

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, October 1, 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, Dan Marvin, Cecil Steward, Mary Bills-Strand and Tommy Taylor (Gerry Krieser absent); Marvin Krout, Ray Hill, Brian Will, Tom Cajka, Duncan Ross, 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 September 17, 2003. Motion for approval made by Larson, seconded by Taylor and carried 6-0: Carlson, Larson, Duvall, Marvin, Steward and Taylor voting 'yes'; Krieser and Bills-Strand absent.

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

October 1, 2003

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 2032, SPECIAL PERMIT NO. 2033, SPECIAL PERMIT NO. 2034, SPECIAL PERMIT NO. 2035, STREET AND ALLEY VACATION NO. 03010 and STREET AND ALLEY VACATION NO. 03011.**

**Item No. 1.6, Street and Alley Vacation No. 03011**, was removed from the Consent Agenda and scheduled for separate public hearing.

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

Note: This is final action on Special Permit No. 2034 and Special Permit No. 2035, 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.

**STREET & ALLEY VACATION NO. 03011**  
**TO VACATE AND DESIGNATE AS SURPLUS**  
**A PORTION OF THE PUBLIC RIGHT-OF-WAY**  
**SURROUNDING THE NEW THEATER COMPLEX**  
**GENERALLY LOCATED FROM 11TH TO 12TH STREETS,**  
**BETWEEN “P” AND “O” STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 1, 2003

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

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

This application was removed from the Consent Agenda at the request of the Planning staff for the submittal of additional information and a revised legal description.

Ex Parte Communications: None.

Greg Czaplewski of the Planning staff submitted a letter from the Public Works Department addressing the easements that will be granted if this public right-of-way is vacated and indicating that the Nebraska Department of Roads (NDOR) needs to be notified of this request. Czaplewski advised that the NDOR has been notified and they have not objected to this proposal. The Federal Highway Administration has also been notified and they do not object. Czaplewski also submitted a revised legal description for the area being vacated; however, this revision does not require additional notice or readvertising. Czaplewski also submitted a revised map that conforms with the revised legal description.

Steward inquired as to the responsibility for maintaining the surface of these vacated portions, i.e. that is, the surface that is not covered by some building appurtenance in both the alley and along the sidewalk. Dallas McGee of Urban Development advised that the portion that would be in the area where the entire width of the alley is vacated would be maintained by the Douglas Theater Company. The portion beyond that would be maintained by the city. The sidewalks would continue to be maintained by the city. The city would grant an easement to Douglas Theater which would allow portions of the building to extend into what is now the right-of-way; however, most of the vacation requested is to allow for awnings and areas above the ground level.

Carlson commented that the city is going to retain ownership of this property, so the proposal is actually vacating a particular use to a different use. McGee concurred. Initially, they talked about not vacating. They had discussions with NDOR and not vacating would

have been their preference; however, in discussions with the developer and getting title insurance on the building itself, the title insurance company needed assurance that the right-of-way on "O" Street would not be taken for additional width for a road. Therefore, the city is retaining ownership, vacating it as street right-of-way and then granting an easement to the developer to occupy that portion of the space where their building may be located. The city has reversion rights in the event that the use stops.

Support

**1. Michael Morrow** appeared as attorney for **Center Associates**, which is entering into the Redevelopment Agreement with the city. He applauded the staff for getting the correct legal descriptions. Part of the reason for the easement is because the facade itself is going to encroach slightly into the public right-of-way. There is a walkway connecting the two buildings between the alley. The legal description for the easement talks about surface rights only for the walkway in the alley and for the easement in the alley. That is somewhat of a misnomer. The 6" easement that the developer is requesting that would run along the northern boundary of the alley is for footings that will extend below the surface; however, Morrow assured that they will not in any way interfere with any utilities. The easements for the walkway that will connect the two buildings will also have footings that will extend to a maximum depth of 4' to support the walkway facility. Therefore, it will also be necessary to have a subsurface easement across the portion of the alley that supports the walkway itself. There will no longer be vehicular access through the alley.

There was no testimony in opposition.

