

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, September 3, 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, Gerry Krieser, Dan Marvin, Cecil Steward, Mary Bills-Strand and Tommy Taylor (Roger Larson absent); Marvin Krout, Ray Hill, Brian Will, Becky Horner, 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 Cecil Steward called the meeting to order and requested a motion approving the minutes for the regular meeting held August 20, 2003. Motion for approval made by Krieser, seconded by Bills-Strand and carried 7-0: Carlson, Duvall, Krieser, Marvin, Steward, Bills-Strand and Taylor voting 'yes'; Larson absent.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

##### **BEFORE PLANNING COMMISSION:**

September 3, 2003

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 634D**, **SPECIAL PERMIT NO. 671B** and **COMPREHENSIVE PLAN CONFORMANCE NO. 03008**.

**Item No. 1.1, Special Permit No. 634D, and Item No. 1.3, Comprehensive Plan Conformance No. 03008**, were removed from the Consent Agenda and scheduled for separate public hearing.

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

**SPECIAL PERMIT NO. 634D,  
AN AMENDMENT TO THE SKYLINE  
ROLLING HILLS COMMUNITY UNIT PLAN,  
ON PROPERTY GENERALLY LOCATED  
AT SOUTH 14<sup>TH</sup> STREET AND PINE LAKE ROAD.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 3, 2003

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

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing due to a letter received in opposition.

Ex Parte Communications: Bills-Strand advised that she had a phone conversation with Pace Woods on procedures.

Proponents

**1. Rick Onnen of Engineering Design Consultants,** testified on behalf of the developer, Pace Woods. Onnen requested that Condition #1.2.2 be deleted (Revise the site plan to show a note that states there shall be no driveway access or parking allowed within the roundabouts). Onnen stated that they started this project 1.5 years ago with what they thought would be a simple change to the special permit. The developer wishes to enhance the final phase of development with some median islands and additional landscaping. They met with Public Works and Planning as to how to accomplish that and went through various concepts in terms of the shapes and positions of the islands, and finally came down to placing a cul-de-sac bulb in line in the street. The primary reason for wanting these medians was for some special signage and a little bit of landscaping. The developer is not particularly interested in controlling traffic, although that is a secondary function that will come along with this layout.

Onnen explained that the configuration was determined by Public Works and Planning to be a "roundabout". The developer does not believe this constitutes a "roundabout", and they had considerable discussions with the staff which were not successful. Onnen suggested that the design criteria with a roundabout has 3-5 approaching streets. Clearly, this proposal is only showing two approaching streets, so technically, Onnen does not believe it meets the criteria for a roundabout. With the designation of roundabout comes all the restrictions that are part of the design criteria. The developer has provided to Public Works and Planning proof of the ability to maneuver a bus through this layout, with parking. The developer is opposed to eliminating the ability to front driveways onto these "roundabouts" (the bulb). The typical layout for a residential home is to have the driveway on the high side of the lot to reduce the grade on the driveway. The recommendation from

Public Works that driveways not be allowed on these “bulbs” would essentially force some of these lots to have driveways on the low side. What is proposed is nothing a whole lot different than what would be on a typical cul-de-sac. With regard to sight distance and maneuverability, there will be 27' back-to-back where someone could potentially have a drive and only have to worry about traffic in one direction.

As far as the landscaping and signage, Onnen pointed out that there are already height restrictions and it should not create any kind of a sight distance issue. The median in the center creates no more obstacle to a vehicle than an approaching vehicle would from the other direction.

Carlson commented that it looks like these would have the net effect of a traffic calming device. Has this developer had previous experience with this? Onnen suggested that there are some examples similar to this around town in some older neighborhoods.

**2. Pace Woods**, owner and developer of the subject property, also testified that he started this process over a year ago. All city departments have been very cooperative, and he has made some changes in response to meetings with the city staff, i.e. street medians and boulevards as opposed to roundabouts. Woods wants to incorporate some of the assets that his company has used in places such as Woodshire and Sheridan Blvd., which have added aesthetics and value. Two of the areas he desires to incorporate are “circles” (because he does not believe they qualify as roundabouts) and “boulevards” similar to (although smaller than) Sheridan Blvd. The city also asked us to change the street grades due to the height of the land (The Ridge) east of this property, and he has agreed to grade it down 5%. However, he does not want this land to be lower than the adjacent land, and he was able to reach agreement with the staff.

