there is road jutting out toward 176th Street to the east and that could easily be made the sole entrance to this property. 176th Street is a very good access because there are no hills and there is line of sight both ways with safe entrance and exit. Smith guaranteed that if this board requires that access, it will save lives. It is perfectly doable.

Steward inquired as to the smallest acreage represented by Smith's clients. Someone in the audience reported that it would be 7.2 acres. Steward also inquired as to how many of Smith's clients currently use lagoons. Four people raised their hands in the audience.

2. Clifford Dill, 18405 Holdrege, testified in opposition. He owns 34 acres immediately to the east of the proposal and shares 1635' of the property line with Mr. Heier. He has lived there for 19 years. Dill has grave concerns about traffic safety on Holdrege Street. He purchased the property with the goal to create a living laboratory for biological research. He planted 10.5 acres in native prairie species in an effort to simulate the diversity of regional grasslands. This is parallel to the west property line adjacent to the Heier property. As a prairie develops, in addition to wildlife species, a diversity of animal species also develops. For several years, while teaching ecology, Dill brought students to this area for field exercises and research projects. He continues to conduct his own research. This proposal with 3-4 acre lots immediately adjacent to this prairie could be devastating. One of the benefits of the research was realization that this area is a natural corridor connecting the Camp Creek Watershed with the Upper Nemaha Watershed. Dill showed an aerial photograph depicting the vegetation coverage and the watershed boundaries. There is a natural drainage and vegetation from the Camp Creek Watershed over into the Little Nemaha Watershed, passing right along the proposed development. That is the only natural corridor connecting these two watersheds. This corridor is also important for the non-game species. The location of the proposal could have profound effects on this natural corridor and the species using it.

Dill has also developed a bluebird nesting trail along the property. He has experienced multiple successful nestings for the past 8 years. The proposed development would most

likely destroy this nesting trail.

In 1998, Dill and his wife opened a business on property, “The Center for Healing Touch and Wellness”. A part of this wellness is relaxing and enjoying the solitude of the area and they have sponsored weekend retreats. The development of 16 lots immediately adjacent to this property will destroy this solitude.

Dill also expressed concern about light pollution. As rural residents, the neighbors enjoy the natural darkness of the nights. This proposal would certainly affect the enjoyment of this natural condition.

Dill believes the proposal will have an effect on the existing community of residents. Of the entire half section, Heier has chosen to place the CUP in the northeast corner where it has the greatest impact on the existing rural community. This is a community of people that moved to this rural location to avoid close association with neighbors. Sixteen lots definitely do not fit the existing neighborhood.

Dill submitted a petition in opposition signed by 41 property owners within a one-mile radius of the proposed development.

Steward inquired as to how many of those 41 families are gainfully employed elsewhere in the county. Dill did not know the answer. However, at their most recent meeting with the applicant, he took a poll and three-fourths of them were not acreage owners, but farmers and larger acreage owners.

3. Zack Morton, 18301 Holdrege, testified in opposition. He is 16 years old and is involved with FFA including cattle and hogs. His sister has horses and rabbits and his mother raises chickens. His neighbors have been supportive and understanding about the odor and noises from his animals. He is concerned about the proposed development because legally he is not protected if an occupant complains that his cows are too loud and his pigs too smelly. During one of the meetings, the question was asked if these 16 families could have livestock and the answer was no. The families not experiencing the farm will not find it favorable. He does not have enough money to defend himself and he does not want to put his parents at risk. He wants to stay involved in agriculture. The farmers that he knows would never consider doing a development like this.

