

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, October 2, 2013, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Michael Cornelius, Tracy Corr, Chris Hove, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber; Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, Christy Eichorn, Paul Barnes, Brandon Garrett, Sara Hartzell, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jeanelle Lust called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Lust requested a motion approving the minutes for the regular meeting held September 4, 2013. Sunderman moved approval, seconded by Weber and carried 8-0: Beecham, Cornelius, Corr, Hove, Lust, Scheer, Sunderman and Weber voting 'yes'.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

October 2, 2013

Members present: Beecham, Cornelius, Corr, Hove, Lust, Scheer, Sunderman and Weber.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 05026C, CHANGE OF ZONE NO. 13017, CHANGE OF ZONE NO. 13021 and SPECIAL PERMIT NO. 13044.**

There were no ex parte communications disclosed.

Item No. 1., Change of Zone No. 05026C, was removed from the Consent Agenda due to comments received in opposition and scheduled for separate public hearing.

Cornelius moved approval of the remaining Consent Agenda, seconded by Beecham and carried 8-0: Beecham, Cornelius, Corr, Hove, Lust, Scheer, Sunderman and Weber voting 'yes'.

Note: This is final action on Special Permit No. 13044, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

**CHANGE OF ZONE NO. 05026C,
AN AMENDMENT TO THE
APPLE'S WAY PLANNED UNIT DEVELOPMENT,
REGARDING THE RESTRICTION ON DRIVE-THROUGH
RESTAURANTS, ON PROPERTY GENERALLY LOCATED
AT APPLES WAY AND HIGHWAY 2.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 2, 2013

Members present: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

This application was removed from the Consent Agenda due to comments received in opposition.

Staff presentation: **Brian Will of Planning staff** presented this proposed amendment to the Apple's Way PUD which was approved in 2005. At that time, there was discussion at the City Council about the PUD and it was at that time that the note in question was added to the PUD, i.e.:

NOTE #33: NO FAST FOOD RESTAURANTS WITH DRIVE-THROUGH ACCESS (EXCLUDING A COFFEE SHOP RETAILER) OR 24-HOUR OPERATION USES SHALL BE PERMITTED IN THE B-2 ZONING DISTRICT OF THIS PLANNED UNIT DEVELOPMENT.

The existing boundary is a larger area with two components: B-2 Commercial and R-1 Residential. Neither are fully built out today. The majority of the commercial is built out, but there is still some vacant property, and the R-1 is underway. The lot we are talking about today is within the commercial center (Lot 3, Block 3, Apples Way Addition). This building was originally constructed as a multi-tenant commercial bay with several commercial tenants. The eastern side was built with a drive-through, consistent with the note as approved to accommodate a drive-through window for a coffee shop.

Today's request is for a restaurant seeking to become a tenant of the commercial center and would like to use that drive-through facility; however by the nature of their use and operating characteristics of the restaurant (Dickey's Barbeque), they are considered fast food, so they would be in violation of the note as it exists. Therefore, the request is to strike that note from the PUD to allow them to be able to go into this space.

There are comments in opposition from the Country Meadows Home Owners Association. There is a neighborhood under development as part of Apple's Way and we do not have opposition from that neighborhood. There is a letter in support from a property owner in Apple's Way, provided that such provisions do not apply to the lots on the west side of Apple's Way.

Staff found that the way the commercial center is developed is consistent with the other B-2 centers across the city, functioning and operating so that there is no need for the restriction to exist. However, that was an accommodation made between the developers and the City Council pertaining to this particular PUD. The staff is recommending approval of this proposed amendment to delete Note #33.

Lust inquired whether the neighbors who initially negotiated the restriction are the same neighborhood in opposition to removing the note. Will answered that the neighbors in opposition are in Country Meadows.

Hove inquired if this amendment is for the entire PUD. Will explained that the amendment as proposed would affect the entire PUD. He suggested that there are other alternatives perhaps, but the applicant does not have a preference so long as they would be able to occupy that space. One option would be to limit the restriction such that it does not apply to certain lots, such as allowing the restriction, except for the lot in question.

Beecham assumed deleting the note entirely would also delete the prohibition of 24-hour operations.

Corr sought to clarify that the Artisan Meadows residential is the other part of Apple's Way. Will explained that the B-2 and R-1 are both part of the Apple's Way PUD. Artisan Meadows is part of the original PUD.

Lust inquired about the difference in the number of cars that one would expect from a coffee shop versus a restaurant. Will advised that when the building permit was originally approved, that drive-through facility was reviewed based on the design standards for a drive-through associated with a coffee shop. The stacking requirement is slightly different for a restaurant. If this were to be approved, they would still need to verify that there is adequate stacking. In discussions with Public Works and the applicant, Will believes there is, but they need to demonstrate such by means of an exhibit. The menu board has been removed but will be relocated on the site, and that is where we start counting the stacking.

Will did not know how long the space has been vacant.

Beecham inquired whether there was a speaker system as part of the menu board, and whether there will be a speaker system with this user. Will believes that the coffee shop did have a speaker system.

Proponents

1. Will Carter with Dickey's Barbeque Pit, 7200 Hickman Road, Hickman, NE 68372, testified as the applicant requesting that the drive-through be allowed at 6125 Apple's Way. It is a pre-existing drive-through that was used for a coffee shop. In other Dickey's locations, customers can come through the store, go through the line and take the food out with them. With the drive-through, they would not have to get out of the car. He does not believe it is much different than parking the car and going into the restaurant – it would be a convenience factor. For Dickey's restaurants as a whole, the drive-through is about 12 to 15 percent of their sales, so it is a small portion of the sales. One of the concerns of the residents was the amount of traffic, but he does not see that as a concern because the drive-through is not going to increase the volume of traffic – there might be a slight increase but not a significant amount.

Quoting from the letter in opposition from the County Meadows Home Owners Association:

Our concerns remain with traffic in general in this area, traffic seeking shortcuts through our neighborhood, lights, noise and additional trash blowing about the area.

Carter clarified that Dickey's is not putting up a three-story sign like McDonalds. The menu board for the coffee shop did have speakers. Dickey's will have speakers as well, but Dickey's is not adding any more noise. As far as more trash, Carter pointed out that the drive-through is more of a pick-up window. He does not believe people will try to eat ribs driving down the road. Dickey's has two other locations in Lincoln.

Lust asked whether Dickey's is considered traditional fast food. Carter suggested that it is classified as "fast-casual". They make the food in front of you. He confirmed that there are no drive-through windows at the other locations in Lincoln. The hours of operation are 11:00 a.m. to 9:00 p.m.

Hove assumed this applicant doesn't care about other locations in this neighborhood having a drive-through – just the drive-through for this business. Carter agreed. Carter also stated that Dickey's does not care about the restriction on 24-hour operations.

Support

1. Mark Hunzeker appeared on behalf of **Apple's Way, LLC**, the owner of the property, in support of their tenant's application. This building is an existing building with a drive-through window that served a coffee shop. Part of the issue is that there really is not a definition of "fast food". From his personal perspective, he would suggest that a working definition would be something where the items on the menu can be consumed while driving, and he does not believe that fits a barbeque establishment.

With respect to traffic, Hunzeker does not believe take-out is an issue. There will be the same number of cars coming and leaving the site whether they have to park in the parking lot or drive through the existing drive-through area. But it seems that logic would tell you that it takes a lot more latte sales than rib sales to make a business run. The number of cars that have historically been through that drive-through is probably greater than the number of cars that will pick up food at Dickey's.

Hunzeker noted that one of the comments talked about changes in signage. He stated that this applicant is not interested in changing the signage package. They would have no problem with the suggestion by the homeowner who lives the closest to this site, that this apply only to the west side of Apple's Way. There are a lot of commercial areas in the city like this that have much, much tighter interface between the commercial use and the residential.

Hunzeker also submitted that Country Meadows is now part of the city; there is a subdivision of 31 lots which has 20-plus homes now, which have all developed in that area between Country Meadows and this commercial area since 2005. Therefore, Hunzeker believes there is quite a bit of buffer already in place.

Lust observed that the note as it currently reads that is requested to be eliminated says “no fast-food restaurants with drive-through access...”. It does allow opportunity for another fast food restaurant if Dickey’s is not successful. Hunzeker agreed, but it is not what you would typically envision for a regional or national franchise because it sits so far off the highway with no real visibility for a true fast food restaurant. The building also does not set itself up for that. The space is smaller in general than what you see for the freestanding fast food restaurants. He does not believe it likely to get something like that in the event Dickey’s leaves this location. It is very hard to specify a particular tenant for these kinds of things. But when you look at the site plan, this site is several hundred feet to the nearest residential dwelling, and that is the person who wrote in support. It is not a site that is likely to cause a real problem.

Beecham asked Hunzeker to show the row of businesses between this area and the residential area. Hunzeker pointed out Cornhusker Bank, another commercial building, and Graham Tire, so there are businesses between Apple’s Way and the abutting residential. The vacant residential on the aerial photo is now 2/3 to 3/4 developed.

Lust asked how long the site has been vacant. Hunzeker did not know for sure but he believes it may have been 1.5 to 2 years.

Hove asked whether the owner is amenable to any other restrictions, such as the 24-hours. Hunzeker stated that if the tenant is okay with 9:00 p.m., the owner is okay. The owner also does not have a problem with limiting it to this building.

Opposition

1. Alan Christensen, 6617 Almira Lane, testified in opposition. He believes that deleting the note opens the door to a lot of things other than what this applicant wants. There was a restaurant in that location after the coffee shop which did not use the drive-through, and it has not been 1.5 or 2 years since it became vacant.

Christensen is a resident of Country Meadows, just east of Apple’s Way. He did not live in the neighborhood when the Home Depot was constructed, but he believes the city

promised no more big boxes. Then a few years ago, a developer constructed Lowes on the other side. The homeowners association was quite concerned about the impact on property values, quality of life and traffic being surrounded by big box stores. The attorney retained by Apple's Way to oppose the homeowners association was Tom Huston, who is a resident of Artisan Meadows and in support of this change. In return for the developer agreeing to these restrictions, Country Meadows dropped their opposition.

Because of the history of the zoning agreement, Christensen is firmly opposed to this change. Do promises made by the city mean anything, or are they just a method to get homeowners to give in on an issue? This Planning Commission has a chance to send a powerful message. You can send the message that negotiated settlements settle the matter and the city can be trusted. Or you can send the message that the promises of the City made yesterday are not honored today. Do you really want to damage the credibility of the City?