Woods then referred to the letter in opposition from Ray Swanson, who has objected to any deviance from the standard paving widths or sidewalks. Woods clarified that the only deviation is that he is making them larger. There is a slight deviance in the right-of-way width (2' narrower), which was done earlier in Rolling Hills Addition at the entrance at Old Cheney Road. This is nothing new in Rolling Hills. The city has asked that there be no parking allowed in the three “circles” and that driveway access be denied. Woods testified that these “circles” are more like street medians or cul-de-sacs and he does not believe they fit the definition of roundabouts. The paving on these circles is 27' plus curb. That is the same amount of paving as there is on the entrance to HiMark, and HiMark allows driveway access. This is not something that the city has not allowed before. There are not any “no parking” signs posted on any of the circles at HiMark or Woodshire. There is driveway access off of the circles in Woodshire.

Woods reiterated that he is offering a low traffic circle similar to a cul-de-sac or street median, but one which adds beauty and value to the neighborhood without creating a traffic problem.

There was no testimony in opposition.

Staff questions

Taylor asked staff to respond to the request to delete Condition #1.2.2. Chad Blahak of Public Works stated that it was the opinion of Public Works that it was not necessarily a design standard issue as far as roundabouts or traffic, but more from a safety point of view. If we allow both parking and access to the roundabouts, there could be a deviation from a straight line, with possible sight distance conflicts. Public Works would be willing to go with either access or parking, but not both. It was more of a safety issue rather than straight design standards.

Bills-Strand inquired whether this has been a problem in HiMark or Woodshire. Blahak could not speak to that. Bills-Strand recalls that there were always cars parked in those areas in those developments and she never saw problems. How is this different from a cul-de-sac where there are driveways and parking, with only one access? Blahak suggested that on a cul-de-sac, vehicles will not have a through destination, whereas on this proposal it is more of a through traffic situation. Bills-Strand pointed out that it is not a problem on Sheridan Blvd. They do have parking and there is heavier traffic on that street. Blahak agreed that there is parking “up to” it, but not on the roundabout.

Steward asked whether Public Works would agree that psychologically this could be a calming device – people will decelerate upon approaching. Blahak agreed that it might function somewhat as a traffic calming device.

Response by the Applicant

Onnen reiterated that he sees no difference between this and a normal street where there is approaching traffic. We have the ability with this island for cars to go on both sides at the same time. With cars parked on both sides of the street, you are limited to one-way traffic. Here we are talking about an island that is not moving. We are approaching it and we’ve got at least 15’ on either side through which to drive. The effect of an “obstacle” that this island creates is very minimal and makes it more functional than a typical street.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** September 3, 2003

Bills-Strand moved to approve the staff recommendation of conditional approval, with amendment deleting Condition #1.2.2, seconded by Carlson.

Bills-Strand believes it is nice to see a few things thrown in to make a neighborhood feel a little different than with straight streets.

Motion carried 7-0: Bills-Strand, Carlson, Krieser, Duvall, Marvin, Taylor and Steward voting ‘yes’; Larson absent.

**COMPREHENSIVE PLAN CONFORMANCE NO. 03008  
TO REVIEW THE PROPOSED DECLARATION OF  
SURPLUS PROPERTY AS TO CONFORMANCE WITH  
THE COMPREHENSIVE PLAN, GENERALLY LOCATED  
AT NO. 30<sup>TH</sup> & "X" STREETS.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 3, 2003

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

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

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

Proponents

**1. J.J. Yost of the City Parks & Recreation Department** explained that this is a piece of abandoned railroad right-of-way property acquired as part of a bigger piece of right-of-way for construction of the MoPac Trail. The portion of the trail between 30<sup>th</sup> and 33<sup>rd</sup> was built 5 years before this property was acquired. The subject property is on the north side of Peter Pan Park. At the request of a developer who owns the property between the park and this right-of-way, the Parks & Recreation Department has determined the property to be surplus to the Parks & Recreation Department needs. The property runs from 33<sup>rd</sup> to 30<sup>th</sup>. Peter Pan Park is about 140' south.

**2. Gene Carroll, Rose Investments, Inc.,** owns the property between the railroad right-of-way and Peter Pan Park. He testified that it is his intention to eventually put affordable housing in this area. This application is the first step to get the property surplus. The land was rail-banked and they will be going to the Department of Transportation to take it out of rail-banking.

Steward inquired whether Mr. Carroll's property extends on the other side of the railroad property. Carroll stated that he only owns the property to the south. There is a different owner to the north.

