

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 20, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEBERS IN ATTENDANCE: Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson Dan Marvin, Greg Schwinn, Cecil Steward, Mary Bills-Strand and Tommy Taylor; Marvin Krout, Mike DeKalb, Steve Henrichsen, Brian Will, Tom Cajka, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Special presentation was made by Mayor Seng to Chair Greg Schwinn, whose term expires on August 24, 2003. Vice-Chair Cecil Steward read a resolution into the record by the Planning Commission in appreciation for his six years of service on the Planning Commission. Carlson moved to approve the resolution, seconded by Bills-Strand and carried unanimously 8-0: Carlson, Duvall, Krieser, Larson, Marvin, Steward, Bills-Strand and Taylor voting 'yes'; Schwinn abstaining.

Schwinn recognized and expressed appreciation to Teresa McKinstry, Jean Walker, and all of the Planning staff, who he believes are very dedicated, hard working individuals. He believes that Marvin Krout will be a wonderful leader for the Planning Department, bringing new and fresh ideas. He also expressed appreciation to Steve Duvall and Cecil Steward, who came on the Commission at the same time that he did.

Schwinn then requested a motion approving the minutes for the regular meeting held August 6, 2003. Motion for approval made by Bills-Strand, seconded by Krieser. Motion carried 9-0: Carlson, Duvall, Krieser, Larson, Marvin, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'.

ELECTION OF CHAIR AND VICE-CHAIR

August 20, 2003

Bills-Strand nominated Cecil Steward for Chair, seconded by Larson and passed unanimously.

Krieser nominated Mary Bills-Strand for Vice-Chair, seconded by Schwinn. Marvin nominated Carlson for Vice-Chair, seconded by Steward. Bills-Strand was elected Vice-Chair on a vote of 6-3.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

August 20, 2003

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3417; USE PERMIT NO. 153; SPECIAL PERMIT NO. 638A; SPECIAL PERMIT NO. 1022D; SPECIAL PERMIT NO. 2030, FINIGAN VIEW COMMUNITY UNIT PLAN; PRELIMINARY PLAT NO. 02005, CATHERLAND SUBDIVISION; PRELIMINARY PLAT NO. 03003, OLD MILL VILLAGE 1ST ADDITION; COUNTY FINAL PLAT NO. 03025, PRAIRIE CREEK ESTATES; COUNTY FINAL PLAT NO. 03026, WYNDAM PLACE ADDITION; COUNTY FINAL PLAT NO. 03028, THE PRESERVE AT CROSS CREEK ADDITION; ANNEXATION NO. 03006; and COMPREHENSIVE PLAN CONFORMANCE NO. 03007.**

Item No. 1.3, Special Permit No. 2030, and Item No. 1.4, Preliminary Plat No. 02005, were removed from the Consent Agenda and scheduled for separate public hearing.

Bills-Strand moved to approve the remaining Consent Agenda, seconded by Taylor and carried 9-0: Carlson, Duvall, Krieser, Larson, Marvin, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'.

SPECIAL PERMIT NO. 2030,
FINIGAN VIEW COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT NO. 84TH STREET AND BLUFF ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 20, 2003

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

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

Mike DeKalb of Planning staff submitted a letter from Attorney Andrew M. Loudon, on

behalf of Rochelle J. Bray, an adjacent property owner. It is their opinion that Ms. Bray actually controls a portion of the property in this community unit plan by adverse possession. However, the City Attorney does not believe this has any effect on the application before the Commission and that it would be a civil matter between the two parties.

Steward noted that the property is located approximately one mile from the LES peaking facility, the landfill and northeast sewage lagoons, yet there is no expression of concern about this proximity. DeKalb suggested that the peaking facility would not be different than the Rokeby peaking station on S.W. 12th and W. Denton with acreages right next to it, other than some light at night. Occasionally, there might be noise but it would not be too much of an impact. As far as the landfill, most of the traffic is coming in on 56th and 70th and it is his understanding from the neighbors that they do not notice it that much, and this development is one mile away. As far as the city's effluent lagoons for the northeast treatment plant, DeKalb believes the city is going to begin using that effluent for cooling for the peaking station. This could change the characteristics and he believes there will be improvement. He believes this development is far enough away that there will be no direct impact. Steward assumes there is no evidence of any water contamination from either the landfill or lagoon. DeKalb concurred.