Cornelius was curious about how the distinction was drawn between the coffee shop with a drive-through and a fast food establishment. Christensen stated that it was negotiated between the homeowners association's lawyer, Mr. Hunzeker and Mr. Huston. Christensen was not sure about the definitions.

Hove wondered how this affects Christensen personally. Christensen's response was, "we walk there". If Dickey's opens and does not use the drive-through, he is sure he will walk there for dinner. Striking this note opens the door to a Burger King, etc., etc., and the nature of this discussion is about trust. Can we trust anything the City of Lincoln does, or is this going to be quietly changed later on by some powerful developer?

Christensen did not remember the hours of operation of the coffee shop.

Staff questions

Cornelius asked for an explanation of the difference between a fast food restaurant and a restaurant. Will suggested that in state statute, there is a definition of restaurant that talks about going into an establishment, sitting down, ordering, and eating off a plate. Beyond that, we have to look at how the food is prepared and how people are served. Dickey's food is prepared and can be made available rather quickly as opposed to sitting down and ordering. By definition, this would be considered fast food. They use a drive-through menu which is often typical of a fast food restaurant.

Lust suggested rather than eliminating the note, that some changes be made to the note. Is there a way to add a clause to the exception that any restaurant whose gross revenues from a drive-through are less than 10% would be allowed to have a drive-through? Will believes there are a number of options but that is not one of them. Those sorts of things are very difficult to enforce. Staff would be more supportive of something that is cleaner, more enforceable, like perhaps excepting this one lot from the restrictions. Will suggested that the restrictions could apply to the remainder of the development, with the exception of this lot (Lot 3). Therefore, Lot 3 could have fast food, provided that the hours of operation were something other than 24-hours a day. Lust wondered whether there is any argument to be made that Dickey's is not a fast food restaurant and therefore we do not need to eliminate this note. Will stated that staff did have that discussion and could not get there.

Beecham wondered whether a traffic count was performed in terms of how many cars pass through a drive-through. Will has not done this calculation, stating that to be extremely problematic with regard to enforcement. Beecham wondered whether the restriction on the one lot would go away if Dickey's does not survive at this location. Will answered, "no". This is a PUD, which is ultimately the most flexible zoning instrument we have. You can also restrict uses in a PUD. There is no separate special permit here with a PUD. We cannot just restrict or allow one specific user by zoning.

Sunderman noted that Hunzeker stated that he thought it unlikely that a fast food restaurant would go in there. If one did, does Planning staff feel there is enough buffering and street capacity to handle a fast food restaurant? Will reiterated that it is in a B-2 center on Highway 2, and it's not intensely developed. There is no issue in that regard because it looks, feels and functions like most any other B-2 center around the city that would allow this as a use by right in the B-2 district. The staff did not find any characteristics associated with this one that warranted this prohibition.

Beecham wondered what the thinking was when this agreement was put in place. Will believes that the language was agreed upon between the developer and the neighborhood and was added at the public hearing before the City Council. Will did not know any more specifics, but there was obviously a concern at the time.

Will suggested that this lot would be defined and legally described as Lot 3, Block 3, Apple's Way Addition. That is the lot for the location of this restaurant. The building, parking, and entrance driveway are all located on Lot 3, Block 3.

Beecham wondered whether it could have multiple drive-throughs if the tenant were to change. Will suggested that it would be difficult to do a drive-through facility somewhere else here. You have to accommodate stacking for the vehicles and it would take some sort of reworking of the site.

It was clarified who represents Apple's Way. Will stated that Mr. Hunzeker is representing Apple's Way on this application.

Scheer asked for the square footage of the building and the amount to be occupied by Dickey's. Will did not know the specific square footage but he suggested it would be approximately 1/4 to 1/3 of the building.

Response by the Applicant

Carter clarified that there was never any negotiated settlement between Apple's Way and Country Meadows Home Owners Association. The note was added at the request of a City Council member. The space for Dickey's is about 2200 sq. ft.; the total building is about 7,000 sq. ft.

ACTION BY PLANNING COMMISSION:

October 2, 2013

Corr made a motion to take out the coffee shop and put in the legal description of the specific lot upon which Dickey's is going to locate. Note #33 would read, "No fast food restaurant with drive-through access (excluding Lot 3, Block 3) or 24 hour operation uses....", seconded by Cornelius.

Beecham wanted it clarified that the 24-hour limitation would remain in place.

Cornelius indicated that he went back and forth on this decision. The application itself turns one of the precepts of the PUD on its head, and turns it into exactly what it didn't say. With regard to the language of the note, he believes it is confusing. What is a fast food restaurant? We never got a clear answer. The answer is not food you eat in the car. His answer is a fast food does not have table service. He resents the opposition telling him what he has to do here, i.e. support decisions that have been made in the past by the City. That is not entirely true. We have to take into account those decisions, but this decision today is a decision made by the city and the city mechanism was used to put that into power. For the reasons as stated and for the reasons, 1) that this is fairly distant from the neighborhood presenting the opposition with a fair amount of buffering between; 2) that it

will not be audible to the residents; and 3) that the coffee shop represents a greater number of trips and greater opportunity for trash than a fast food would represent, he will support the motion.

Corr believes it is very important that the city help businesses and neighborhoods work together and a compromise was found when this went to the City Council. She believes it is important to honor that. It is difficult for a neighborhood to have a voice when these kinds of things happen. But they were heard in this situation initially and we need to hold that. She is okay with excepting this particular lot from the restriction on a drive-through, and that appears to be the best way we can work around it at this point.

Lust agreed. The general restriction is still going to be there, and there had already been a drive-through use which probably generated more trips than this request. She believes this is a good compromise that supports the initial thought of why that note was there, and she respects the use of the existing drive-through by Dickey's.

Motion carried 8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'. This is a recommendation to the City Council.

**COMPREHENSIVE PLAN CONFORMANCE NO. 13007,
AN AMENDMENT TO THE ANTELOPE VALLEY REDEVELOPMENT PLAN
TO ADD THE "21ST AND N REDEVELOPMENT PROJECT:
THE EXCHANGE AT ANTELOPE VALLEY,
ON PROPERTY GENERALLY LOCATED AT
21ST AND N STREETS BETWEEN K STREET, N STREET,
SOUTH ANTELOPE VALLEY PARKWAY AND 23RD STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 2, 2013

Members present: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust.

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

There were no ex parte communications disclosed.

Staff presentation: **David Landis, Urban Development Director**, appeared as the applicant. This is an amendment to the existing Antelope Valley Redevelopment Plan, describing a project to move forward with a development agreement. Urban Development

is thinking of taking 5 acres of land, selling it to a developer, and having 52,000 sq. ft. of retail, including a 40,000 sq. ft. grocery store, and about 63-67 units of row housing and 28 units of apartments. We had hoped at one time to be able to increase the amount of land sold to include property owned by the NRD and Windstream, but Windstream does not want to part with their land. The developer, Hoppe Brothers, is proceeding with a PUD application. A street vacation is also anticipated as part of this project. This is consistent with a large number of the specifications in the Downtown Master Plan and the Comprehensive Plan.

The original boundaries have been amended to include the N Street Bike Path.

The redevelopment plan will spend the TIF money on the sale price of the land, the N Street bike path, moving the Parks and Recreation buildings to new locations, and cleaning up a gas spill that has occurred in the area.

Landis pointed out that when the community invested in Antelope Valley, we did it for flood purposes; we did it because there were 800 residences and 200 businesses in this area; and we also said it is important to unlock redevelopment in an area with almost no redevelopment. By adding this 30 million dollar project to the 60 million dollar Assurity project, there will be about 100 million dollars of investment in the Antelope Valley, which, over time, vindicates the planners' perspective of long term thinking into the future and adjusting the city to meet long term goals. This is an important chapter of what started as the Antelope Valley saga more than a decade ago.

Beecham wondered about the historic Parks building on the site. Landis stated that that building is not in this project area. It is a bath house associated with Muni Pool and the site of a historic incident with respect to race relations in the 1950's. It is an occupied building by Parks and will continue to be an occupied building. It will not be sold and it is not included in this project area.

Beecham wondered whether there are any other buildings with historic significance that are involved in this project. Landis did not know of any with historical significance and none with an architectural reason to exist. They are good storage and that's about it, and we can do better than that.

Support

1. **Tom Huston**, 233 S. 13th Street, Suite 1900, appeared on behalf of **Hoppe Brothers**, the redeveloper. The issue today is conformity of this project with the Comprehensive Plan. The staff report does a good job of describing all of the reasons it complies with the Comprehensive Plan. It is a new type of urban residential development that we have not seen to date, and he believes it will be well-accepted by the market place. The project does include the enticement of a grocery store downtown, which is so needed. The redevelopment agreement is being finalized. The developer will be back before the Planning Commission in about six weeks with the PUD showing more details and elevation drawings for this primarily residential development. This project is very consistent with the Comprehensive Plan.

Elliott School is to the northeast on the other side of the Antelope channel. Beecham encouraged the developer to meet with LPS in terms of traffic flow, drop-off and pick-up times. Huston stated that this project is walkable to Elliott School and part of the PUD will show a new trail to connect this site to the trail system.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

October 2, 2013

Cornelius moved to approve the staff recommendation of a finding of conformance with the Comprehensive Plan, seconded by Hove.

Cornelius believes this is a tremendous opportunity to create a project which exemplifies the principles created during the Comprehensive Plan process. It sounds like it will be a really nice place of benefit to the community and set an example of what we can do within the framework we have created in the Comprehensive Plan.

Lust commented that it is always great to see great redevelopment projects within the city core.

Corr believes this to be a great mixed-use development, creating housing and utilizing the land more efficiently. She is excited about having a grocery store in the downtown area and walkability will be an awesome improvement, too.

Motion for a finding of conformance with the Comprehensive Plan carried 8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'. This is a recommendation to the City Council.

** 5-minute break **

ANNEXATION NO. 13004,
CHANGE OF ZONE NO. 13020,
FROM AGR AGRICULTURAL RESIDENTIAL DISTRICT
TO R-4 RESIDENTIAL DISTRICT,
AND
SPECIAL PERMIT NO. 13043,
BROADMOOR ASHBROOK APARTMENTS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER
OF ASHBROOK DRIVE AND HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 2, 2013

Members present: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust.

