MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, October 15, 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, Steve Henrichsen, Mike DeKalb, 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 October 1, 2003. Motion for approval made by Marvin, seconded by Taylor and carried 6-0: Carlson, Duvall, Marvin, Steward, Bills-Strand and Taylor voting 'yes'; Krieser abstained; Larson absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: October 15, 2003

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3422 and CITY/COUNTY FINAL PLAT NO. 03016, VIEW POINTE NORTH.**

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

SPECIAL PERMIT NO. 2038
FOR A SALVAGE YARD OPERATION
ON PROPERTY LOCATED AT
1646 S. 3RD STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 15, 2003

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted a revised staff report adding Condition #3.8 at the request of Building & Safety.

> 3.8 The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive, or could be injurious to human, animal or plant life, is prohibited."

This is language found in the zoning ordinance dealing with the floodplain.

Proponents

1. Mark Hunzeker appeared on behalf of the applicant, **Britt Baer**. Mr. Baer has been in business at this location since 1974. His operation has not changed significantly in that period of time. Only recently has he been asked by Building & Safety to seek a special permit for this use. His primary business has been, and still is, acquiring vehicles which have been damaged and similar vehicles which have damage other than that on the vehicle initially acquired to repair and resell the vehicle. He has not thought himself to be in the salvage business; however, a complaint has been lodged and action taken by the City Attorney to require him to cease operation absent the special permit.

Hunzeker believes there is a very plausible and strong argument that could be made that this applicant is not in violation but is, in fact, a legal nonconforming use; however, Mr. Baer is attempting to take the path that is less expensive and less trouble. There are no waivers being requested. The applicant agrees to comply with the conditions of approval, including the new Condition #3.8.

Steward noticed on the site map that the application property is split by 3rd Street. Steward inquired whether the applicant distinguishes uses between those two sites. Hunzeker stated that the use on the east side has been temporary parking of vehicles and/or storage of materials, which Mr. Baer has from time to time, upon request, sold to the public. The property on the west side is where all of the dismantling of vehicles takes place indoors,

and the vehicles, after repair, are displayed for sale. The property on the east side is screened by a fence which does not meet the design standards, which will have to be changed. Hunzeker believes it would be found to be a very neat operation and not one creating an eyesore. Hunzeker pointed out that there are 13 letters in support from area businesses.

Steward inquired as to the use of the property to the south on the west side of 3rd Street. Hunzeker reported it to be an automotive related business but he did not know whether there is any salvage business taking place there.

2. Bob Stephens, a neighbor to this operation, testified in support. The area is zoned industrial and he believes the applicant is using the property within those constraints. It is exactly the kind of business that he would like to see located there and the type of business he would like to have as a neighbor to his construction business.

Opposition

1. Danny Walker, 427 E Street, testified as representative of the South Salt Creek Community Organization in opposition. From the information he has gathered, he believes this is an illegal operation. The salvage facility was never approved. Within the contents of the proposal, it is stated that tie-downs will be utilized the same as they are in the city tow lot. The city tow lot handles between 400-600 vehicles per day. There is a grand total of 18-20 tie-downs in that city tow lot, regardless of the fact that the city promised the City Council that there would be tie-downs for every vehicle in that city tow lot. There are huge recreational facilities directly south of this area. The road is closed off–it is a non-maintenance road. The city wants to close the road, and now it is dirt with rock being put in by one of the businesses located in the area.

Walker referred to page 4 of the staff report, Analysis #7, regarding potential for water contamination, where it states that the City does not have any restrictions for this type of use in the floodplain. Walker suggested that the floodplain regulations require that the storage or processing of materials that are buoyant, flammable, explosive or could be injurious is prohibited. This is in the city's own floodplain regulations. Yes, there are businesses in there but some of them are no more than a glorified junk yard. This area is not that far from residential properties–about 3 blocks–and this should be taken into consideration. He does not believe this business should have been located in the floodplain in the first place, legal or illegal. The Commission needs to consider what will happen if there is a serious flood. There is a vehicle being salvaged in that area right now. If they don't have tie-downs they have to be out of there in a certain amount of time, but Walker contends that it is flash flooding that will cause major flood damage.