Proponents

1. Mark Hunzeker appeared on behalf of **Pearle Finigan**, the applicant, and agreed with the staff recommendation and conditions of approval. The property is in close proximity to a similar subdivision the owner did some time ago. The water is good and plentiful. There have been no complaints with respect to the landfill or the potential odors from the treatment facility. Finigan has experienced good market in that area and has had no resistance. With respect to the claim by Ms. Bray, Hunzeker also suggested that it has no effect on what the Planning Commission is doing here. The only claim, based on the letter, is that they allegedly possess ½ acre abutting the property that is owned by Ms. Bray. The aerial photograph shows that the parcel owned by Ms. Bray is in the southwest corner of this quarter section, containing approximately one acre. Ms. Bray is claiming that she has adversely possessed as much as ½ acre surrounding that property. If they file a lawsuit and if they are successful, that would reduce the total land area only by ½ acre and will not affect the density calculations of this community unit plan.

Steward noted that the land is currently farmed and rated as prime quality. Is it the intent of the owner, except for the cluster development, to continue to farm? Hunzeker answered in the affirmative. The applicant did not seek any bonuses for preservation of the agricultural land so the number of units being requested is the permissible number.

Opposition

1. **Rochelle Bray**, 10500 No. 84th Street, which is approximately the corner of 84th & Bluff Road, testified in opposition. She requested that the Planning Commission delay action on this community unit plan because she will be filing a lawsuit of adverse possession. She has owned the property for 18 years. The land that is in question today is a greenbelt property—not ideal farm quality. She reminded the Commission that less than 5 years ago, the Commission also authorized a rezoning of agricultural land to residential located on the north side of Waverly, with two subdivisions now in progress. She requested that the Commission delay any action on this community unit plan. She did contact the Finigans on several occasions. The letter was sent certified mail and was signed for on August 2, 2003, allowing the Finigans 14 days to respond. The Finigans have not responded so she will go forward with a lawsuit claiming the .92 acres as her own.

Bills-Strand noted that the proposed cluster development is clear up in the northwest corner, quite a distance from Ms. Bray's property in the southwest corner. Bills-Strand does not believe that what Ms. Bray is trying to adversely possess is contained in the development. Ms. Bray disagreed. The applicant's survey of the entire property includes her property.

Larson does not believe the proposal will affect her property. Ms. Bray indicated that the litigation cannot go forward if there is action on this development at this time. She lived in the country and worked very hard to provide and have what she has. Changing the land would put her into a residential area of 3.5-acre lots and this would definitely change the abstract of the land as it exists today. There is another subdivision in progress just across the road.

Larson noted that the actual lots being proposed would be approximately 1/8th of a mile north of Ms. Bray's property. Ms. Bray agreed, but she does not believe that is very far away.

Ms. Bray also pointed out that her water has tested poorly and she had to install a \$10,000 water distiller system in order to have good drinking water.

Steward asked the City Attorney to respond. Rick Peo advised that if there is a claim of adverse possession, that is for a court to determine based upon 10 years of occupancy of the property hostile to the owner. It is his understanding that the proposed acreage development is not directly next to the area in dispute, but reserved for agricultural, so if at a subsequent time there would be change of ownership, that portion of the property could be eliminated from the community unit plan and not have an effect on the continuing use of the acreage development. He sees no problem with this body going forward. It appears that the party claiming adverse possession also dislikes the concept of the community unit plan.

Response by the Applicant

Hunzeker pointed out that the distance from the property in question to the nearest property of any of the lots proposed is more like 1800 feet. Page 45 of the agenda shows that the Bray property is in the extreme southwest corner of this quarter section. The quarter section is ½ mile north-south, so that it is more than 1/4th (almost ½) mile from the north property line of Ms. Bray's lot and the only property affected by the litigation would be the large outlot which has no bearing on the density calculations. He also suggested that the approval of this CUP will not have any effect on her ability to file a lawsuit. The approval of this subdivision will not change the title or the likelihood of success of her lawsuit in any way. The record title holder is Pearle Finigan and he has no desire to engage in extended litigation. Hopefully, there is some means of getting this resolved without litigation.