Staff recommendation: Approval of the annexation and change of zone requests; and conditional approval of the community unit plan special permit.

Ex Parte Communications: Corr disclosed that she did have a conversation with a co-worker who lives in the Pine Lake development, Sandy Peters.

Staff presentation: **Brian Will of Planning staff** presented the proposal on the three related applications: annexation, change of zone and special permit. The property is located at Highway 2 and Ashbrook Drive. With regard to the annexation, the property in question is currently surrounded but still outside the corporate limits. This property needs to be annexed to facilitate the proposed development. To achieve the requested density of 220 apartment units, the change of zone is required from AGR to R-4. Will focused on the key issues with this proposal.

Will showed the site plan submitted by the applicant showing five apartment buildings, parking areas, and garages. One of the first issues discussed by staff with the applicant relates to access. The site plan shows a circular driveway with two access points off Ashbrook Drive. Ashbrook Drive does go north and there is a potential route up Old Cheney Road as well as street connections through Edenton Woods to Northshore Drive,

then continuing north and east to 84th Street. The issue related to access is whether the access shown is adequate, and in general terms, the more access points the better. To that end, there is a petition from the Pine Lake Association on today's agenda requesting to vacate the stub street, Pine Ridge Lane. When Pine Lake was originally approved, it had multiple stub connections to the edge of the development. In the broader context of reviewing these applications, staff is supportive of that vacation. This proposal does not accommodate making that connection, and it is not practical. Based on what is before us today, the staff is recommending approval. As an alternate connection in light of the street being vacated, staff had suggested that another connection could potentially be made through Eiger Drive. Staff was not suggesting a public street or private road, but a driveway would be adequate. That property is not controlled by this developer, but by Pine Lake Association. The staff report requires a condition of approval that this developer modify their site plan to show a driveway from their parking lot to the edge of the property so that some day a connection can be made. That connection comes down Eiger Drive and makes an important connection back out to 84th Street. It can be difficult making a left hand turn onto Highway 2 at Ashbrook Drive today. That connection is not in place; the easement has not been granted; but it is a condition of approval.

Will then addressed the issues pertaining to the Pine Lake dam, floodplain and dam breach area. There is floodplain to the north and the dam breach area, which are sensitive and need to be protected. The plan as shown shows minor encroachment into that and we have raised that issue and it will be need to be approved by the State.

In addition, there is some grading shown in the floodplain which will require a floodplain permit. There are multiple review comments from Public Works and those comments are included as conditions of approval in the staff report.

With regard to open space, Will explained that the northern 1/3 of the parcel is not being developed, so the floodplain and the dam breach area is not going to be developed and will remain as open space. The western strip along the dam on the western edge of Pine Lake is also open space. There is another outlot set aside as open space as well.

With regard to the issue of density, the question is whether R-3 or R-4 zoning is appropriate. Will pointed out that the community unit plan is by special permit, which is how apartments are allowed in the residential zoning; however, design standards specify the maximum amount of density that is allowed. Under R-3, the maximum of 110 dwelling units would be allowed. R-4 would allow 220 dwelling units, which is what is being requested today, maxing out the R-4 density. As staff looked at this location in the broader context,

it is a property adjacent to Highway 2, a major arterial. To the southeast is the Southeast Rural Fire station and then the Pine Lake Plaza office development; to the west we have the Berean Church; and then the townhomes and attached single family residential development to the north. While it may not be appropriate to locate the R-4 density in the middle of a consistently R-3 neighborhood, there are locations where staff believes it does make sense and this would be one of those cases. Based upon the land use pattern and based upon the proposed site plan with 1/3 of the site being unable to be developed and essentially open space, the staff is recommending approval of the annexation and change of zone to R-4, and conditional approval of the community unit plan special permit.

Lust asked staff to address the concerns about increased traffic. Will stated that staff does not view what is being proposed as rising to the level of significant. He thinks the applicant does have a specialist in traffic that has done some analysis and may be giving some testimony in that regard.

Hove inquired how the dam breach area is determined and whether it can change. Will stated that it is determined by the State of Nebraska Department of Natural Resources. **Jared Nelson of Public Works** stated that the dam breach area is delineated when the dam is built; it assumes a worst case scenario such as a rain storm event in excess of the 100-year storm; it could change if the conditions downstream were to change; it could also change if the conditions upstream of the dam changed such as raising the dam and it impounded more water. The State of Nebraska evaluates the dam breach areas on a case-by-case basis. Because this development was proposed just downstream of the dam, Public Works asked that the state agency review it and approve it.

Beecham inquired whether the density calculations of R-3 and R-4 are based on the entire site or just the developable portion. Will stated that it is calculated on the entire area of the site. Even though some of the property is not developable, all of the land is counted towards the density.

Corr wondered whether that is a standard. Will responded, "yes". This case is a little unique in the sense that it is a CUP only for apartments. Sometimes there is a mix of uses. There are two design standards that apply. One is the overall number of units you can have. If the developer is going to cluster the units and set aside some areas, they cannot cluster all 220 units into one acre. Overall there is a maximum density per acre. This proposal is at the maximum overall and what would be allowed in cluster density.

Proponents

1. **Tom Huston**, 233 S. 13th Street, Suite 1900, appeared on behalf of the applicant, **Broadmoor Development**. Broadmoor Development is based out of Omaha and develops multi-family properties primarily in Nebraska and Iowa, with three in Lincoln – Highpointe Apartments at 48th and Old Cheney; Old Cheney Apartments at 27th and Old Cheney, and Holmes Lake Apartments at 70th and Holmes Lake Drive.

The property that is the subject of this application is currently an irregular tract comprised of 15.88 acres. Huston's client has the property under contract. The developer has been in discussion with the Berean Church, which owns the 2.8 acre remnant directly west of this site, and Broadmoor owns the .2-acre site on the west side of Ashbrook Drive. These remnants were separated when the street was dedicated. This developer has an agreement with the Berean Church to exchange those remnants, with net increase to this developer of 2.6 acres. Huston suggested that this is not an issue of maximizing the density because if the developer controlled 18.4 acres, there would be over 250 apartments that could be built. The application is for 219 because that is the way the building is laid out.

Huston also submitted that Broadmoor has experience in this kind of product – it is non-subsidized rental opportunity that their experience in Lincoln indicates that more than 60% of the residents will be age 60 and over, consisting of retirees, empty nesters and young professionals. The developer had its first communication with the Pine Lake Association Board back in February before any design decisions were made. They then met with the general membership in April, and subsequently submitted this application to the City in July. As a result of those conversations with the neighbors, the developer came up with a variety of changes to try to address their concerns. For example, Pine Ridge Lane had originally been shown as a connecting street, and it was eliminated because of the potential traffic that would be generated going through the neighborhood. The city requires connectivity to neighborhoods, the connection to Pine Ridge Lane was eliminated and the developer is seeking a waiver of the city design standards for that purpose.

In addition, the side yard setback is required to be five feet. This developer has increased that to a 50 ft. no build zone and moved the properties to the west, resulting in moving the buildings down the hill, decreasing the visibility from Pine Lake and created a buffer/landscaping area with 100% landscape screen. A wrought iron fence was designed around the site in response to the neighborhood to impede any pedestrian trespassing.

The developer has also agreed to implement a “no dog” policy because of the concerns of the neighbors. The developer has also agreed to look at the possibility of some additional screening to the north in response to the neighborhood.

Huston stated that it is understood why the property should be annexed because it is an island. It is no longer rural; it is in the urban area and not appropriate for AGR zoning. The issue is the CUP and the density.

Huston suggested that the decisions on density are not made in a vacuum, but based upon sound land use principles in the Comprehensive Plan. The Comprehensive Plan also supports the land use in that it is adjacent to Highway 2 and is not conducive to single family development. Typically, multi-family is used to buffer single family between high intensity uses including roadways like Highway 2. The Comprehensive Plan identifies Highway 2 as a transportation enhancement corridor, which is an opportunity to increase density according to the Comprehensive Plan. This site is an infill development which has been identified as an opportunity at no cost to the city. The Comprehensive Plan focuses on the factors of higher efficient use of roadways and land.

Huston also pointed out that the parking on-site exceeds the city requirements; the street connection was moved at the request of the neighborhood; and the staff concluded that the R-4 zoning is appropriate based upon existing land use patterns.

Huston agreed that traffic is an important issue. He believes the site will work better once the intersection is signalized. The staff report indicates that this intersection will eventually be signalized. The CIP identifies this intersection for improvements in 2016. If this development is approved, the earliest construction would start in the spring of 2014, which is probably about an 18-month construction process through 2016 and 2017. Huston believes the timing will work. According to the impact fee schedule, this developer will be paying approximately \$440,000. A traffic signal at this intersection will probably cost \$150,000 to \$170,000. Thus, there will be plenty of impact fee revenue to pay for the signal.

Huston then submitted a motion to amend Condition #1.1.4 of the special permit which deals with the potential for a connection road through the outlot owned by Pine Lake Association. This is a way to make sure there is access for eastbound traffic to get to 84th Street without having to go onto Highway 2. It would not happen without cooperation and consent of the Pine Lake Association. The existing language in the staff report for

Condition #1.1.4 required construction of this driveway under any circumstances. The motion to amend puts a time frame on it. Huston believes that the staff is in agreement with this amendment:

~~1.1.4 Add a general note which states "Sidewalk and road extension of Pine Ridge Lane is waived provided that the developer is responsible for the construction of the driveway (with a sidewalk) to Eiger Drive once an access easement is obtained. However, the obligation to construct this improvement is contingent on the property being in open space use. If the property is approved for additional development, then the developer is not responsible for the improvement."~~

1.1.4 Add a general note which states, "Sidewalk and road extension of Pine Ridge Lane is waived provided that the Permittee is responsible for the construction of the driveway (with a sidewalk) to Eiger Drive if an access easement across Lot 42, Pine Lake Addition ("Lot 42") is obtained. If the owner of Lot 42 refuses to grant the access easement, the obligation to construct the driveway expires upon the 10th anniversary of this special permit. The obligation of the Permittee to construct this driveway is contingent upon Lot 42 being used as open space. If Lot 42 is approved for additional development, then the Permittee is only responsible for the construction of the driveway on the project site for which this CUP is approved.