Steward inquired whether there needs to be any revisions to the staff report or conditions to include the subsurface easement. Rick Peo of the City Law Department advised that the Planning Commission is only acting on the finding as to conformance with the Comprehensive Plan on the street vacation itself. Transfer of easement rights will be a separate action.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 1, 2003

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

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

October 1, 2003

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Greg Czaplowski of Planning staff submitted a letter in opposition and a revised page 9 of the staff report, adding Condition #1.1.8:

Prior to any further grading on the site, submit and receive approval of a mitigation plan for the vegetation and grading within the minimum flood corridor in conformance with Section 26.15.020(b) and (c) of the Subdivision Ordinance to the satisfaction of the Director of Public Works & Utilities.

Proponents

**1. Mark Hunzeker** appeared on behalf of **HiMark Golf LLC**, the applicant. They have discovered that there are issues with the Parks Department with respect to the location of the proposed bike path through the site, which Hunzeker believes can be resolved, and requested a two-week deferral.

In addition, there is apparently some concern on the part of Public Works that there has been work done on the site that is in violation of some standard with respect to the drainageway that runs through the site. Hunzeker displayed a picture taken this morning and explained what has and what has not been done. When the sewer line was built, there was an area cleared so that it could run along side the drainage channel. There were a lot of trees in this area damaged in the snow storm a few years ago that have never been cleaned up, and that is what is being done at the present time. Nothing has been done that in any way violates even the spirit of the regulations. The developer is doing some clean-up work in order to be able to set up the golf hole. The developer needs to work with Public Works with respect to the alignment of the channel as well as the grading plan.

Bills-Strand moved to defer two weeks, with continued public hearing and administrative action scheduled for October 15, 2003, seconded by Taylor and carried 7-0: Bills-Strand, Carlson, Larson, Taylor, Marvin, Duvall and Steward voting 'yes'; Krieser absent.

There was no other testimony.

**SPECIAL PERMIT NO. 2027**  
**FOR A WIRELESS FACILITY**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. FOLSOM STREET AND W. OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 1, 2003

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

Staff recommendation: Conditional approval, subject to moving the tower further to the east.

Ex Parte Communications: None.

Proponents

**1. Michael Healy** appeared on behalf of **Alltel Communications**, the applicant. Condition #2.1.1.3 requires that the tower site be moved to the east. This is problematic because the property owner has some very specific plans for development of this property and moving the site to the east would interfere with those plans. The property owner desires that the utilities and infrastructure be concentrated in the corner of the property and moving the tower site to the east will interfere with the owner's plans.

As far as the staff's rationale for moving the site further to the east, Healy does not believe that the 2:1 setback to height ratio is in the regulations. Healy submitted that the site as proposed complies with the setback ratio called for in the ordinance and the applicant will comply with all setback regulations. This is the first he has seen the 2:1 setback ratio. He believes it is somewhat arbitrary to apply that regulation in this case.

As far as the staff's rationale for moving the site to accommodate future development, Healy agrees that to be a nice thought that makes sense, but it is different from the way the owner anticipates developing the property.

Another problem with moving the site is the elevation of the property. Moving the tower further to the east would likely require a taller tower. Healy suggested that the best attribute of the proposed site is the proximity to the LES towers and power lines that run north/south along Folsom Street and clustered in the corner of the property. The applicant believes it to be beneficial to locate as close to those poles as possible since they are similar existing structures.

Healy requested that the Commission consider approving the special permit without the condition to move the site further to the east.

Carlson referred to the aerial on page 87 of the agenda. He inquired whether it is a house that is just south on Folsom. Healy clarified that it is a house and the tower site would be about 311' from the house. Carlson asked for the applicant's response to moving the tower further from that house. Healy believes that property was recently designated in the future land use plan as a community center and light industrial area, so the thought was that the proposed tower site would not interfere with those future plans for the property.

Steward inquired as to how much latitude the applicant has as far as service area for moving the tower in any direction. Healy stated that it varies. This is sort of a unique situation in that Alltel's engineers are asking us, with this site, to actually do the job of two sites just because of the elevation and location. For that reason, there is probably a little bit less leeway in terms of moving it geographically. They typically have a 1/4 mile radius within which to operate and have the site do its job.

With regard to elevation, Steward inquired whether it is really only to Alltel's advantage to have a shorter pole. Poles that have to be at a certain clear sight line height may be in lower elevations and it just simply means that it has to be a longer pole--the top is not any higher. Healy indicated that if they were to move the site, the pole would need to be about 15' taller to compensate for the elevation.