Response by the Applicant

Hunzeker stated that there is no salvage taking place on the east side of the road. There is a car there today with its hood up, but there are no parts being removed or salvage operation taking place on that property. There is storage of vehicles which will be salvaged, or parts thereof, for reconstruction of vehicles on the west side, but those parts would be removed indoors and removed from the property.

With respect to hazardous materials and buoyant materials, Hunzeker suggested that the new Condition #3.8 addresses the section of the ordinance that Mr. Walker was quoting. This property is in the floodplain today, but was not in 1974 when Mr. Baer commenced his operation. Mr. Baer has correspondence with Building & Safety in his files relative to his business that goes back at least as far as 1986 indicating that Building & Safety was aware of the location of this operation. Until recently, this applicant did not realize there was a legal problem with the use. This application is an attempt to address the concerns of Building & Safety and to bring this operation into compliance. The floodplain in this area is really backwater and storage–it is not channel and fast-moving water; however, the applicant has agreed to a condition which will require tie-downs for vehicles stored on the east side. The fence will be brought into compliance and the applicant has no objection to the conditions of approval.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 15, 2003

Marvin moved to approve the staff recommendation of conditional approval, as amended, adding Condition #3.8, seconded by Bills-Strand and carried 7-0: Duvall, Carlson, Bills-Strand, Taylor, Marvin, Krieser and Steward voting 'yes'; Larson absent.

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

SPECIAL PERMIT NO. 1423-I,
AN AMENDMENT TO THE HIMARK ESTATES
COMMUNITY UNIT PLAN, ON PROPERTY
GENERALLY LOCATED AT 84TH & OLD CHENEY ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: October 15, 2003

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

Staff recommendation: Conditional approval, as revised on September 29 and October 1, 2003.

Ex Parte Communications: None.

Proponents

1. Mark Hunzeker appeared on behalf of **Guy Lammle,** the applicant. The apartment complex plan previously approved for the area near the intersection of 84th & Old Cheney Road included 272 dwelling units, with access onto Old Cheney Road in two locations, a substantial amount of fill in the areas identified as being within the 100 year storm elevation, and a number of large buildings along 88th Street and behind the single family units along 88th Street. This amendment to the plan is to place townhomes in the area previously identified for the apartments by bringing a private street off of 88th Street and wrapping it around to the west and north. Mr. Lammle resides in HiMark and he was previously involved in this property with other partners and was not particularly enamored with the apartment plan. Lammle believes that this change will be positive for the neighborhood in terms of traffic because of the requirement imposed on the original plan that there be an easement for an access retained out to 88th Street for the eventual widening of Old Cheney Road, placing a median in front of the entrance and providing for access to 88th for those turning east on Old Cheney Road. The concern was that that would drain traffic out onto 88th Street that otherwise might have gone a different direction. Lammle believes the new plan will be a much improved plan for the area.

Hunzeker pointed out that this proposal re-routes (not reconstructs) one existing golf hole. They are building a new golf hole near the creek which will provide for a better golf hole and keep it away from the single family homes. This will be an improvement to the golf course and the neighborhood in general. A neighborhood meeting was held and everyone who attended expressed support for this plan. They are not aware of any direct opposition. There have been some concerns with respect to visibility of the golf course, but no one has expressed direct opposition to this plan. This plan will enhance and continue the high value and attractiveness of this neighborhood.

Marvin asked for an explanation of the history of the HiMark development because this is the third amendment the Commission has seen in the last few meetings. Hunzeker advised that the original HiMark community unit plan for this area showed an open lot in this area (an outlot) which was designated for around 220-230 multi-family dwelling units. The single family part of the project proceeded ahead now for several years and is nearing buildout. The plan that came in two years ago to do the multi-family complex actually expanded the size of the area for the multi-family by bringing in some additional land and it was ultimately approved for 272 dwelling units. With respect to the areas to the east, Hunzeker stated that as that project has evolved there has been interest of developers and/or builders who wanted to do something a little different. The project on the east side of 91st wanted to do something more along the lines of new urbanism with the smaller footprint with the porches on the front and the private roadways–still single family. The area to the west of 91st Street, owned by a different owner which was also approved, is an area that was a parcel originally retained by the original owner of a substantial portion of HiMark, Ray Snyder, who had a single family home on that lot for years and years, and still does. His widow still lives at that location. The replatting of that area has been in the long term plans but there had

never been a particular site plan designed because there had not been an intent to redevelop that until Mrs. Snyder was no longer interested in living there. Now, Mrs. Snyder is ready to do the development and that is the reason for that change. Hunzeker does not believe there have been a lot of significant changes.