4. Dan Creal, the owner of 32 acres at 190th & Holdrege, testified in opposition. He stated that he is not against having neighbors but he would like the development to mesh with the present neighborhood. The number of lagoons required is a concern. He referred to the Health Department communication dated February 7, 2003. At least 12 of lots were determined to have soils that would fail perc tests. That means lagoons would be necessary. And the slope would limit the possibility of lagoons. How will waste be treated? Four of the lots are found to be frequently flooded and no wastewater treatment system is recommended. The Heiers purchased over 300 acres. Creal urged the Commission to

recommend that this proposed development be moved to an area on this land where they have decent water and where it will not negatively affect the other homeowners who have been there for 20 years. The major reason the developer is unwilling to move the development is because it would not be marketable. There are many lots in the area that are not being sold.

Creal stated that the neighbors did speak with the Water Department and were told that getting rural water would be at the Heier's expense. The groundwater investigation reported two test wells and the second required significant treatment. Heier is not proposing a treatment facility for the 16 homes. When the neighbors asked about this, they were told that the home buyers would be told individually that they would have to treat their water. It is common knowledge in the neighborhood that the water is not fine.

5. Michael Keele, 18000 Holdrege, which is the pie shaped acreage directly to the north, testified in opposition to the project as currently proposed. The current condition of Holdrege Street and the additional traffic resulting from this development will impact his neighborhood. He is opposed to the entrance to this development being placed as shown. The current design suggests placement of the main entrance immediately adjacent to his driveway. He currently backs out onto Holdrege Street. His family has frequent visitors during the spring and summer months. He also has two dependent children using this drive. Another road at the end of his drive will force him to move his drive or construct a turnaround. This should not be necessary. In addition, placement of this road at the end of his drive would create a nuisance with car lights shining on his home every evening. He may be forced to relocate his drive to maintain the privacy he enjoys today. Keele suggested that relocating a road that does not exist today is a simple solution. He requested that the Commission deny the current plan or any future plans that would create a main or future entrance directly adjacent to his driveway and home or any other existing driveway or home in this neighborhood. The developer should be required to create all access off 176th Street.

6. Jerry Malek, 182nd and Holdrege, testified in opposition. This proposal is located in a watershed which drains into his pond and through the rest of his property. With the additional 16 houses, runoff will become more concentrated and increase the frequency of his pond being flooded. He has spent time and money stocking the pond with fish. The runoff from that many residences will include contaminants which would not be conducive to a healthy pond environment.

Malek finds it interesting that the applicant purports the concept that this would be an ideal place for acreages because of police and fire. How can this be? This is ½ mile from the county line. The area is rated #9 as far as fire protection, putting the burden on a volunteer fire department that isn't even in Lancaster County.

7. Mark Sass, 18401 Holdrege Street, testified in opposition. The Heiers have proposed

that all of the traffic enter and exit off of Holdrege. One of the primary reasons the neighbors object is that Holdrege is not able to handle this increased amount of traffic. The proposed development could triple the traffic on this road. There have been accidents and one fatality on that portion of Holdrege. If this development is approved, Sass assured that this will sign a death warrant for a driver on this road because it has already happened. This road is unsafe for the increased amount of traffic proposed. It would be simple to take the traffic off of 176th Street, which has been improved, is flat and safe enough to handle the increased traffic.

Sass informed the Commission that the neighbors asked Mr. Heier to move his development driveway to 176th, and Heier's only response was "the entrance to the subdivision would not be as lovely, his houses would not sell as well and that he will do what is best for himself." The safety of the 40 people who have signed the petition is of no concern to the Heiers. We were told that "no one would drive east". We all have free will. We were quick to point out that the elementary school is in Eagle and quite a few people would be going east.