There was no testimony in opposition.

Bills-Strand asked staff to clarify the 2:1 ratio. Brian Will of Planning staff acknowledged that it is not a requirement. It was included in the analysis to conceptualize the setback ratio to the proposal. The only setback requirements are those of the district. In this case, the setback requirement is 50' plus the fall zone, which is half the height of the tower. The applicant was also correct about the community center and industrial center designations. If this area were already developed, the staff's thought process would be to move the tower further away from adjacent roadways and more centrally within a given commercial and industrial area.

Bills-Strand assumed that the LES towers would not be moved. Will concurred. Bills-Strand inquired whether the staff would object if the tower blended in with the LES towers. Will indicated that to be part of the rationale for siting the tower in this area in general.

Steward suggested that without having any specific development planning before the Commission by the property owner, we're all just speculating. Will agreed. Steward indicated that he is trying to split the speculation into logic and something that is not so logical to determine how serious the staff objection to this location is. It seems that the tower is here first. Will concurred. That is a consideration, and it was considered by the staff. Whatever tower is sited here will impact development that will come afterwards. The staff wanted to provide some sort of setback in an attempt to buffer this site from Folsom. Although not in the Capitol View Corridor, Steward is concerned that it is very close, and Folsom seems to be the focal point.

Response by the Applicant

Healy indicated that he understands the point that moving the tower back allows for a pad site and future development, but that is not what the owner has planned for the property, thus it would be incompatible with what the property owner has planned.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** October 1, 2003

Bills-Strand moved to approve the staff recommendation of conditional approval, with amendment to delete the requirement to move the tower further to the east, seconded by Larson.

Larson does not want to speculate. The property owner does not have any objection so he sees no reason to require them to move the site.

Marvin thinks there is something gained for it to be closer to Folsom because the bypass is going to carry most of the traffic.

Motion for conditional approval, with amendment, carried 7-0: Bills-Strand, Carlson, Larson, Taylor, Marvin, Duvall and Steward voting 'yes'; Krieser absent.

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

**COMPREHENSIVE PLAN CONFORMITY NO. 03010  
TO REVIEW THE PROPOSED LANCASTER COUNTY  
ROAD AND BRIDGE CONSTRUCTION PROGRAM,  
FY 2004 AND 2005-2009, AS TO CONFORMITY WITH  
THE COMPREHENSIVE PLAN.**

**PUBLIC HEARING BEFORE THE PLANNING COMMISSION:** October 1, 2003

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

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

Ex Parte Communications: None.

**Duncan Ross** of Planning staff appeared to answer any questions.

There was no testimony in support or opposition.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 1, 2003

Bills-Strand moved a finding of conformance, seconded by Larson and carried 7-0: Bills-Strand, Carlson, Larson, Taylor, Marvin, Duvall and Steward voting 'yes'; Krieser absent.

**SPECIAL PERMIT NO. 1939B,  
TO ADD MEDICAL OFFICE FLOOR AREA  
AND TO AMEND THE PARKING LOT LAYOUT,  
ON PROPERTY LOCATED AT 7500 SO. 91ST STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 1, 2003

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

Staff recommendation: Conditional approval, as revised.

Ex Parte Communications: None.

Brian Will of the Planning staff advised that since the revised staff report was last distributed, the staff and the other parties involved have had several meetings and revisited the issue of the traffic cap, which has been one of the central issues. The residential area east of 91<sup>st</sup> Street is not part of the traffic cap for Appian Way or Prairie Lakes, the commercial development to the west. In recognition of that fact, the staff has again revised the conditions of approval, deleting Condition #1.1.2 and #1.2, and modifying and adding language in Condition #2 such that any application for further expansion, except for 12 accessory multi-family units for the Hospital, shall be accompanied by a traffic study which identifies any impact on the street network. It has been agreed that the substance of this amendment is acceptable and is not covered by the traffic cap for Appian Way and the annexation agreement; however, should the hospital further expand, the city wants to reserve the right to review the potential impacts and to be able to mitigate, if necessary.