**Other Public Testimony**

**3. Jerry Haertel,** owner of the property at 37<sup>th</sup> & Apple (two properties to the west of the Kingery property), which is on the south side of Apple Street, testified that he is in negotiations with his neighbor to buy or sell, with the intent to put multiple units in the R-4 zoning. The Kingery property is "I" zoning to the east. Haertel has a question about the location of the access and whether it would be off of 33<sup>rd</sup> Street. He has no problem with

multi-family housing in this area, but he and another adjoining property owner are interested in procuring the portion behind their properties for more parking or another unit. He assumed the access would be off 33<sup>rd</sup> to the east end.

Steward explained that there is nothing before the Commission as to development at this point. Haertel wondered whether he would have the opportunity to purchase the property being surplus.

Steward asked for a staff response. Marvin also noted that the Apple Street property looked to be zoned I-1. Becky Horner of Planning staff clarified that the subject area is zoned I-1. The Haertel property is zoned R-4. If the area is redeveloped and declared surplus, it would be required to have a change of zone to residential. With regard to access, the Parks Department has been in discussion with the individual who wishes to purchase, but nothing has been formally submitted for review.

Rick Peo, City Law Department, advised that the city is not required to put this surplus property out to public bid or to allow property owners to participate in this purchase. We are envisioning it as a land exchange agreement with the property owner to exchange the surplus park property to do enhancements to Peter Pan Park. It would be a land exchange agreement with a development solution. Steward assumes that was stimulated by the fact that the property owned is contiguous to that surplus parcel. Peo concurred.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** September 3, 2003

Taylor moved to find the proposed declaration of surplus property to be in conformance with the Comprehensive Plan, seconded by Bills-Strand and carried 7-0: Bills-Strand, Carlson, Krieser, Duvall, Marvin, Taylor and Steward voting 'yes'; Larson absent.

**SPECIAL PERMIT NO. 1423G**  
**AN AMENDMENT TO THE HIMARK ESTATES**  
**COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 84<sup>TH</sup> STREET AND OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:** September 3, 2003

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Greg Czaplowski of Planning staff submitted additional information for the record, including two emails by Public Works in response to an email from June Simpson dated August 17,

2003; three letters in opposition from neighbors to this development; and a memo from Public Works asking for an additional 10' of right-of-way on the north side of Old Cheney Road. Czuplewski added Condition #1.1.1 to the staff recommendation: "Show the dedication of an additional 10' of right-of-way on the north side of Old Cheney Road."

Proponents

**1. Mark Hunzeker** appeared on behalf of **HiMark Development**, indicating that he did not find out about the 10' of additional right-of-way until today and that the applicant intends to request a waiver to provide an easement for public access as opposed to dedicating the additional 10'. The applicant was also informed today that they need to amend the preliminary plat to conform this amendment to the community unit plan with the plat. Therefore, Hunzeker requested a two-week deferral to allow advertising of the additional waiver requests.

Bills-Strand moved to defer two weeks, with continued public hearing and administrative action scheduled for September 17, 2003, seconded by Taylor and carried 7-0: Bills-Strand, Carlson, Krieser, Duvall, Marvin, Taylor and Steward voting 'yes'; Larson absent.

**PRELIMINARY PLAT NO. 02005**  
**CATHERLAND SUBDIVISION,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NO. 70<sup>TH</sup> STREET AND FLETCHER AVENUE.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** September 3, 2003

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Tom Cajka of Planning staff submitted a request from the applicant for an additional two-week deferral in order to have a meeting with Public Works and Planning.

Taylor moved to defer for two weeks, with continued public hearing and administrative action scheduled for September 17, 2003, seconded by Marvin and carried 7-0: Bills-Strand, Carlson, Krieser, Duvall, Marvin, Taylor and Steward voting 'yes'; Larson absent.

**ITEMS NOT ON THE AGENDA**

**CHANGE OF ZONE NO. 3416  
FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL  
ON PROPERTY GENERALLY LOCATED  
AT SOUTH 37<sup>TH</sup> STREET AND "J" STREET.  
RECONSIDERATION BY PLANNING COMMISSION:**

September 3, 2003

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

Staff recommendation: Denial.

On August 20, 2003, by a vote of 6-3, the Planning Commission placed this application on their pending list for an indefinite period of time to give the Planning Department an opportunity to look at a further study of the complications of downzoning property throughout the city from R-4 to R-2. Steward asked Rick Peo of the City Law Department to discuss his memorandum dated August 27, 2003, which suggests that the Planning Commission does not have the authority to place an application on pending for an indefinite period of time without the applicant's consent.