Huston then submitted that by moving the buildings west, they are taking advantage of the height differential. Huston believes the existing trees are 20 feet tall. From an environmental perspective, the developer will not be building in the floodplain or floodway; two corners are in the dam breach impact zone but that is being worked out with the State. Huston also observed that the exchange with Berean Church will provide an additional 2.6 acres that will be subject to a conservation easement with the City. The reason for this negotiation with the Berean Church is to square the boundary lines, and it make sense to include that remnant within the conservation area for this development.

Hove asked about the fence. Huston stated that it would run the entire perimeter. They are trying to redirect pedestrians away from the lake out of concern for the neighbors. The 50' buffer is the entire span of the east border. There will be no construction activity in the wetlands or the tree stand. There will be no impact to the wetlands.

2. **Shane King**, Traffic Engineer with **Olsson Associates**, 1111 Lincoln Mall, shared trip generation numbers as follows:

220 units: 110 during am peak hour (20 enter and 90 leave)
 140 during pm peak hour (90 leave and 50 enter)

The general principles of circulating traffic show that people select the path they feel is safest and with the least delay. Under the current condition, it is more difficult to make a left turn from the minor leg during peak hours. At this location along Highway 2, those delays are reduced with a traffic signal. The peak hours vary intersection-to-intersection, typically 7:45 to 8:45 a.m. and 5:15 to 6:30 p.m.

Beecham asked how a traffic engineer comes up with that calculation. King advised that the Institute of Transportation Engineers has a trip generation manual which is used nationwide. The rates are set forth, identifying the land use, and then it uses a variable (in this case the number of units). Based on past data collection, it provides an average rate per dwelling unit. It also has a ratio for entering and exiting.

Sunderman wondered if King could guess how many trips will go north through the neighborhood. King suggested that to truly identify something like that would require more of an origin/destination study accomplished by polling some people. Given the constraint of certain movements on a minor leg, it is difficult to project.

Opposition

1. **Bill Austin**, 301 South 13th Street, Suite 400, appeared on behalf of the **Pine Lake Association**, along with Bill Janike, President of Pine Lake Association. Pine Lake Association is not opposed to the annexation of the 15.1 acres. Pine Lake Association is not opposed and understands that this tract will and should be developed in some form of urban density, but Pine Lake Association is opposed to the R-4 zoning coupled with the CUP that would allow this property to be shoe-horned in with some 220 dwelling units on 10 usable acres of the tract. While R-4 may be in conformance with the Comprehensive Plan, Austin posed the question: The Comprehensive Plan says that this property is supposed to be zoned to urban residential density. That can be anything from R-1 to R-8. What makes sense for this piece of property? It is incumbent upon the applicant to convince the Planning Commission that R-4 is appropriate for this property. Merely

because the developer wishes to maximize profits is not a reason to maximize density. Austin stated that he has not heard anything today that would convince him that R-4 is appropriate for this tract.

Austin went on to state that until about 10 years ago, the Pine Lake area directly to the east was a separate governmental entity, SID #2, developed in the 1960's. At that time, Pine Lake was developed as AA zoning, now AGR zoning, 1-acre tracts, with density combined to allow a number of amenities including the golf course and the lake. It is all single family large lot dwellings. The land immediately to the west was sold to Livingston Development in 1998, for about \$300,000, zoned AGR. Since that time, the property appears to have benefitted from a greenbelt designation, giving it a tax basis of \$50,000 in special agricultural valuation.

Austin submitted that zoning is intended to apprise the neighbors of what the future adjacent development might entail. It was originally thought that this property would be developed as large lot single family dwellings. The city grew and Pine Lake is now inside the corporate limits and it is designated as urban density residential. Reasonable people might assume that this pattern of development would continue; however, neighbors would not anticipate or contemplate a proposal asking not only for R-4, but coupling it with a CUP, the provisions of which would support high density 3-story apartments. R-4 is intended to provide a stable area of 3-5 dwelling units per acre. Under the provisions of this CUP, there will be 13.93 dwelling units per acre. If the property were zoned R-3, it would be allowed 6.96 dwelling units per acre, or 110 units. These design standards were not contemplated with the idea of maximum development. They were intended to take a look at abutting land uses, open space, and the size of the buildings. The design standards do not say that the city will grant the calculated maximum density. There is nothing that justifies the R-4 zoning in this circumstance. This is not a PUD. This proposal virtually maximizes the density that could be available. It is not compatible with the development around it. The R-4 and CUP are inconsistent with the R-3 and AGR zoning surrounding it. The open space is a dam breach area, flood corridor area, floodplain, and wetlands. This has none of the amenities contemplated with a true CUP with a mix of uses and residential.

The staff report even states that the R-4 higher density may not be appropriate in all cases and Austin challenged the Planning Commission to find in paragraph 7 a rationale that convinces them that R-4 is appropriate versus R-3. The fact that you have to cluster the units is not a basis for asking for higher density. The extra acres gives the advantage of clustering. The fact that this is adjacent to Highway 2 is not a good reason. There are all

sorts of properties that are adjacent to Highway 2 that are not zoned R-4. This is too many units. R-3 zoning is appropriate and a development of 110 units would be appropriate here, avoiding the traffic concerns.

Austin also pointed out that the staff report even mentions that a second access would still be desirable. Despite the traffic engineer's statements, Austin suggested that the fact of the matter is that there will be 300-400 cars on this site, and taking this traffic into the neighborhood is inappropriate.

Lust asked if 110 dwelling units is acceptable to the Pine Lake Association. Bill Janike, President of Pine Lake Association indicated that they would not object to the R-3 zoning.

Lust wondered whether there is a number between 110 and 219 that is acceptable. Austin stated that he would be concerned about how to get to any other number in between. Even a CUP with R-4 showing 125-130 units could be amended in the future. The protection is the actual zoning designation.

Corr confirmed that Pine Lake Association is okay with 110 apartments. Janike stated that every discussion by the board is that we know this property will be developed. We object to the R-4 but do not object to R-3. Corr made sure it was understood that R-3 would still allow apartments. Austin believes the Association understands that. By raising the development to 40', it will be just a little higher than the two-family dwellings on the other side of the dam. Maybe they could do two stories with 110 units.

Janike stated that there are 130 homes in Pine Lake. The discussion amongst the Board has been that we know this is going to be rezoned and we will not object to R-3 zoning. We object to the density of R-4.

Beecham asked whether Pine Lake has discussed the stop light. Janike acknowledged that the Board has discussed the possibility. With 400 parking spaces, having seen how streets open up and how people travel, we know that when people want to go to a certain place, such as WalMart or to Omaha, they don't get on Highway 2 and go southeast to go north. They go through Pine Lake. The Pine Lake residents go through Edenton South to get to 84th Street or 70th Street. He is convinced that a stop light will not solve that problem. People will go the quickest and shortest way they want to go and they will not go to Highway 2, whether there is a stop light or not.

The first homes were built in the Pine Lake area in the early 1960's.

2. Bill Janike, President of the Pine Lake Association, submitted a resolution passed by the Board of Directors of Pine Lake Association expressing opposition to the proposed development, and, specifically, that,

The request for R-4 Residential zoning with the attendant ability to construct 219 dwelling units would allow development at a greater density level than is reasonable and appropriate for the subject property. A development of 219 dwelling units it out of character with the development of adjacent properties that are zoned AGR and R-3 Residential. The development at the proposed density would cause an undue burden upon the roadway system within and adjacent to the proposed development.

Janike further pointed out that Pine Lake does not belong to the Pine Lake residents. Pine Lake is a part of the City of Lincoln, but also unique in some ways. The roads are narrower than in many neighborhoods. There are no street lights or sidewalks. There is a lake with a road that goes over the dam at the west end of the property – that is a narrow road that currently is at capacity. Pine Lake wants to continue to be welcoming to people who want to walk the area. There are trails and common areas. The Pine Lake residents want to continue to be welcoming and not restrictive; however, when you have a lake and narrow roads without street lights or sidewalks, there is some risk and some danger that needs to be considered.

Janike then referred to the “Taking Charge” survey reported upon by the Lincoln Journal Star on September 20th. The top concerns of the 1200 participants are safety and security and livable neighborhoods. Janike believes that the Association’s concerns are legitimate with the R-4 zoning. R-3 is acceptable.

3. Jeff Petersen, Executive Pastor of **Lincoln Berean Church**, testified in opposition. The Berean Church has enjoyed a wonderful 51-year history with the City. 32 years ago, the Berean Church (Church) moved from downtown Lincoln to a dirt road on 70th street in a milo field. The Church is now the neighbor immediately to the west of this proposal and feels like “the partner left out of the conversation”. No one from City Planning has spoken to anyone with the Church. Pastor Petersen stated that the Church is not rising to oppose the development because they desire to be a good neighbor; they understand there are very complex issues; they are supportive of the neighbors to the east, Pine Lake

Association; new neighbors to the east (Ashbrook Drive) also have legitimate concerns; and the Church cares that Livingston has had this property and wants to see it developed. The Church does, however, have some concerns.

Petersen highlighted the Church's concerns. On any given weekend, there are between 4,000 and 5,000 people who will be on the Church campus, bringing traffic dynamics to bear. The Church is growing every year, and our city is growing. Eventually, the Church's master plan allows for potential growth to a weekend of 14,000 people on the campus.

The issues of the Church include safety related to the intersection at Highway 2, which is used by the Church on a daily and weekly basis. Turning left off Ashbrook Drive onto Highway 2 is simply unsafe. They have been seeking a stop light for some time.

About 8 years ago, the city came to the Church explaining that neighborhoods have to have two connections to arterial roads. At that point, Hunters Ridge was being developed and there was concern for egress access for Hunters Ridge. What was decided by the city was to take the Church's property and create Ashbrook Drive. In 1999-2000, the Church built and paid for a four-lane access/driveway. Then the city came and said that they need to build Ashbrook Drive for Hunters Ridge to have a southern egress. The Church did not desire to lose the land because it would bisect their land, but the Church wanted to be a good neighbor and worked it out with the City. A big concern was cut-through traffic. People will go the easiest and safest way. When Ashbrook Drive went through, the egress was through the Church's property. Adding 220 units, with really only one access on the west at Highway 2, will bring the traffic through the Church's property, that being the easiest and safest way. This is already taking place. The city did try to work with us to mitigate this concern. Safety, security and maintenance are issues to the Church. The Church could put up gates and close the property, but they have a rich and long history of being in this area and want to be open to the community. They do not want to send the message that says the Church is closed. No solutions have been brought forward to mitigate this concern. Nothing has even been discussed in terms of mitigating the Church's concerns.