Steward noted that Analysis #4 in the staff report refers to a letter being required to the original developer. Will advised that such condition is now being stricken.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Nebraska Heart Hospital**, the applicant. He agreed with the staff's proposed amendments to the conditions of approval This is an office building which was originally contemplated albeit at a slightly smaller scale. The project is designed to be architecturally compatible with the existing building, using the same brick and similar architectural style. This building will have a flat roof which is not identical to the Heart Hospital but is of compatible design. A lot of glass has been incorporated on the third floor, which is set back from the front and rear elevations considerably to provide a break in the scale of the building. He believes this will be a very attractive project and agreed with

all conditions of approval, including the revisions.

Hunzeker understands there may be a request to further revise the new condition, which he will not oppose. The parties to the annexation agreement have some concern about the potential confusion in the future over the cap and he believes they will submit additional language which he has seen and to which he has no objection.

Steward referred to the waiver of building height and asked Hunzeker to give an indication of the height of the existing building. Hunzeker indicated that the building heights are similar. The peak of the pitched roof on the Heart Hospital is very close to the height of the flat roof building.

Marvin noted that two weeks ago the discussion focused on trip counts and how this was pushing the upper limit. What happened? Hunzeker stated that in the annexation agreement, there was a trip cap that was placed on the commercial development and the area east of 91<sup>st</sup> is all zoned residential. This special permit, a community unit plan and a day care center have been approved under that residential zoning. It was determined that the area east of 91<sup>st</sup> Street, which is zoned residential, wasn't originally included in the trip cap and will not be included in the trip cap, but they have agreed that with the approval of this particular application, this is all that can be done with this site, with the exception of putting in the originally contemplated residential structures for family and visitors to the hospital. The Heart Hospital has agreed to submit a traffic study if any further changes come forward. The applicant's traffic engineers that reviewed this and the City Traffic Engineer agreed that what we are doing here is going to add something like 22 trips to the total peak hour traffic in this area. There will be very little potential impact--one very hard to measure.

**2. DaNay Kalkowski** appeared on behalf of **Andermatt** and **Eiger**, the owners and developers of the shopping center. She submitted a proposed amendment to Condition #1.1.2. In November of 2001, Andermatt and Eiger were the principal parties with the city on the original annexation agreement for 84<sup>th</sup> and Hwy 2. That agreement identified the road, water and sewer improvements needed for the ultimate development of the entire area between 84th and 98th, from Pine Lake Road south all the way to south of Hwy 2. The road improvements that were identified were designed to handle a certain amount of traffic, so as part of that agreement, a cap was placed on the pm peak hour commercial trips. The trip cap at that time specifically excluded trips that were allocated under the traffic study to the residential areas that were covered by the annexation agreement. The special permit for the Heart Hospital is located in residential zoning and within the area shown as residential under the annexation agreement. There has been a lot of confusion about how the traffic generated as a result of this special permit and this expansion should be accounted for. When the special permit was originally approved in 2001, no trips were counted or subtracted from the commercial trip cap. In fact, the permittee was required to construct some additional road improvements over and above what was required in the annexation agreement. Kalkowski agreed with staff's conclusion that this special permit is located in the residential area and is separate from and does not affect the commercial

trip cap. Consequently, Kalkowski indicated that her clients support the staff's revised conditions, with the addition of language to Condition #1.1.2, which clarifies that this special permit is located in a residential district and it does not affect the pm peak hour commercial trip cap outlined in the annexation agreement. With the proposed additional language to Condition #1.1.2, if the Heart Hospital comes back in with any additional amendments in the future, there is no question how we reviewed this issue today. Kalkowski believes that Mr. Hunzeker would like to have this additional language moved from Site Specific, and she would agree to move it to Condition #3.5.

Marvin recalled the discussion that this amendment only added 22 more trips. Kalkowski indicated that she was not involved in the calculation of trips on this application. Marvin inquired whether this will impact the trip counts if there is a trip count for residential. Kalkowski does not believe it affects any of the other residential.

There was no testimony in opposition.

Taylor asked whether staff agrees with the language proposed by Kalkowski. Will did not object.