Peo explained that the Planning Commission's responsibility is to evaluate the application in light of the criteria set forth in the Charter and Ordinance to make a decision. Failure to make a timely decision puts the Planning Commission, City Council and the public in a quandary as to what to do. An applicant's recourse would be to go to the courts and seek a mandamus action ordering the Planning Commission to fulfill its responsibility to be an advisory body to the City Council. Placing this application on pending holds the applicant hostage in that the application is not being forwarded to the body to which the applicant is allowed to petition.

Peo urged that in order to avoid legal complications and issues, it is the responsibility of the Planning Commission to make a timely decision on the requested change of zone. Motion to place on pending for a limited time and date certain are feasible, but if the information is incomplete and the Commission cannot make a decision as to conformance or the affect on abutting properties based on lack of evidence, the Commission should ask for additional information or evidence.

However, in this situation, Peo believes there is a problem as far as consistency with the Comprehensive Plan. The decision as to whether it is wise to make a decision is the decision of the City Council. The Planning Commission might suggest to the City Council that the application is premature or give suggestions to the Planning Dept. Peo would recommend that the Planning Commission act to take this application off pending and take action today. This would require a waiver of Robert's Rules.

Steward requested more discussion about the matter of this action in relationship to the Comprehensive Plan. In this circumstance, we have a potential interpretation which some of the Commissioners made, that the requested action was not necessarily in conformance with the Comprehensive Plan, and with the knowledge that there were studies underway intended or pending that would potentially shed more light on this issue. It seems that this is a lot different than a request for action in the circumstance of a development where there are economic consequences pending and high pressure for community improvement to be gained from almost immediate action. He is wondering how this differs from some other aspect that seems to be counter to the Comprehensive Plan, knowing that there are decisions to be made that will influence this and knowing, at the same time, that it is highly likely that once this action may be taken, that it will not be able to be reversed if different information or arguments arise from the study. Peo suggested that the Planning Commission could say more than yes or no. Typically, the Planning Commission is adopting a recommendation. As far as conflicts in the Comprehensive Plan, Peo suggested that the Comprehensive Plan is not a document that doesn't blend or overlap. Maybe additional study is needed. The Planning Commission's report to the City Council can be broad. Maybe the Council needs to order it back or put it on pending and ask for further review of the R-4 versus R-2 issues. If the application is denied, the applicant is required to wait one year before reapplying. It is still the City Council's decision as to whether to withhold making a recommendation. Peo suggested that the Commission could modify the staff analysis to reflect the Commission's opinions in making its recommendation.

Bills-Strand was concerned that the Planning Commission is not allowed to place an application on pending while there is a study being done, and in this case, the Comprehensive Plan calls for higher density affordable housing. Peo indicated that he has never supported placing applications on pending waiting for studies. He is concerned about not advising the next body. It's more defensible if there is a study going on that has an end in sight. In this case, no study has been initiated. There is no timeline for a study to be completed. You are placing an applicant in limbo. A study may or may not occur. There has been no direction mandated to the Planning Department to make that study or complete it within a timeline. The City Council has to weigh these same types of concerns when an application comes forward. He does not believe putting it on indefinite pending is a "reasonable" timeline.

Bills-Strand wondered if the Commission could make an amendment to the Comprehensive Plan to request a study. Peo believes the Commission can ask the Director to initiate a Comprehensive Plan amendment.

**Motion to Waive Rules:** Bills-Strand made a motion to waive Robert's Rules and to remove Change of Zone No. 3416 from the pending list to allow a motion to reconsider beyond the time limited provided by Robert's Rules of Order, seconded by Taylor and carried 7-0: Bills-Strand, Carlson, Krieser, Duvall, Marvin, Taylor and Steward voting 'yes'.

**Motion to Reconsider:** Bills-Strand moved to reconsider Planning Commission action taken on August 20, 2003, which placed this change of zone on the Planning Commission's pending list, seconded by Duvall and carried 7-0: Bills-Strand, Carlson, Krieser, Duvall, Marvin, Taylor and Steward voting 'yes'; Larson absent.

**Motion upon Reconsideration:** Taylor moved to close public hearing and recommend approval of the change of zone, seconded by Carlson.

Taylor referred to the comments he made on August 20<sup>th</sup>.

Bills-Strand stated that she will not support this. She is in support of looking at ways to protect single family residential areas, but she is not sure a change of zone to R-2 is the best way. Affordable housing is becoming a bigger and bigger issue in Lincoln and it is addressed in the Comprehensive Plan. We can add new urbanism in old neighborhoods with some very nice looking row houses to add affordable housing, which R-2 zoning would not allow. This could be added as houses are deteriorating. R-2 is really limiting. She would rather vote denial, with a recommendation to the City Council that they do a study and put this on pending for three months. She believes that the Planning Director has indicated that a study could be done within three months.