Pastor Petersen acknowledged that the developer has been very good in meeting with the Church. The Church inquired about a maintenance escrow but the developer was not interested.

Beecham inquired as to the days and time of the activities going on at the Church throughout the week. Pastor Petersen stated that on any given weekend, there are about

4,000-5,000 people on the campus. There are Saturday night services at 7 p.m. The senior high youth ministry meets on Sunday night, adding about 300-400 drivers. He believes the highest volume is Sunday and Wednesday night. The Women's Ministry meets on Tuesday evenings; College Ministry on Thursday evenings; and an addiction recovery program on Friday evenings. There is traffic flowing in and out of the property seven days a week. On Wednesday's people start arriving about 5:00 p.m. and leave around 9:00 or 10:00 p.m.

With regard to the property to the west of the Church, Beecham asked whether the Church has any plans for that property in the next 10-20 years. Pastor Petersen advised that they currently have a nature trail that is undeveloped. A lot of the expectation for the future will be parking in the outer lots. The Church lost a lot of the road and property on the west side when the city made improvements to the intersection of 70th and Highway 2.

Scheer inquired as to the anticipated growth of the church from 5,000 or 6,000 to 14,000. Does that mean that the Church will have either more, or more and continuous kinds of activities and services, or is it more and possibly bigger? Will the facilities grow? It does have an impact on the future traffic patterns. Pastor Petersen indicated that the Church outgrew the facility immediately, so in 2007, they opened the newest auditorium and did it in a big footprint so that they could grow into it. The youth complex also has considerable unused space. The greater the size, the greater the complexity of issues. It is a 7-day ministry center and will continue to grow.

Weber noted that Ashbrook Drive crosses the Livingston property. Pastor Petersen said that they did work with Livingston and had an easement. The city built the connector and it all became Ashbrook Drive, and the city now has the easement that crosses the Livingston property. There are some wetland dynamics that the road needed to follow instead of going straight.

4. Jonathan Hoesch, 8101 Dougan Circle, testified in opposition. He moved from Texas a year ago. He chose Pine Lake because it is such a beautiful single family area. Increasing this traffic will be very dangerous and cause a lot more problems. He is concerned about safety with children getting into the lake area. A fence is not going to provide any kind of deterrent. There will be more sound and traffic. In his opinion, a traffic light is not going to help. If you put the maximum of anything into a situation, you are going to have issues. Hoesch had assumed that the subject property would be developed as townhomes or single family homes in R-3 zoning, but going beyond that will be a big question mark for him. Access to the lake and the liability issue is a big concern.

5. Nick Cusick, 6400 Westshore Drive, testified in opposition. He has been a resident of Pine Lake since 1967. He is not opposed to development of this property. He is pro-growth. He recognizes what Lincoln can and needs to become. The Chair of the Pine Lake Association was in charge of the asphalt placed on the dam road in approximately 1980. The road was asphalted without a permit against the wishes of the engineer on staff and it has lived there ever since. It is very dangerous. It seems as though the requirement by the staff for the developer to build out the connection to a potential future street or road or pathway or trail presumes that that will ultimately be built. He is opposed to that. He also believes that the Southeast Rural Fire District is opposed. It would be a nightmare for a traffic pattern onto Highway 2 and Eiger Drive. That recommended connection is inappropriate.

Cusick was curious about the concessions of the developer to allow for the 50' setback and various screenings. How did we get from 35' to 40' in height? Was it necessary to allow for that exception? We have all seen promised landscape screenings that became dead or not maintained or unmanageable or unsightly. Nothing here guarantees that the trees will live and be maintained, resulting in nothing more than an eyesore for Pine Lake.

Beecham asked Cusick to address the horse stables. Cusick does not anticipate any change. They are fully occupied. The neighborhood was established as a horse community and there are riding trails all the way around the community through all kinds of areas.

Hove asked how the apartment dwellers would access the dam road if there is a fence and the 50' buffer. Cusick stated that there was discussion previously about the path of least resistance. If going north on Ashbrook Drive, connecting up through the development to the north, one possible likely quicker route is to take the connection on the north side of the waterway below the dam and connect directly across the dam onto Westshore Drive and onto Eiger Drive. He believes that would be the path of least resistance for the apartment dwellings. They would go north from the Broadmoor Development on Ashbrook Drive as opposed to going south to the highway; and then instead of continuing north and weaving through the neighborhood or going through the Berean property, they would cut across and head back to the south and go on Westshore Drive. The dam road is the extension of Westshore Drive between Westshore Drive and Northshore Drive. Given the traffic issues and the potential solutions, if Cusick was a developer, he would question whether it is a good investment to develop this as a multi-family unit location.

6. Joel Geyer, 7805 Northshore Drive, testified in opposition. He discussed the sense of humanity and the lifestyle of the Pine Lake area. There are no sidewalks in this community so people walk in the street, and they can do so because there is not that much traffic. He is a capitalist and if he had the money to invest, he suggested that the developer has put together a very compelling package; however, he is not in favor.

Will the apartments be part of the “sense of community” or are we going to build berms and fences so that they do not mingle? He does not think so. Geyer talked about the picnics and how the neighbors gather and help each other out. The kids are riding their bikes to the lake area on the dam road. It is a community where people know each other and help each other. He suggested that the people who move in and out of apartments are not invested like the Pine Lake residents. He invested in Pine Lake because of the quality of life and the community. What we have here is a tension between capitalism and community.

7. Bob Moodie, 6510 Ashbrook Drive, appeared on behalf of the homeowners in **Edenton Woods**. in opposition. Edenton Woods consists of the homeowners along Ashbrook Drive up through the intersection on Bo Creek Bay and Bo Creek Court and extending up Ashbrook Drive to Edenton Park. 41 units are already constructed, with another 29 units planned, platted and under construction on Camellia Court. Approximately 15 people stood in the audience in support of Moodie’s testimony.

Moodie shared photographs of traffic at the intersection on Sunday when the Church is letting out, showing how much traffic backs up in the left turn lane and in the right turn lane. When traffic backs up in this manner, it does divert itself and he saw two cars pull out of the traffic and do u-turns and proceed back up north through the neighborhood.

Moodie also shared a map showing the traffic patterns he perceives with the proposed development. People traveling through the Berean Church parking lot will then head north on Ashbrook Drive connecting with Stevens Ridge Road working out to 70th Street, or they will work their way out on 77th Street up to Old Cheney Road, or finally they will turn on Northshore Drive, taking them into the Pine Lake area, where they will either proceed on Northshore Drive or will go across the dam road to Eastshore Drive and exit there. Traffic is a problem. The staff seems to dismiss these traffic concerns in their report with the mere suggestion that it is not going to be excessive. There will be 350-400 cars all wanting to leave and enter at the same time. The u-shaped drive is a legal fiction to get around the notion that you have to have more than one exit and entrance. The S-shaped curve restricts vision and there is also a hill which crests.

Moodie submitted that traffic should be enough of an issue to deny the change of zone and the special permit, but at the very least before approving it, there needs to be a much better traffic analysis.

Moodie also suggested that this is a very bad example of land use planning. He showed other areas with many other multi-family developments either in the planning stage or construction stage or already constructed. This proposed development is not needed in this area for multi-family dwellings. The other areas were planned, platted and developed with the idea that streets could be installed or approved to accommodate them; they were planned with multi-family in the core, then mixed use dwellings around it, then single family dwellings after that, so that anyone buying into these neighborhoods knows what they are investing in. That is not what happened in this case. This property owner did not do a master plan.

Moodie then suggested that the better argument is, why should it be done? That is the question that the Commission should consider in deciding whether this should or should not be allowed. This proposed development asks the Moodie and his neighbors to sacrifice the investments that they have already made. Moodie requested that the Planning Commission deny the zoning change and the special permit. In the meetings that were held, Edenton Woods residents acknowledged that development has to take place; Edenton Woods is zoned R-3. They would have a hard time arguing against R-3, but they would need to see the plan.

Moodie submitted a letter from the officers of the Edenton South Neighborhood Association in opposition.

Beecham inquired how far the traffic backs up. Moodie took the pictures about in the middle of the S-curve, and the traffic was backing up 10 and 12 cars deep on the left hand side and the traffic backs up on the right hand side as well, and at times even further.

Beecham noted that there is a park bordering Ashbrook Drive. Moodie stated that the park was designed to be a neighborhood park. He believes the traffic may overwhelm the park is this development is approved.

7. Jim White, 6339 Bo Creek Court, testified in opposition. He lives on the property which backs up to the creek that flows through the area proposed. When it rains, all the rain from Edenton South comes rolling down well into his back yard. He is worried about the runoff

and the environment. If you take that hill away, it will never come back. The wildlife that we witness will never come back.

8. Mike Poskochil, 6725 Eastshore Drive, east side of Pine Lake, testified in opposition. He pointed out that there are two sites currently within ½ mile of this site zoned R-3 under construction for apartments at 84th and Highway 2, the corner of 84th and Cheney Ridge next to Lincoln Christian; and Faith Bible Church on the south (also zoned R-3 and currently owned by the Schleich family and zoned for apartments). There are other apartment sites in this area which have been built recently. R-3 zoning is being used for apartments within ½ mile of this site.

Poskochil does not believe that the “no dog” policy is enforceable by the city on private property. Who will enforce the fencing? As far as living next to Highway 2, Poskochil pointed out that Artisan Meadows is next to Lowes and they abut Highway 2. He believes that this property has a great use under R-3 zoning, like the property abutting to the north. All of the parking lots for Berean Church are on the east side and the traffic will flow on Ashbrook Drive.

In the late 1990's, Poskochil walked the site with the present owner to assess the value of the land being purchased. At that time, it was priced based on single family lots and/or townhome lots. He was not involved in any matter beyond the value. The applicant had owned the property for 15 years. At any time the owner could have applied and annexed under R-3. In this case, it is a situation where someone must have made more money than the neighborhood thinks that they should. Traffic and safety are big issues. He lives on the lake. He is concerned about the liability because there is no way to enforce trespassing.