Sass referred to the latest document from the County Engineer dated April 2, 2003, where one access onto Holdrege Street was denied. This was the eastern access off of North 182nd. The other proposed access to Holdrege off of 179th is deemed "not safe" by the County Engineer. The County Engineer's report states that, "Based upon the original submittal, the western access (N. 179th Street) is not safe and will require more field survey work along Holdrege in both directions." Sass believes that the County will be responsible for the cost of the significant earthwork to be done on the road in front of this development. He is appalled that the County would consider paying for a County Commissioner's development for ½ mile. The state is broke and we have been told that there is no money for significant road improvements on Holdrege. He is appalled that the County is willing to pay for improvements to the road in front of Mr. Heier's development when they were not concerned when a 15-year old lost his life on that road. Mr. Heier has completely refused to listen to 40 plus people. Out of complete frustration, the neighbors are asking that the proposal be denied. The neighbors are not able to get into the midst of this system. The neighbors have discovered that under this current plan to improve this little dab of Holdrege, Heier is going to shift the whole road over, then in the future when Holdrege is changed they are going to straighten it back. This is inexcusable. 176th is the place to put the access.

Newman asked the staff to explain the recommendation of approval on this proposal and the recommendation to defer The Preserve at Cross Creek. Mike DeKalb of Planning staff explained that The Preserve at Cross Creek was clearly shown as AG and required a change of zone with a request for significant density. The Comprehensive Plan shows it as AG but implies that the point system should be developed for review. This one (Wyndam Place) is shown as AG, they are not requesting a change of zone, and the Comprehensive Plan does support AG clusters within the AG zoning and the AG density. This developer can build 13 units by right with a bonus for clustering. But Newman

believes part of the criteria is a paved road and whether there is any possibility of nuisance around it. DeKalb confirmed that those issues are taken into account.

DeKalb further advised the Commission that the staff just received the proposed amendments to the conditions of approval at the beginning of this meeting. In fact, he has seen three different versions since the original staff report. Staff cannot give adequate review or response to the proposed conditions and would recommend a deferral for at least four weeks for adequate staff review of the amended site plan. The latest version shown today does have issues regarding the length of the cul-de-sac, access, etc. The staff needs to see a definitive plan showing grading, vertical curve data, etc., to do an appropriate review.

Steward observed that cluster developments have an advantage of preserving the value of adjacent lands, and that's what the whole bonus strategy is about–encouraging the cluster arrangements. But there are also infrastructure opportunities in the cluster. Obviously, the one that comes to mind is saving a lot of roadway. But we've not talked about any other aspect of infrastructure in terms of shared sanitary sewer system. Do we have any leverage in the cluster development language to require the developer to consider one large, more manageable, more environmentally appropriate lagoon compared to 16 potential poorly maintained and unmanageable systems? DeKalb did not believe there to be much leverage. The primary thing staff is concerned about is whether it will pass Health Department review as to alternative ways to handle waste treatment. All of the lots are in excess of 3-acres which can accommodate multiple opportunities. We do have some CUP's in the county that do have community sewer systems. Often the trade-off is substantially smaller lots. So you are clustering tighter by going to one lagoon. This could be considered by the developer.

Response by the Applicant

Seacrest reminded the Commission that he generally leads by trying to reach consensus. They have deferred this proposal previously to try to work with the neighbors, but he has not heard any proposals that begin to strike a sense of balance and fairness in his professional judgment.

Seacrest further reiterated that there are at least three lots that are going to work on septic, which were chosen to be representative of the different types of soils. He assured that the proposal will meet Health Dept. regulations and standards.

With regard to the well water, Seacrest suggested that Dreeszen is highly regarded and his report determines that this development has good water, both quantity and quality. Seacrest acknowledged that they do need reverse osmosis, but this is done a lot in the county.

With regard to traffic, Seacrest pointed out that the most recent County Engineer letter

indicates a solution for getting safely in and out off Holdrege Street and the proposed amendments are consistent with the County Engineer's recommendations. With regard to the traffic fatality referred to by the opposition, Seacrest submitted the police report indicating that the driver was eastbound at a high rate of speed when he lost control. The driver was cited for reckless driving and misdemeanor motor vehicle homicide.

With regard to the "nuisance" issue, Seacrest stated that if any of the neighbors are fearful of the nuisance, the nuisance is there today. He suggested that if they are doing normal farm operations, there will be no problem.