Marvin asked staff to address the trip count peaks for commercial and whether there are similar trip counts for residential. Will advised that there is no trip cap for residential in the annexation agreement. The trip cap only related to the commercial west of this property. Marvin inquired whether this land mass generates a comparable number that residential would have generated, or would residential generate more traffic? Will explained that the increase of 22 trips was because there was no cap on residential. It was not broken down and they did not do a cross-comparison between the Heart Hospital and residential. The debate started because there was a trip cap as part of the annexation agreement relative to commercial development. It was not clear until recently that the trip cap did not include the residentially zoned property. The discussion of the trip cap should not have been applied to this area in the first place. It only relates to the commercially zoned property west of 91<sup>st</sup> Street.

Steward clarified that the trip cap is in place for commercial because of concern for the overall traffic as this area develops into residential -- to control the volume of traffic. Will believes that the trip cap was developed so that the infrastructure could be planned to support what is going to be developed. The concern is having enough capacity for the commercial development, and that is why the residential is not included as part of this trip cap.

Carlson recalled that during the debate of the southeast area master plan, the whole purpose of coordinating the uses was traffic related. It does seem that a heart hospital and medical office building are going to generate more trip counts than a similar amount of single family residential. Carlson wants to make sure we are not just saying it is residential so that we don't have to count it. He believes the medical office will generate

more trips on the streets. The issue is that there will be additional cars on the street. Will responded, stating that when the traffic study was done and the trip cap was established, it was established for the commercial development. The cap was established to make sure there was adequate control over what was going to occur there.

Carlson then inquired as to what degree the traffic level of service is impacted by the addition of this special permit. Will suggested that for anything other than permitted uses, the city has the authority to ask the applicant to submit a traffic study to evaluate the impact, and the city still has that authority. Either with this amendment or subsequent proposals, the city has the authority to review it and if there are impacts associated with that proposal that are above the capacity, improvements can be required. In this case, the trip cap established with the annexation agreement was for the original shopping center.

Carlson confirmed that the staff analysis has determined that the additional trips are not going to be significant. Will concurred. Carlson and Marvin were both surprised that there was no impact determined.

Marvin Krout, Director of Planning, explained that the staff went back and reviewed the history of the first special permit request, and when all was said and done and the final numbers on the office trips were reviewed, it was determined that there was a reduction in the original square footage that was submitted and additional mitigated measures beyond the original annexation agreement. Thus, the Traffic Engineer determined that the impact of the pm peak hour trips on the residential side that had been assumed in the traffic study was inconsequential. Now we're looking at the impact of 22 more trips, and if you spread those out in different directions, you're talking about 3-4-5 trips in a direction over one hour of time. It is inconsequential and it is not a significant impact.

Steward commented that it is pertinent also to think about how big of an area this is – 21 acres in an R-3 townhouse configuration. Marvin believes that 20 acres of duplexes at 8 units an acre would generate about 160 trips. Krout further explained that we are talking about somewhat more trips, but it is not substantially more, not even enough that it is going to change the level of service. If someone asks for a change of zone from R-3 to something that generates more trips, then we look at it in terms of commercial trip count. If you compare the trips on the east side of 91<sup>st</sup> Street to the west side where the commercial was intended, the range of things you can do in R-3 won't substantially change the overall picture of traffic.

Response by the Applicant

Hunzeker explained his reference to the 22 more trips. What he is referring to is the increment over what is already approved versus what is being proposed. It has been agreed that the increment being added with this application is 22. With regard to the first permit, the developer did agree to construct a turn lane to serve this property that does enhance the capacity of 91<sup>st</sup> Street as it passes in front of this building.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** October 1, 2003

Taylor moved to approve the revised staff recommendation of conditional approval, with the amendments submitted by staff today and with the additional language submitted by Kalkowski (moved to Condition #3.5), seconded by Bills-Strand and carried 7-0: Bills-Strand, Carlson, Larson, Taylor, Marvin, Duvall and Steward voting 'yes'; Krieser absent.

**ANNEXATION NO. 97007**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. FOLSOM STREET AND W. VAN DORN STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** October 1, 2003

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

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

Ex Parte Communications: None.

Brian Will of Planning staff explained that he had asked for two-week delay to allow a revised legal description to be advertised and the revised map has now been distributed to the Planning Commission. The staff is still recommending a finding of conformance with the Comprehensive Plan. Other than the revised legal description, there are no changes to the staff report.

Marvin noted the calculation that the additional cost for a property valued at \$100,000 would be \$144 after annexation. The city mill levy is about .29, so he asked staff to explain the offsets. Will indicated that the only offset he is aware of is that the property owner would no longer be responsible for an assessment to the SW Rural Fire District.