With regard to the original configuration versus the current configuration, Carlson noted that the staff report does a good job of analyzing and recommending based on the planning principles with regard to transportation, urban density, etc. Which one of these layouts is better for economic development–the existing or proposed? Hunzeker suggested that that depends a lot on how you value the golf course. Mr. Lammle thinks they are about equivalent. The improvement to the golf course is something that is important. The short nine that was added a few years ago is a little bit short and this will improve that and lengthen those nine holes and work into the long term plans. There is a portion of the golf course that abuts Pioneers Boulevard, and in the very long term, when there is sewer available, some of that property may be developed as residential. It may be that there could be some additional housing in this project in 10-15-20 years, and it may become an 18 hole golf course (now 27).

Carlson wondered whether it is assumed that this townhome configuration better facilitates that potential. Hunzeker concurred. He thinks it is something that only the owner and his long term planning can evaluate and it is the owner's judgment that this is a better project for the neighborhood and is probably about a wash economically for him.

Taylor inquired about the staff's recommendation to deny the waiver of major street width. Hunzeker stated that he did not comment because he did not think it would be successful based on previous action by the Commission recently. This applicant is not enamored with dedicating additional land in that there has been dedication along 84th and Old Cheney with the original plat, but Hunzeker was also here two weeks ago when two similar waivers were denied, so he chose not to raise the issue.

Opposition

1. Marilyn Bernthal, 7611 Wren Court, testified in opposition. She purchased a lot at 5251 Troon about a month ago with no knowledge that this was going to happen. It was her understanding that they had purchased a golf course lot and paid the price for it. They were not invited to the neighborhood meeting, probably because of the change in ownership. Now she is going to have townhomes behind her lot. The Commission needs to consider the view that will now go from a pretty green with trees and a pond to townhomes.

Response by the Applicant

Hunzeker noted that the developer has had extensive discussions with staff about grading plans and the bike path. He then requested amendments to the conditions of approval

which have been agreed upon. He requested that Condition #1.6 and Condition #1.8 be deleted, and that language be added to Condition #1.17:

> Prior to construction of the golf course holes in this area, provide final design and locations for the golf holes and bike trail and trail protection measures for approval of the Public Works & Utilities and Parks and Recreation Departments.

The applicant had proposed the bike path to come along 84th Street--coming under 84th, and then traversing along Old Cheney Road where it then eventually crosses under Old Cheney. There were concerns by Parks and Recreation as to the proximity of the bike trail to the golf course and protection of people on the trail. Hunzeker believes that they are very close to reaching an agreement with Parks on how to deal with that. We think there are enough trees behind the green to protect the trail. Where it goes underneath Old Cheney there will likely have to be some sort of fence constructed because the trees are likely not to survive the widening of Old Cheney Road.

The applicant has also had discussions with Public Works relative to the grading along the stream channel. A plan for the grading and the protection of the stream corridor as well as a plan for protection of the bike trail must be submitted and be approved before this application is scheduled on the City Council agenda.

With regard to the testimony in opposition, Hunzeker pointed out that the cul-de-sac was kept short so that "this area of the open space and golf course" remains open. The townhomes will not be butted up to the lots on Troon Drive. The existing tee box will be maintained as well as the cart path for use by the maintenance people and the beverage cart. Hunzeker believes there is 50-75 feet of green space between the lot lines and the back lot line (not the house) which will keep that open and available in terms of golf course view and golf course frontage.

Staff questions

Steward requested staff response to the proposed amendments. Czaplewski indicated that staff agrees with the changes proposed by Hunzeker.