9. Bob Olson, 8001 Dougan Circle, since 1997, testified in opposition. The traffic concerns and the crush of humanity on that side of the neighborhood is plain obnoxious because it does not fit with anything going on in the area. He showed photographs of the dam road and reiterated that Pine Lake does have a lake and a beach. The road is single surface asphalt. It is not meant for heavy traffic. The whole neighborhood consists of beautiful homes at least 30 feet apart. They do not need any more people on the beach. Pine Ridge Lane goes to the stables. If that is opened up with 400 people just over the hill, it will be their escape route. Pine Lake is on a quarter section of land. This proposal is on 16 acres, or one-tenth of the area of Pine Lake. Pine Lake consists of 131 homes. The proposed development will have 90 more units than Pine Lake. There are 300 residents in the entire Pine Lake neighborhood.

10. Pam Gannon, 6501 Eastshore Drive, testified in opposition She has been on the Board of the Pine Lake Association over the years and was there when they entered into the annexation agreement with the City. Pine Lake has worked to make sure they have their two access points (as required by the City). The access point at Northshore Drive is the main concern. This area is not the normal area because it is a highway. Traffic is constantly busy. It is hard to get onto Highway 2. She cannot even be in the front of her house on Sunday morning when the traffic from the church is so steady and you cannot cross the street. Opening up Northshore Drive has really changed the dynamics. The Association is responsible for the liability of the lake, but what recourse do they have if there are people using the lake and beach other than Pine Lake residents? They prefer not to call the police. They do not want to be exclusive but be responsible homeowners, be good neighbors, and maintain the quality of life.

Gannon reiterated that the Pine Lake residents know that the subject property needs to be developed, but she requested that the Commission be respectful and look at the R-3 as being much more viable for all the neighbors.

Staff questions

Lust confirmed that there will be an additional 2 acres on this parcel pursuant to the land swap with Berean Church. Will stated that the staff has not seen those plans. With the addition of 2 acres, Lust wanted to know whether the R-3 allows additional dwelling units. Will stated that it could. Corr suggested that 2 additional acres would allow about 18 more units (118 in R-3). Will stated that the applicant will need to amend the boundary of the special permit if that additional two acres is included. Corr then suggested that if the property is zoned R-4, the additional 2 acres would allow an additional 36 units (256 in R-4).

Beecham asked for an explanation of the greenbelt designation. Will stated that this refers to the rate at which the county assessor applies property taxes, something lower than without the greenbelt status.

Beecham inquired whether anyone at the NRD or City has addressed potential environmental concerns about this development. Will observed that Public Works reviews the application relative to the grading and drainage plan and runoff. The city does not review in terms of wildlife.

Hove asked for the number of apartments that are zoned R-4 in the area. Will talked about apartment developments in R-3 zoning:

84th and Old Cheney Road - 200 units on 8.9 acres, R-3 zoning (22.5 du/acre)

Savannah Pines (40th & Pine Lake Road) - 232 apartment units on 6 acres, R-3 zoning (38 du/acre)

Highpointe (45th and Old Cheney Road) - 182 units on 12.7 acres, R-3 zoning (14 du/acre)

Rockledge (part of a larger PUD at 84th & Old Cheney Road) - 210 units over 9.6 acres, R-3 zoning (22 du/acre)

Van Dorn Meadows (70th & Van Dorn) - 324 units over about 22 acres, R-3 and R-4 zoning (15 du/acre)

The Springs at Heritage Lakes - 270 units over 11 acres, R-5 zoning (22 units per acre)

Grand Terrace (84th & Highway 2) - 200 units on 11.3 acres, R-3 zoning (18 du/acre)

For comparison, what is being proposed today is 220 units over 15.8 acres (14 du/acre). Looking at the relative density, a lot of the other complexes are part of a larger CUP with single family and attached single family, where the excess density supports those apartments. Most of them would not be allowed as stand alone apartment complexes in R-3 zoning.

Beecham wondered why the parcel being proposed for annexation was not included previously. Will advised that annexation is usually requested by the owners of the property or by the city. This applicant neither asked for nor was there a reason on the part of the city to annex.

Putting aside the change of zone and CUP, Lust asked whether the city staff supports the annexation. If it were a stand alone annexation, Will did not know. The staff would need to discuss that. Usually there is some intended purpose. Taking the change of zone and special permit away, it may not meet that purpose.

Beecham asked whether there have been any comments from the Southeast Rural Fire Department. Will state that there are none.

Response by the Applicant

Huston stated that his client does not envision this development as a huge detriment to any neighborhood. His client has three projects in Lincoln with similar density, on major arterial streets, and they function very well. They have a community. They have residents that have been there a long time. This applicant does not want to have a detrimental impact on anyone. If there was a master plan, we would not be dealing with this parcel. The only guide that we have is the Comprehensive Plan, which does focus on increasing density. That is the only issue. The Comprehensive Plan also focuses on infill development. There are no additional infrastructure costs. This proposal maximizes and uses the infrastructure that exists with the most efficient land use available.

Huston went on to state that this applicant is also trying to be cognizant and respectful of the neighborhood. In broad terms, Broadmoor has been a long time investor in the city and wants to continue that investment to enhance some opportunity for other people. The Comprehensive Plan goal is housing diversity - provide all types of housing in any given neighborhood.

Huston agrees that there are traffic considerations, but he does not believe it will be to the extent that some fear. This developer has a lot of faith that a new traffic signal will be the magnet to attract traffic out onto Highway 2. This intersection is the ½ mile line between 84th and 70th and is appropriate for signalization. Huston submitted that the traffic light will answer a lot of the questions.

With regard to the proposed connecting road, Huston pointed out that this developer does not have to build it, just show on the site plan how it can be located at some point in the future. It does not happen without the consent of a lot of different people.

As far as infiltration of traffic north and east, again, Huston believes that the traffic light will draw traffic out. Those are publicly dedicated streets. We cannot prevent people from driving on them. The applicant supports the vacation of Pine Ridge Lane.

Huston also suggested that we all knew this would happen when the Comprehensive Plan was adopted. The Planning Commission and City Council have acknowledged that. But

that does not mean that we have to ignore the guidelines and objectives stated in the Comprehensive Plan.

Lust stated that one of the things that has some sway with her is, why does this need to be R-4 when everything around it is R-3? Huston suggested that it is more important to focus on the number of units per acre. It is a fair comparison. You can do a CUP with all the surrounding ground, and because of drainage ways and private streets you can capture a lot of density. The staff's analysis focuses on the number of units per acre. R-3 is half of R-4. His client builds multi-family properties. He does not build townhomes. This site is appropriate because of the Comprehensive Plan.

Corr expressed concern about the increased height adjustment, with the staff report stating that the tops of the apartment buildings are not significantly higher than the homes in Pine Lake. What does "significantly higher" mean? Huston offered that the garages will be located at a level 27 feet below the dam road level. That is a significant grade differential. If you do the math, if there is a rooftop that is 40', obviously there is potential that it could be 13' above the base level of the dam road.

Corr asked why the dog ban is for only three years? Huston did not have an answer, other than it is difficult for the city to support and enforce. The applicant would be willing to consider a longer policy. However, Broadmoor does have a retired couple with a small house dog and we don't see how that presents an issue.

Beecham inquired about the visual of the fence. Huston stated that a wrought iron decorative fence has been suggested. It is not designed to keep people in or out but to provide some barrier. He assured that it will not be a wooden stockade fence or something that requires a lot of maintenance or looks ugly.

Hove inquired whether the applicant has any documentation on the average stay of residents in the apartments. Huston does not believe a specific count is available but Broadmoor has had many long term residents that stay in their units 10 plus years. The demographic shows 60% being 60 years of age and over, which indicates long term stable tenants.

ANNEXATION NO. 13004

ACTION BY PLANNING COMMISSION:

October 2, 2013

Sunderman moved approval, seconded by Hove.

Sunderman pointed out that this 16 acres is pretty much surrounded by the City and Highway 2, so it is appropriate to be in the city.

Lust agrees that the annexation is really noncontroversial.

Motion for approval carried 8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 13020

ACTION BY PLANNING COMMISSION:

October 2, 2013

Sunderman moved approval, seconded by Cornelius.

Sunderman believes R-4 zoning is appropriate for this area because it is separated from the Pine Lake area. There are no direct connections. R-3 to the north is wetlands and floodway that will separate and buffer; to the west is the church which is a heavy user of the facilities. His concern basically is traffic but he does not believe the traffic will affect the neighborhood that much. He believes most of the traffic concerns come from the church when they exit and leave or arrive, and Sunderman believes the traffic issues will take care of themselves when Highway 2 is signalized. If he were headed east, Sunderman would go Highway 2 west down to 70th Street to Pine Lake and then around. He drove this area and had no problems. If he were going west, Sunderman would definitely take Highway 2. He would not go through the neighborhood. He just does not think there is enough traffic to make a difference.

Scheer heard comments about there being tension between capitalism and community, and tension between timing and the Comprehensive Plan. He thinks there is tension on this site because of the Comprehensive Plan and the goals that are built within the Comprehensive Plan. He would support this motion if the only goals in the Comprehensive Plan were things like land use, future growth, density, etc. He would oppose this motion if the only goals were things like one community, quality of life, healthy communities, and environmental stewardship. Scheer stated that he can't get past how those items within the Comprehensive Plan affect this site and how we are trying to determine what the

appropriate capacity for development is on this site. When he looks at this site, it is 10 usable lots, not 15. He would love to be able to review this as 10 acres in terms of a R-3 analysis. 219 units on this property seems overkill, but something in the range of 125 units seems appropriate. That's how he can resolve the tension within the Comprehensive Plan and what the Planning Commission is supposed to be trying to determine. He will not support the change to R-4, but could support something more than R-3.

Corr commented that she followed a similar approach to Scheer. She has a hard time including the approximately 5 acres that is not developable in the density calculations. It just seems like we are packing so much into this little piece of land. She sees Pine Lake as zoned R-1, which is the least dense, and this applicant is requesting R-4. That's a huge jump, especially when other areas around it are zoned R-3. She cannot support the R-4.