Opposition

1. **Steve Larson**, past president of **Yankee Hill Neighborhood Association**, appeared on behalf of the Association in opposition. The neighborhood has submitted a petition signed by 70 households in opposition. Approximately 25-30 stood in the audience in opposition.

Larson stated that the neighbors did have an assessment done to determine the cost to hook up to the city water line. To bring the water in from the street, the cost will be \$900-\$1200, which must be paid up-front. The internal plumbing could be as much as \$400-\$600. The assessment will be \$1500-\$3000 for a standard lot, not taking into account that many of these lots are very large. There are also inspection fees, bringing the costs to a total of \$2800-\$4800 to hook up to the water. Larson pointed out that this is in an area where the income is 20% lower than the average in the city.

Larson does not understand how the proposed boundaries for the annexation make any sense. The staff says they need to follow the sewer line. That may be clear to someone on paper, but if you visit the neighborhood, it actually makes no sense. The boundaries quit in the middle of some streets and in the middle of the neighborhood. As you look at the map, is one part of the street going to have snow removal by the city and the other part by the county? Where does the gravel end? What about the Rural Fire District? Larson suggested that simply following the sewer line ignores the practical implications. If we are going to annex a neighborhood, then either do the whole contiguous neighborhood or don't do it at all.

In looking beyond this particular annexation, Larson inquired whether there will be more annexation in the area in the future. The property owners are told that the lay of the land mitigates sewer so there is likely to be no city service south of W. Pioneers. How does that fit into the Comprehensive Plan that calls for rapid growth in the area? How is this in the best interests of the city and the neighborhood? The Governor has announced a study to determine whether the Regional Center should be closed. Shouldn't there be a guarantee that the Regional Center will not be closed before forcing these residents to hook to the city water? The gerrymandering this represents creates a situation of "have and have nots". Currently, with the present services, this neighborhood's needs are being met. Much of the area being annexed is not taxable and almost all of the homes are 45-100 years old, so there is not a lot of new tax revenue available. Larson encouraged that the Commission reconsider the Planning Department's recommendation to follow the old sewer line in annexing this area.

**2. Virgil Meints**, 4020 S. Folsom, appeared on behalf of the **SW Rural Fire District** in opposition. About 5 years ago, there was an annexation that went out West O that included Shoemakers and Crete Carrier. The SW Rural Fire District has yet to receive anything back from that annexation, even though the Fire District has some bond indebtedness. There is a rule and regulation on file with the state that it is necessary for the City to take care of those items whenever there is an annexation. A couple years ago they annexed the part of South 14<sup>th</sup> down past Lincoln Memorial Cemetery. The SW Rural Fire District has received nothing out of that annexation to help on the indebtedness, either. This proposed annexation is going to take the bulk of the population serviced by the SW Rural Fire District and will take the biggest part of their income away. He is afraid the Fire District will not be reimbursed for the bond indebtedness. This annexation will be a big financial burden on the SW Rural Fire District.

**3. William C. Aycock**, 634 W. Calvert, is opposed to the cost of putting his property in the city. There are three houses on this dead-end street. Accordingly to the rough calculations, just to put the sewer line in front of his house would cost \$10,000, and it would cost the same amount for the water. He does not believe being in the city and the privilege of paying \$144 extra city taxes will increase the value of his home. Because his house is on the low side of the street, after he gets the sewer there, he has to have a lift pump installed in his home. The two corner houses have long lots and only about 50' of the sewer line would be in front of his house but they estimate 200' to put it down there, so he is paying for 150' that is coming down the sidewalk.

Staff questions

Larson inquired whether all of the properties adjacent to this proposed annexation are in the city limits. Will showed the map and stated that there are adjacent properties that are not in the city limits.

Marvin asked whether property owners with well water would be forced to hook up to city water. Dennis Bartels of Public Works advised that according to the Health Department regulations, a property owner does not have to hook up to city water if they have a well. He believes there is an annual testing requirement, but as long as it meets Health Department regulations, they are allowed to keep their well. With regard to sanitary sewer, however, if the property is within 300' of the city sanitary sewer and it is available and fronts the lot, the Lincoln Municipal Code would allow the Health Department to order the property owner to hook up to the city sanitary sewer. If additional sewer and water lines are built, even though not required to take the water service, the City Council could create an assessment district to build a water main and the property owners may be assessed for the main that provides potential service, but they would not necessarily have to hook to the city water main.