Marvin asked staff to discuss the change in density issue. In dealing with the change of 272 multi-family units to 31 single family units, Czaplewski stated that part of the staff analysis is that it would be the staff's preference to locate the multi-family near commercial centers with concentration of uses, people and transit. The apartments were approved previously, but this change to single family preserves a lot of the existing environmental features. Marvin noted that the density is dropping drastically, including the two previous amendments.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: October 15, 2003

Taylor moved to approve the revised staff recommendation of conditional approval, with the amendments as requested by the applicant, seconded by Krieser.

Bills-Strand expressed her hope that Mr. Lammle will work with the people that just bought the lot thinking they were purchasing a lot on the golf course.

Marvin commented that the new mandate of the Planning Commission is to concern themselves with economic development, and density then becomes a factor. He is hopeful that people would back away from that and let people do what is within the range of options available on their own land. We have to think about the loss of the number of people that would be living there. Bottom line, when he thinks of 270 apartment dwellers, he thinks of a huge number of people that could go to a Blockbuster or Applebee's, and switching that to 31 townhome units could have an impact on economic development. He does not want economic development to be placed so high on the list of things that the Commission needs to focus upon.

Steward believes there are reasons to discuss densities other than economic development, i.e. compact use of the infrastructure. The notion that we approve a golf course project and then steadily allow it to decrease in density is not an especially good strategy. Perhaps one of the reasons it might have been approved in the beginning was the high densities that were being projected. However, in this particular case, it seems that we have a pattern that is most dominated in larger lot, single family residences, and that maybe the apartment block was out of place to begin with in terms of higher traffic densities, etc. All in all, it seems that this is at the end of the project and we are supporting a project that has been underway for a number of years. In terms of living quality, with the nature of the project that it was to begin with, this is a better solution. On a broader philosophical point, Steward believes that Marvin raises a valid question.

Taylor stated that he is excited about the recent changes to the project. He is also hopeful that the developer will work with the opposition. He does not believe it is something that the Commission can handle here.

Carlson commented that he has certainly supported decrease in potential densities in existing neighborhoods to match the neighborhood character, so he will support it here as well.

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

ITEMS NOT ON THE AGENDA: October 15, 2003

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

Bills-Strand distributed an article on smart growth and affordable housing from the National Association of Realtors. She asked whether there is a report from the committee that is supposed to be looking at the zoning issue and protection of older neighborhoods from multi-family, yet still allowing for changes. Marvin Krout, the Director of Planning, advised that the City Council approved the Witherbee neighborhood downzone and there was no discussion about setting up a committee to discuss other options and other ways to encourage mix of housing types in neighborhoods. There is an Antelope Valley study going on and maybe out of that study there will be some discussion of those kinds of concepts. The City Council has not directed that another committee be established.

Steward appreciates having this publication and encouraged the Commissioners to spend some time with it. It comes from the National Association of Realtors and is a thorough inquiry into some real definitions of "Smart Growth".

BRIEFING BY STAFF
PROPOSED AMENDMENTS TO THE IMPACT FEE ORDINANCE, INCLUDING ECONOMIC DEVELOPMENT CRITERIA FOR REDUCTION OF IMPACT FEES. October 15, 2003

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

Steve Henrichsen and Darl Naumann overviewed the amendments being proposed. The public hearing on these items is scheduled for October 29th. The proposed text amendments cover items that were originally envisioned in the impact fee ordinance that was adopted last January. What is being brought forward is the criteria that is mentioned in the ordinance. In addition, there are a few "house-keeping" amendments proposed as a result of having had the opportunity to work with the ordinance.

Darl Naumann then explained the criteria for economic development that is being proposed. It is performance based – job creation and investment. If you do not create the jobs and if you do not do the investment, you do not get a credit. The Employment Investment Growth Act is used as a model for the criteria submitted. If you invest three million dollars and create thirty jobs, you would be entitled in a fifty percent reduction in the arterial street impact fee. If you create 100 jobs and 10 million dollars in investments, you would be entitled to 100% credit. If you do not create the jobs and the investment, you are entitled to no credits or refunds of any impact fee. This is based on "qualified" companies out of the Nebraska Investment Growth Act and relates to "primary" jobs in research and development, data processing, telecommunications, insurance, financial, manufacturing,

headquarters and agriculture. Naumann pointed out that this works very nicely with our targeted industries identified through the Angelou Study – bio-tech, customer support, specialty electronics and warehousing, and value-added agriculture. It ties in very closely with the primary jobs that we have listed on the investment and job creation. This is easy to administer. All of the businesses who qualify have to submit documents to the Department of Revenue under the Employment & Investment Growth Act. We will use a lot of the documents that are submitted to the Department of Revenue as our backup for a lot of the impact fee reductions. All of the criteria is performance based.