Beecham stated that she still has real concerns about this area regarding the traffic. This area needs to be reviewed for a potential traffic light. And hearing from the Berean Church only increases her concerns. In regard to the Comprehensive Plan, Beecham believes it is important, but it is not the law. The Comprehensive Plan is a guideline. It does not mean that one size fits all. When the Comprehensive Plan talks about infill, it also talks about preserving character of existing neighborhoods. Pine Lake is an existing neighborhood; it is about 50 years old; she would have problems putting R-4 next to R-1 in this area because she thinks it will impact the characteristics of Pine Lake. She cannot support the R-4, but she would be open to R-3. She likes the idea of putting the development closer to the edge and not in the middle of a neighborhood.

Weber agreed that the density is a little bit much for the area and he could support R-3.

Cornelius stated that he is very in the middle of what Scheer said and what Sunderman said. He found the analysis of the traffic to be pretty good. He does not think that the impact of the traffic of a higher density development would be so very great, especially in terms of the traffic on a Sunday evening. He considers the sheer of uses – he would like to see a slope rather than a steep drop-off. While he was surprised to hear the neighbors say they would be happy with R-3, he finds that that is less of a sheer for himself. He will not support the motion.

Hove observed that this has been a very emotional issue for a lot of people. He has a hard time with “not in my back yard.” We all need to welcome each other. He is sensitive to the traffic issues, but he thinks that we, as developers and planners, have to look at what's best for the city and he intends to support the motion.

Lust acknowledged that this has been a very hard decision for her. The Comprehensive Plan encourages denser development, and we knew when we went through that process over 18 months ago, that denser developments will have opposition. Every time there has been a major apartment complex proposed, we have had neighborhood opposition. But once the apartments have gone in, she believes people have found them to be good neighbors and the traffic has not increased. She was somewhat swayed by the argument that R-3 is more appropriate in this area, but she also believes that when we consider the credits developers typically get in the R-3 CUP, they typically end up with more dwelling unit density in the apartment area than what is being proposed here. The fact that this property is along Highway 2 actually makes apartment dwelling units a good buffer to the commercial and traffic that is along Highway 2. While this was a difficult decision, and while she understands all of the concerns, she will support the motion.

Motion for approval failed 3-5: Hove, Sunderman and Lust voting 'yes'; Corr, Beecham, Weber, Scheer and Cornelius voting 'no'.

Cornelius moved to deny, seconded by Corr.

Corr wondered about amending the change of zone to R-3, but then that leaves the question of what the CUP looks like. We have no testimony from the applicant about how they would design the plan under R-3 zoning. We have mixed opinions from the neighborhood. Marvin Krout approached and suggested that amending the application to R-3 is premature at this time. The applicant could amend the application after this hearing if they so choose.

Motion to deny carried 5-3: Corr, Beecham, Weber, Scheer and Cornelius voting 'yes'; Hove, Sunderman and Lust voting 'no'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 13043

ACTION BY PLANNING COMMISSION:

October 2, 2013

Cornelius moved to deny, seconded by Corr and carried 5-3: Corr, Beecham, Weber, Scheer and Cornelius voting 'yes'; Hove, Sunderman and Lust voting 'no'. This is final action, unless appealed to the City Council within 14 days.

** 5-minute Break **

**STREET & ALLEY VACATION NO. 06007,
TO VACATE PINE RIDGE LANE WEST OF THE WEST LINE OF
WESTSHORE DRIVE, AT APPROXIMATELY
HIGHWAY 2 AND ASHBROOK DRIVE.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 2, 2013

Members present: Corr, Beecham, Scheer, Hove, Sunderman, Cornelius and Lust; Weber absent.

Staff recommendation: Revised from a finding of conformance with the Comprehensive Plan to denial as a result of the Planning Commission denying the previous Change of Zone 13020 and Special Permit No. 13043.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** explained that Pine Ridge Lane is the street stub coming into the east edge of the proposed Broadmoor Ashbrook apartments Community Unit Plan (Special Permit No. 13043). It is platted as public right-of-way so the only way to get rid of it is to vacate it. Based upon the Broadmoor applications, the staff was in support of the street vacation; however, it was based on the approval of Broadmoor. Given that has been denied, the staff now modifies that recommendation to denial.

Proponents

1. **Bill Austin** and **Bill Janike**, appeared on behalf of **Pine Lake Association**, the applicant for the request to vacate the stub street, Pine Ridge Lane. Austin advised that the Pine Lake Association made this application in 2006 and it has been dormant since then. It was reactivated at the request of the Planning staff when the Broadmoor proposal came forward. This street should not be developed by anyone. There is sufficient connectivity between the potential uses. Pine Lake does not believe there is appropriate reason to have any more connectivity. Pine Ridge Lane would come right onto the rural cross section road that crosses the dam, and that road needs no more traffic. Pine Ridge Lane would not help anyone get into the Pine Lake area. There is some uniqueness about Pine Lake and there is no need for the connectivity.

Lust asked if Pine Lake would consider a deferral of this vacation until we see what might occur on the adjoining property. **Bill Janike**, 6601 Perry Circle, President of **Pine Lake Association**, stated that he could not speak on behalf of the Association, but he personally

would not oppose a delay of making that decision. Austin agreed that it is not a burning issue at this time. Janike wanted to keep these issues separate. He does not believe the Broadmoor developer wanted to come through that area anyway.

Marvin Krout, Director of Planning, suggested that in this case, the Commission could defer for a longer period of time with the applicant's consent, which is the basis for how long we can wait. Eight weeks might give the Broadmoor applicant some time to reconsider their position on the change of zone and CUP.

Austin agreed to an eight-week delay.

Support

1. Pam Gannon, 6501 Eastshore Drive, testified in support. She signed the petition to vacate in 2006. At that time of annexation, Pine Lake was told that they had to have two points of connectivity so that they are connected to the neighborhoods. With the lay of the land, the steep change of grade to go down into the Livingston property and the fact that Pine Ridge Lane would not provide any more connectivity than they already have, she does not believe Pine Ridge Lane is needed. It is just redundant – just access to the Stables.

2. Nick Cusick, 6400 Westshore Drive, would be the resident where the headlights would be shining into his house. He is in favor of an 8-week delay because we want to show good faith and willingness to work with the developer to give enough time to come back with Plan B because clearly we would like to see that property developed sometime.

3. Bob Olson, 8001 Dougan Circle, testified in support. He pointed out that Pine Ridge Lane is a gravel road at this time, hooking around the trees to the left to the stables. Vacating it only make sense because it will be a dead-end road. Or, if you open it up and make it a legitimate road, it needs to be a street that goes clear over the hill and down to Ashbrook Drive right through the middle of the apartment complex. He would rather do away with the question and have it vacated. Otherwise, it becomes the driveway for the apartment dwellers into the Pine Lake neighborhood.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

October 2, 2013

Cornelius moved to defer 8 weeks, with continued public hearing and action scheduled for Wednesday, November 27, 2013, seconded by Sunderman.

Lust stated that she will support the motion to defer. There is probably still going to be development of some kind on the adjoining property and she would rather wait 8 weeks to see the results of what will be developed on the Broadmoor property before making a decision on the vacation.

Motion to defer until November 27, 2013, carried 7-0: Corr, Beecham, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'; Weber absent.

MISCELLANEOUS NO. 13002

**TO REVIEW THE PROPOSED DETERMINATION
THAT THE PIEDMONT REDEVELOPMENT AREA
BE DECLARED BLIGHTED AND SUBSTANDARD,
ON PROPERTY GENERALLY LOCATED BETWEEN
A STREET AND C STREET, FROM 50TH STREET
TO COTNER BOULEVARD.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 2, 2013

Members present: Corr, Beecham, Scheer, Hove, Sunderman, Cornelius and Lust; Weber absent.

Staff recommendation: A finding that there is a reasonable presence of substandard and blighted conditions.

There were no ex parte communications disclosed.

Staff presentation: **Wynn Hjermstad of the Urban Development Department** explained that the blight study is the first step in the redevelopment process. In this case, we are looking at 8.6 acres, 4 acres of which are commercial with the remaining being city right-of-way. The boundary is Cotner Boulevard, 50th Street, A Street and C Street. The primary use of the property is the Piedmont Shops.

Hjermstad further explained that the blight study is completed based on objective factors and standards. There are four factors to find that an area is substandard and twelve factors

to determine if an area is blighted. In this case, all four substandard factors were met and seven of the twelve blight factors are present to a strong extent and two to a reasonable extent. For example, the sewer mains are 93 years old; three structures are all deteriorating with major defects; concrete sidewalks and driveway entrances are cracked and broken; deterioration of the buildings causing unsanitary or unsafe conditions; etc. If the Commission agrees with the finding of blighted and substandard conditions, the next step is that the blight study is reviewed by the City Council, and, if they agree, the City Council will pass a resolution declaring the area blighted and substandard. Again, this is the beginning of a redevelopment process. First the blight study, then the redevelopment plan (which comes back to the Planning Commission for a finding as to conformance with the Comprehensive Plan) and then a redevelopment agreement is negotiated with the developer, which gets very specific. The Council then approves the redevelopment agreement. The redevelopment agreement does not go to the Planning Commission. The blight declaration gives legal authority to go forward with a redevelopment plan.

Lust wondered why the surrounding neighborhoods are not considered at the same time. Hjermsstad stated that it is not unusual for the blight study to be specific to the commercial area.

Scheer inquired whether the blight determination must be the exact boundary of the redevelopment plan area. Hjermsstad indicated that the redevelopment area has to include the blighted area, but not the entire blighted area, but the redevelopment area cannot be larger than the blighted area.

Hove inquired whether the construction of a building can be part of the redevelopment plan. Hjermsstad stated that facade improvements can be included with tax increment financing (TIF); however TIF cannot be used for new construction.

Hove asked whether there are environmental issues with the filling station on the south end. Hjermsstad stated that environmental issues are an eligible expense for TIF.

Lust confirmed that TIF cannot be used to tear down and rebuild. Hjermsstad clarified that TIF can be used for property acquisition, demolition, environmental issues, utility work, sidewalks, streets, and building facade. It cannot be used for construction.

Beecham wondered whether the Planning Commission determination on the blighted area links it to TIF. Hjermsstad explained that the City Council approves the TIF funding. The Planning Commission will review the redevelopment plan for consistency with the

Comprehensive Plan. The redevelopment agreement is approved by the City Council. The Planning Commission is not involved in the development agreement.