Upon further discussion, Bartels agreed that Mr. Aycock would not be required to hook up to the sewer or water based on the grade elevations.

Marvin inquired whether the water has been tested. Bartels indicated that over time that has been part of the problem. But he does not know if the existing wells have been tested. Bills-Strand wondered whether they would be allowed to do reverse osmosis or something to make the well water safe for consumption without being forced to hook to the city water. Would they be given the same options they have now? Bartels would assume that to be true but he did not know whether that was Health Department regulations.

Doug Smith of the City-County Health Department stated that existing wells would be allowed to exist. There is a biannual well permit of \$100. The Health Department has done some well sampling on loan approval applications and there have been no problems with nitrate or bacteria in the area at this point in time.

Larson asked whether the opportunity to not connect to the city water would carry over to a new property owner. Smith advised that new ownership should not make a difference.

Bills-Strand is concerned about how the assessments and charges would be paid. Bartels explained that if the sewer and water mains are built by assessment district, the assessment district would be paid back over a 20-year assessment period. The impact fee, the permit fee and what is required to be paid to the plumber is private and would be required at the time of application. Anything beyond the city main is an up-front cost.

Carlson inquired as to how many of the units proposed to be annexed are served by the existing sewer. Bartels did not know. Will thinks there may be 5-10 exceptions, but virtually all of those properties within the annexation boundary are served by the existing sewer. Carlson assumed that they would not have additional sewer charges if they are already on the system. Bartels concurred that if they are already on the sewer, they are already paying the sewer service and there would be no additional cost. Virtually all of the housing within this annexation is already on the sewer. Carlson inquired as to how the property owners are billed for the existing sewer if there is no water. Bartels stated that the Public Works Department makes an estimate of a typical use.

Carlson also pointed out that the Regional Center currently serves some of the housing with its well field. How will they get water if the field is abandoned? Bartels suggested that they could dig a well if the groundwater is available. To serve the Regional Center, the city anticipates building a main in Folsom Street that will front some of the lots. They could use what is in front of their lot or they will have to request a water district from the city. There are 15 lots being served by the Regional Center. And Carlson believes those lots will need to do something if they are not annexed. Carlson is sensing that the sewer is less an issue than the water and the fire bond.

Rick Peo of the City Law Department advised that state law does require that when the City annexes into a rural fire district, the city must do some type of settlement of sharing of the assets and liabilities. Typically, we try to do an assessment of the total assessed value of the area and the property being annexed, look at the debts and liabilities and adjust that accordingly. It is to be worked out voluntarily and then approved by the District Court. If the parties cannot agree, they would ask the Court to resolve any differences. Peo recognizes that the city needs to work these out more efficiently, and State law does provide for that to happen.

Steward inquired as to who is responsible for collecting the data to make such a settlement. Peo acknowledged that to be an issue that is not defined so both parties need to work together.

Bills-Strand clarified that what is before the Commission today is whether or not the proposal complies with the Comprehensive Plan, regardless of anything else. Peo concurred.

Carlson wondered whether it is possible to satisfy the needs of the Regional Center and the 14 property owners short of annexing the remaining balance. Will stated that the annexation boundary can be drawn to only include the Regional Center or to include it and the 14 properties. The boundary recommended by the staff is based on the availability of services. The boundaries can be changed. This is the staff recommendation.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 1, 2003

Duvall moved to find the annexation of the Regional Center site only to be in conformance with the Comprehensive Plan, seconded by Bills-Strand for discussion purposes.

Larson believes this will leave “some of these other folks hanging out there”. He does not know that decreasing the boundaries will do anything to lessen that.

Duvall is comfortable with the way things are – this is an area that has been left alone for a long time. The only real benefit has been the Regional Center. The residents around the Regional Center site got caught up in this. He does not think they need to be involved. Bills-Strand believes the reality is that the properties will eventually be annexed. Her urging would be that if it is not passed today, the property owners need to work with the city to work things out in the future so that it does not negatively impact the value of their homes in terms of having this “hang over you”.