Steve Henrichsen advised that the ordinance currently says the City Council would reduce impact fees by a super-majority vote. We are proposing that this criteria is very specific and we would revise that section to being an administrative action of the administrator who checks off that the criteria and thresholds have been met for three consecutive years. There is no interest earned on the money.

Steward inquired whether there is a direct connection to meeting the state criteria and meeting the city criteria. Naumann responded, stating that you have to create the jobs and do the investment, and this is measured through the state criteria. If you do not meet it at the state level, you would not meet it for the city.

Duvall noted that if you qualify for LB775, your state taxes are raised and your impact fees are reduced. You are not looking at retail or fast-food. Naumann concurred. We look at primary business job creation, providing wages and high paying industries. We have built in an average wage of $12.99/hour for the qualifying businesses. Duvall believes this is a higher standard for wages than the state. He wonders whether it can be monitored. Naumann indicated that it can be monitored because the wage information is provided by the Dept. of Labor under their annual tables.

Marvin wondered whether there was any thought to creating another tier where you hire 20-30 people with a higher wage. Naumann stated that the City is not proposing anything different than what was required under the state criteria. There has been a lot of talk about revising the state criteria and if that is revised we can certainly review this again.

Steve Henrichsen then explained and discussed the other “clarifying” amendments as set forth on Exhibit “A” attached hereto and made a part hereof by reference.

Marvin inquired about the traffic signals. When the one signal goes in which is paid by impact fees, then who pays for each additional signal? Henrichsen suggested that it depends on the circumstances, but, in general, at quarter mile points, there may be commercial access if the signal is warranted.

Steward suggested that there is some language needed to acknowledge that there are other means for paying for necessary public safety conditions or additional traffic lights. Our requirement for traffic studies pretty much ties the developer in the immediate situation, but then we need to acknowledge that there are other means to get that paid for.
Steward presumes there has been no impact on the existing ordinance by the legal action now pending. Rick Peo of the City Law Department advised that the lawsuit challenging impact fees is still going forward. Both sides have filed motions for summary judgment, which are scheduled for hearing in January, 2004.

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 October 29, 2003.

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EXHIBIT "A"
Impact Fee Amendments
Overview
Draft of October 6, 2003

Economic Development

- Establish a new criteria based on Nebraska Dept. of Economic Development criteria. Using the same criteria simplifies the process for firms looking at both state and local incentives.

- Impact fees are paid by company. After three consecutive years of job creation, the arterial street impact fee would be repaid at:

  - 50% for 30 jobs created and $3 million in investment in building /equipment or

  - 100% for 100 jobs created and $10 million investment

- Clarify that reduction in impact fees is for economic development only. Once the City Council adopts the criteria, based on objective standards, then requests will be processed automatically rather than requiring multiple Council actions.

- In order to be qualify a corporation must be at or over the average wage paid by the employment categories eligible under the Investment Growth Act. Currently, this is $12.99 an hour.

Other Clarifying Amendments to Impact Fee Ordinance

- Clarify conflicting language regarding the grand fathering of building permit applications

- Clarify that administrative costs are deducted from impact fees and should not be an additional amount added to each fee

- Clarify conflicting language regarding streets that: 1) developers should continue to pay for sidewalks along arterial streets, instead of using arterial street impact fee funds to build sidewalks; 2) utility adjustments in street projects would not be paid from arterial street impact fees; and 3) clarify that developers should continue to pay for additional traffic signals, when warranted. These changes were based on recommendations by Mayors Infrastructure Finance Committee.

- Automatically add inflation, beginning in January 1, 2005, rather than by separate City Council action each time

- Amendment to facilitate reimbursement and processing of previously approved fee reductions for low and moderate income housing

- Eliminate out of date category exemption table and clarify processing of amendments to previous agreements granted exemptions

✔ Planning Commission public hearing tentatively for Wednesday, October 29th meeting.