Seacrest offered a further amendment that the primary residence would be set back 100' from the property line, as opposed to the 50' requirement. This field is farmed today. Pesticide, herbicide and erosion is already occurring next to the natural prairie. In addition, Seacrest stated that no street lights are being proposed. In addition, the developer has talked with the rural fire departments and the fire and life safety people tell us they can handle these 16 homes.

Seacrest pointed out that the Planning Commission has approved many, many, many AG clusters, many of which did not have the water well reports or the perc tests, which were on better prime land, and which had more flooding and traffic issues. This proposal has already been deferred for eight weeks.

The main concern Seacrest is hearing from staff is connectivity. If it is important to show one more access for connectivity, Seacrest believes this can be done.

Seacrest reminded the Commission that this developer has the right to do 13 of these lots without coming before the Commission. They are proposing three more lots by clustering and preserving 190 acres of prime soils.

Schwinn took note of the revised layout submitted today that has not been run through the system. In essence, the applicant has changed the layout enough that the block length can be an issue. Seacrest pointed out that the proposed conditions require them to revise the site plan as generally shown to the satisfaction of the County Engineer and the Planning Department. "If we need to tweak it, we will tweak it between now and the County Board hearing."

COUNTY SPECIAL PERMIT NO. 198
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: April 16, 2003

Steward moved to defer for four weeks, seconded by Carlson and failed 3-3: Carlson, Newman and Steward voting 'yes'; Bills-Strand, Duvall and Schwinn voting 'no'; Krieser, Taylor and Larson absent.

Duvall moved to approve, with conditions, with the amendment as requested by the

applicant, seconded by Bills-Strand.

Duvall stated that he understands the concerns of the neighbors. It is a tough issue. But he believes there will be more clustering and growth in the area. By right they have the ability to put in 13 lots and he does not believe three more makes that much difference. Hopefully, the developer will work with the County Engineer and other public officials to make this a better plan.

Steward advised that he had made the previous motion to defer based upon the revised submittal. He was hopeful that additional time could also be effective for more consensus and a better working relationship. He respects the history of the consensus building that has been before the Commission; however, often in the city jurisdiction, when it is evident that there is not consensus, this body would respect the neighbors' opinions more than what we are about to do if we approve this proposal. A larger issue is the whole acreage condition in the Comprehensive Plan. We have a pending study and, although he understands the logic behind the staff recommendation, he does not understand the principle. The principle is part of what is being questioned, or should be. The principle of acreage development and the locational specifics of those acreage developments is up in the air in the county. Steward believes it is possible we could see a recommendation (perhaps never approved) from freezing the status quo to defining areas for acreage development to continue in the status quo for free-for-all development on any land that anyone wishes to purchase. All of this causes him great concern about the future of the county. There is no magic – it's just one set of properties over the county line. There are altogether different sets of conditions across that county line for acreages and this is very close to that county line. We need to be considering regional development, not just the arbitrary government line. Steward is more interested in a) equity and fairness, b) reexamination of the principles, and c) with this much property in question, he believes it deserves a delay.

Schwinn stated that he voted against the motion to defer because it will probably be deferred anyway.

Motion for approval, with conditions, with amendments as requested by the applicant failed 3-3: Bills-Strand, Duvall and Schwinn voting 'yes'; Carlson, Newman and Steward voting 'no'; Krieser, Taylor and Larson absent.

This application is held over for two weeks, with continued public hearing and administrative action scheduled for April 30, 2003.

COUNTY PRELIMINARY PLAT NO. 03000

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: April 16, 2003

In light of the failed motion on the associated community unit plan, Bills-Strand moved to defer, with continued public hearing and administrative action scheduled for April 30, 2003, seconded by Carlson and carried 6-0: Carlson, Bills-Strand, Duvall, Newman, Steward and Schwinn voting 'yes'; Krieser, Taylor and Larson absent.

There being no further business, the meeting was adjourned at 3:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 30, 2003.

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