Larson believes that only annexing the Regional Center is going to leave the rest in limbo, and they are going to be annexed sometime. It’s going to leave a lot of uncertainty. Even though there will be quite a bit of impact on those homeowners, he thinks it best to do it all now.

Steward stated that he will support the motion to annex only the Regional Center site. This is a highly unusual area in terms of both actual use and the Comprehensive Plan. The demonstration of not wanting to be annexed or to have a change to their infrastructure system is dramatic for the number of homes and residences out there and he is personally impressed by the need to work with this neighborhood to be sure that the impact is as small as possible. He believes we have a responsibility in the adjacent areas and according to the Comprehensive Plan, to be sure that all of the residents of this area know that this is a future expansion direction of the City, and yet they need time and the opportunity for involvement for that impact to be lessened when it does happen. By taking this limited action, we may create a bigger problem between the city and the state, but his concern is that we don’t get the residents caught in the middle.

Larson inquired as to what will happen to the 14 households that are getting water from the Regional Center if only the Regional Center site is annexed. Bills-Strand commented that it is expensive to drill a well and she would hope that something could be worked out. The home owners are caught in the middle, but the city is growing and the Comprehensive Plan calls for it to grow southwest.

Carlson suggested that if the Planning Commission recommends that only the Regional Center site be annexed, that would give notice to the property owners to get involved before this goes to the City Council. The Regional Center needs to happen. Bills-Strand does not want to force people to dig wells.

Motion to find the annexation of the "Regional Center site only" to be in conformance with the Comprehensive Plan carried 7-0: Bills-Strand, Carlson, Larson, Taylor, Marvin, Duvall and Steward voting 'yes'; Krieser absent.

Steward suggested to the audience that between now and the time when this is scheduled on the City Council agenda, the property owners may wish to reconsider their wishes in terms of testimony before the City Council.

This annexation will be introduced to the City Council on October 13th, with public hearing scheduled for October 20<sup>th</sup>, at 1:30 p.m.

**ITEMS NOT ON THE AGENDA:**

October 1, 2003

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

Marvin Krout, Director of Planning, addressed the Commission at this time. Referring to the Yankee Hill annexation proposal, Krout suggested that anytime the Commission has an acreage development area (and the Yankee Hill area would qualify) there are going to be problems like this. He believes the Commission has been lucky that they have not had to face annexation of acreage owners who don't want to be annexed because they don't want to pay the extra taxes and convert. There are currently three studies being discussed with the City Council and County Board. We are not sure where the elected officials will want to go with the studies yet, but the staff will be briefing the Planning Commission in a few weeks. As we think about build-through standards, our consultant has done the best he can to anticipate these kinds of problems. When you are in a growth area, the fewer impediments that you have, the better off you are.

Bills-Strand inquired whether there is any mechanism to not require that all of the cost of annexation be paid up-front. Krout believes that some communities offer assistance or deferral for low income. Dennis Bartels of Public Works advised that the only program the city has is on street paving. Urban Development has some funds that can be contributed to lower income for street assessments. The City does not have a program for sewer or water assessments.

Krout went on to state that when the Commission is briefed on build-through, we are talking about some mechanisms that might be built in that would create an escrow that would be available, or we are suggesting that the developer of the outlot adjacent to the CUP acreage lots should be a part of the CUP to help pay some of the costs of the acreage owners.

Bills-Strand would like the City Council to be advised that the Planning Commission would strongly urge that they look into deferred payment on sewer and water.

Larson thinks there will be a lot more annexation questions that will come up in the future. Larson does not have a map showing the city limits and he does not have the annexation policy. Larson inquired whether the city has plans for where to annex, or whether it is development driven. Krout referred to Tiers I, II and III of the Comprehensive Plan, which indicate where the city intends to expand its water and sewer services, and that is the general plan for annexation. The Yankee Hill area falls in Tier I.

Steward believes that the Yankee Hill area is significantly different than other acreages for two reasons: 1) the lots cannot be subdivided. Therefore there is little or no other property value to offset the expense; and 2) the acreage study that we already have indicates that the average home price of acreages is about \$230,000, so the leverage of differential in opportunity is what we are struggling with. Krout stated that he understands the struggle.

There being no further business, the meeting was adjourned at 2:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 15, 2003.