Support

1. **Steve Glenn**, appeared on behalf of **Piedmont Shopping Center, LLC**. Piedmont Shopping Center, LLC purchased the center in June of this year. He is very excited about this possibility for redevelopment. Jim McKee told him that the center is 57 years old and needs a lot of help. He is very excited to make it a neighborhood center with local business tenants. The focus has been to maintain this as Piedmont and make Piedmont proud of the shopping center. The stone facade will be maintained and embellished with marques that add depth to the front. In addition, they will be taking an antique approach to the lighting and the whole design of the parking layout, adding sidewalks along Cotner, and screening some of the back sides of the center for the neighbors. The center is now 50% vacant and declining. This could be one of the nicest looking centers in the City.

Lust asked whether the existing tenants are supportive. Glenn stated that they are. He has sat down with each of them to work out the future. This is their livelihood.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

October 2, 2013

Hove moved to approve the staff recommendation, finding the Piedmont Redevelopment Area as blighted and substandard, seconded by Scheer.

Corr commented that she lives not too far from this area and knows the condition is in despair. She welcomes the opportunity for some increased funding here and some redevelopment opportunity.

Lust agreed. It looks like a great project for the center of the city rather than abandoning it.

Motion carried 7-0: Corr, Beecham, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'; Weber absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 13019,
PIEDMONT SHOPS PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED AT
SOUTH COTNER BOULEVARD AND A STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 2, 2013

Members present: Corr, Beecham, Scheer, Hove, Sunderman, Cornelius and Lust; Weber absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Staff presentation: **Paul Barnes of Planning staff** explained that this is an application for change of zone for a PUD. There is a proposal from the new owner to redevelop this existing site which has some challenges. The PUD can offer some flexibility to meet some of the demands of the current market.

The staff report discusses three waivers as well as some additions and deletions in terms of the allowed uses in the B-3 district. Currently, this is a B-1 Local Business District and this request is to change it to B-3 Commercial District PUD. The PUD adds on- and off-sale alcohol as a conditional use, under the same type of requirement that exists in the B-2 Planned Neighborhood Business District today. For example, on- and off-sale alcohol is allowed in Clocktower. The condition is that the exterior door of the licensed premises for the restaurant or bar must be at least 100 feet from residential property, parks and other uses. The B-2 conditional use at this site would be appropriate and would allow for the restaurant and bar type of use. Today, those doors that would face any potential conflict do not orient towards the residential area or the parks or the school.

Barnes further pointed out that the other change to allowable uses includes the prohibition of residential uses, at the request of the applicant. The Comprehensive Plan does recommend mixed-use in commercial centers. Although a residential component is not included in this proposal today, if it were to be incorporated at some point in the future there would likely be a PUD amendment.

Staff is recommending conditional approval of the request to waive landscape and screening requirements. Because this is an existing site, it may be difficult to meet the standard requirements. The parking lot trees will be reconfigured and there will be parking

lot screening. The modified landscape plan would be approved by the Director of Planning prior to building permit.

There is a request to adjust the parking requirements for dentist and doctor offices from one space/225 sq. ft. to one space/600 sq. ft. This modification has been requested and approved at other sites and done successfully. This type of adjustment is also under consideration in the draft reFORM effort.

With regard to signage, B-3 would allow for one center sign on-site at a maximum of 150 sq. ft. at 35' in height. The applicant is requesting two center signs (the north sign that exists today and the south sign would be replaced with a larger sign, including electronic changeable copy). Staff believes that this is appropriate considering that the two signs together do not exceed what would otherwise be allowed.

Barnes indicated that the drive on the south end as configured today is currently a one-way to the west and staff is suggesting that five parking spaces be removed to allow a two-way drive aisle. The applicant is in agreement.

Beecham wondered whether the waivers were discussed with the neighbors, particularly the alcohol sales and electronic changeable signs. Barnes stated that in general, the neighborhood was very supportive. He does not recall, however, that the specific waivers were discussed.

With regard to sidewalks, Barnes advised that the existing sidewalk on South Cotner Boulevard is a safety issue. There is a condition to move that sidewalk to be adjacent to the parking lot to meet the minimum width requirement. The existing trees would be removed but would be replaced with six new street trees. There is a recommended sidewalk connection along Aldrich Road connecting to C Street. There is sidewalk on the north side of C Street going further west into the neighborhood. There is not a sidewalk on 50th Street.

Barnes believes that the applicant is generally in support of the conditions of approval. This is an existing site which is supported by the Comprehensive Plan in terms of using the existing infrastructure and reusing the site and enhancing the neighborhood.

Corr asked for the difference between B-1 and B-3. Barnes explained that B-3 was suggested because of the parking requirements. B-1 carries a heavier parking requirement. B-3 requires less parking. Staff believes that B-3 is appropriate. It is an older

neighborhood and B-3 is found in other older neighborhoods such as Havelock and University Place.

Corr then asked about the permitted uses in B-1 versus B-3. Barnes was not sure that there is a great number of differences in terms of permitted uses. **Marvin Krout, Director of Planning**, approached and stated that the only significant difference is that B-3 cannot allow car sales. Corr wondered about car washes. Krout did not know for sure.

Corr observed that in B-3, the 100' only has to be from the property line. Barnes explained that the distance in B-3 is measured from the property line, which would not be met in this case given the distance to the adjacent neighborhood. But in the B-2 requirements, which is being proposed in the PUD, that separation can be measured from the front door of the premise. Corr wondered whether the measurement could be from the back door if they had a back door. Barnes believes it is measured from the primary entrance – not the back door. The requirement in this PUD is 100' measured from the primary entrance door to the residential property. The alcohol sales are subject to the B-2 conditional use within the B-3 PUD, as requested by the applicant.

Corr asked why B-2 requirements instead of B-3. Barnes explained that B-3 requires a special permit process and the separation would be measured from the property line. In this case, none of the tenants would meet that requirement.

Hove asked whether the PUD includes the filling station to the south. Barnes stated that it is not included, at the request of the applicant. Beecham wondered whether the filling station allows alcohol sales now. Barnes did not know. Corr believes it is just auto repair.

Proponents

1. Steve Glenn, Piedmont Shopping Center, LLC, appeared as the applicant. He is trying to rebuild the center and it needs a restaurant facility. The neighbors have been very receptive. Part of the design elements are to have a very attractive facility for restaurants. He believes that the PUD will allow 13,300 sq. ft. of restaurant/food within the 50,000 sq. ft. footprint. The parking requirement really determines who we can have for restaurants. He thinks a car wash would eat up too much of the parking area. The practical side is that we really need a restaurant/bar – more restaurant than bar. There is Subway of 2,000 sq. ft. and a coffee shop of 2,500 sq. ft. There is 8,000 sq. ft. of potential restaurant/bar facilities. It's all based on the parking requirements. Glenn stated that he is committed to the neighborhood.

Glenn clarified that they do still pump gas at the station, but they do not sell alcohol and they are mostly a repair shop. He is not able to include the gas station in the PUD at this time.

Glenn pointed out that the PUD process allows the flexibility to build the center. It does not have a proper mix of retailers now to support the neighborhood.

Beecham asked Glenn whether the neighbors specifically understood the alcohol sales. Glenn acknowledged that they did mention a restaurant/bar. The preference from the neighbors was restaurant/bar rather than bar/restaurant. The neighbors want a place to eat in the center. The coffee shop closes at 6:00 p.m. The Subway came in January and they are open until 9:00 or 10:00 p.m. The neighborhood wants more family, sit-down opportunities. He is also hoping to help serve some of the employees and customers of Bryan Hospital.

Corr asked whether the developer met with three neighborhood associations. **Darl Naumann**, 2436 N. 48th Street, stated that there is not a formal neighborhood association in this area. There are three that are very close. Instead of sending letters out to the neighborhood associations, they actually went door-to-door across the neighborhood with fliers and advertised on the radio and television. About 53 individuals attended the neighborhood meeting. They went to the adjacent neighbors around the center and all the way to 48th Street. They did not go across 48th Street nor south of A Street.

Corr suggested that if the developer would have sent notices to the three neighborhood associations, her association would have been notified. She encouraged the developer to go ahead and do a mailing to those close neighborhood associations even though there is not a formal association for that area.

There was no testimony in opposition.

Krout approached to clarify the question about restaurant versus bar. As drafted today, the PUD allows for on-site alcohol sales that could be a bar or could be a restaurant. The code defines restaurant as not being subject to the 100' rule if they sell no more than 40% alcohol and the rest is food. Associated with that, there are other conditions about closing time, no video games, etc. If the Planning Commission's intention is to limit on-sale alcohol to a restaurant that serves alcohol, the facility would have to have at least 60% food sales versus alcohol sales. That does need to be clarified in the PUD. The way it is written now, it could be a bar.

Lust suggested that policing those percentages is nearly impossible. Krout responded that it falls into the same category as operating hours, but we do have those conditions. Beecham wondered whether it could be a liquor store. Krout responded, only on-sale and not off-sale. Beecham inquired whether the local drug store could sell alcohol. Krout stated that it would not be allowed as the PUD is written today.

Steve Henrichsen of Planning staff also approached to clarify that there are five differences between B-1 and B-3. B-1 allows marinas; B-3 allows motor vehicle sales, contractor services and cabinet shops as conditional uses with size limit and no more than 10% of the total floor area, and optical lense grinding. The other difference is that B-1 has a 10' front yard setback and B-3 has zero.

ACTION BY PLANNING COMMISSION:

October 2, 2013

Hove moved to approve the staff recommendation of conditional approval, seconded by Sunderman.

Corr stated that she has some concerns. She would really like to see "no auto sales" included in the PUD. Just because we have that in older neighborhoods, that type of use can deteriorate a property fast. She is also concerned about the alcohol. Leffler School is right behind the center. She really wants to see a restaurant but she is torn on the 100' separation. She encouraged that the developer use more of the mixed-use development things and not knock out the residential for the future. Otherwise, she is looking forward to a revitalized community center area.

Lust will vote in support, as written. We have to recognize that any restaurant is going to have to be able to sell alcohol to be viable, and the 100' setback seems appropriate since this has always been a commercial center. She is not concerned about the alcohol sales.

Motion for conditional approval carried 7-0: Corr, Beecham, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'; Weber absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 6:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 16, 2013.

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