Duvall commented that there are a lot of neighborhoods that are 30-40-50 years old going through this transition, so this is an endemic problem for the community and we need to have a broad policy that is sensitive to these needs. As neighborhoods go through transition, there are opportunities and there should be an intelligent change put in place. He believes the change to R-2 would limit potential growth.

Marvin stated that he will vote in favor because he believes we are making a mistake if we let these neighborhoods turn over into duplexes. If we want to talk about affordable housing, he believes that it does exist in the older neighborhoods. He did a study of 55,000 homes in Lincoln -- 27,500 were selling for under \$110,000 -- "you can't tell me we have homes that are overpriced that people can't get into." Those homes exist in the interior parts of the city. If we allow these homes to convert into apartments (like the application that caused this ruckus), then we wind up making those people leave the neighborhood with their families and kids. The homes then turn into rentals that are half-full, and the inner city schools won't have students because there are no families. It is Marvin's opinion that single family ownership in the interior must be encouraged, and this change to R-2 protects that. The Comprehensive Plan speaks to the issue of allowing downzoning where strong community support exists. We have petitions of well over 100 people who want this approved. We do not need to wait for a study for this particular area.

Taylor believes this to be a classic example of a very fine neighborhood. We should not avoid their request and put it in the hands of a nebulous future. Taylor is not in favor of putting their future on hold or on pending in lieu of a study that can be studied over and over again. Let this be another exception. We've done it before.

Bills-Strand pointed out that R-2 zoning does allow duplexes and she could have supported

this. But, these residents indicated that they plan to come forward with more of the area, and she wants to get the study done before it starts snow-balling.

Carlson believes these comments can be made to the Council independent of placing this on pending. The notion as to “irreversibility” is not borne out historically or philosophically. Many of these areas are zoned the way they are based on the downtown orientation, which unfortunately has been abandoned on several other projects. Others are saying, we need to be careful that some decision that is made today will not hamstring us or shackle us indefinitely in the future, but I’m saying circumstances will change. If a developer comes forward with a superior product, there is nothing stopping it within the R-2 zoning with a community unit plan, or the developer can ask for the upzone. (Amendment requested by Commissioner Carlson on 9/17/03)

Steward will not support the motion to approve because it is a condition and a situation that has changed at this place and this time that is larger than this individual neighborhood. The need for a study is paramount and the sooner that we can take action that will cause that to happen, the better the city will be. Steward reiterated that this is not dissimilar from spot zoning of individual property -- it is just a larger “spot”, and his vote against this is not a vote against the neighborhood nor against their intelligence, values or right to property values. Change does not mean lower values. There are many ways that this can be approached. We just have not had the consequences in front of us to look at it carefully from a center-outward potential of impact. It is not a downtown or mid-town or other edge issue – it’s a cost of services issue – it’s forcing more search at the edges when you hold everything static in the middle, and that would be true if you were talking about Downtown or Near South or any of the immediately adjacent areas. He believes that this is something that we need to pass on so that the study can be authorized because it is urgent. This is the best place to call for the action to get that done.

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

Bills-Strand moved to deny, with a caveat to the City Council to put this application on pending for three months and call for a study, seconded by Duvall.

Bills-Strand stated that this is nothing against the neighborhood. She could have supported it, but knowing it’s a chain reaction, she wants to get the study in place.

Carlson is concerned that the current work load demand. The staff report stated that, “...with current workload demands, the Planning Department is not able to begin looking at this issue in the near future.” Given specific direction, hopefully that will change.

Taylor will not support the motion. If these people had not come forward, there would have been no mention of any study. They have addressed an issue and they are taking steps to solve that problem. He believes approving this will be productive with value added to the neighborhood and to this community as a whole.

Carlson does not believe the neighbors should be denied their choice of protection while a study is being done.

Marvin stated that he will vote in favor of the motion to deny to get five votes so that this application can be moved forward. He does not want it left at this level.

Motion to deny, with a request that the City Council place this application on pending for three months and direct the Planning Director to conduct a study of zoning options, carried 5-2: Bills-Strand, Krieser, Duvall, Marvin and Steward voting 'yes'; Carlson and Taylor voting 'no'; Larson absent.

There being no further business, the meeting was adjourned at 2:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 17, 2003.