Taylor asked Rick Peo if he agreed with Hunzeker's testimony that this development will have absolutely no effect on positioning of the Bray property. Peo could not speak to Ms. Bray's claims; however, if the development were to go forward and if Ms. Bray is found to be the owner of part of the property, the CUP would have to be amended to eliminate that portion of the property from the community unit plan. There is enough acreage to accomplish the requested purpose, with or without that section of the property. He does not believe this subdivision will affect that situation. He does not believe this would prevent her from bringing litigation forward.

Hunzeker believes that if the adverse possession claim is successful, there would need to be an administrative amendment to the community unit plan to exclude that portion of the property.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: August 20, 2003

Schwinn moved to approve the staff recommendation of conditional approval, seconded by Larson and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

PRELIMINARY PLAT NO. 02005
CATHERLAND SUBDIVISION,
ON PROPERTY GENERALLY LOCATED
AT NO. 70TH STREET AND FLETCHER AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 20, 2003

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

Staff recommendation: Conditional approval.

Ex Parte Communications: Larson reported that he had a conversation with the applicant but he was unaware that there was an application pending until after their discussion.

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

Tom Cajka of Planning staff submitted a fax communication from the applicant requesting a two-week deferral.

Schwinn moved to defer, with continued public hearing and administrative action scheduled for September 3, 2003, seconded by Bills-Strand and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

**COUNTY CHANGE OF ZONE NO. 216
FROM AG AGRICULTURAL TO
AGR AGRICULTURAL RESIDENTIAL,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 162ND STREET AND PELLA ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 20, 2003

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

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

Ex Parte Communications: None.

Mike DeKalb of Planning staff submitted a letter in opposition with concerns about spot zoning, spraying problems, increase in taxes, the small hog confinement operation to the south, and a water drainage problem relative to one of the dams on the site.

Proponents

1. **Daniel C. James**, 29275 So. 96th Street, Firth, NE, the applicant, testified that he will accept the staff recommendation of deferral.

DeKalb suggested that the deferral not be date specific. The staff does anticipate doing a briefing for the Commission on the acreage studies in six weeks, followed by a public hearing. The staff would recommend deferral until the acreage studies are complete.

Bills-Strand moved to defer, with continued public hearing and administrative action scheduled for November 12, 2003, seconded by Taylor and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

Opposition

1. **Ron Essink**, R.R., Adams, 68301, who owns the 80 just to the south of this change of zone, testified in opposition, explaining his fear of the spraying of insecticides and herbicides. Spot zoning in a section is also a problem with one 80 being agricultural and the next 80 being residential. There is agricultural farming all the way around this property. Most likely the taxes will increase and farmers are already in a failing farm economy. It could be a burden to some. There are two hog confinements within 3/4 mile. There is a small hog confinement right in the same section one-third to one-half mile away. There is another in the next section to the south. Most of the landowners in this section, except for a couple that own acreages, are opposed to this change of zone. With regard to drainage, when Mr. James contacted him about this application, he said that he changed the dike so that spillway water did not drain on the farm which he anticipates purchasing. Essink does not know what he plans to do with the water, but he believes the spillway should be draining on his own property and not on his neighbor's property. There is a state law that you cannot change the course of water. He asked the Commission to consider these issues as they deliberate this change in the future.

CHANGE OF ZONE NO. 2751A,
AMENDMENT TO THE VAN DORN ACRES
FINAL PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 84TH STREET AND VAN DORN STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 20, 2003

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

Staff recommendation: Conditional approval.

Ex Parte Communications: Bills-Strand and Taylor reported that they met with the applicant.

Greg Czaplowski of Planning staff submitted additional information for the record including:

--a letter from Allstate Insurance Company addressing their concern with the potential for a traffic signal at 84th & Rockledge Road;

--an email with two attached letters in opposition from the Crown Pointe Neighborhood Association;

--a memo from the City Wastewater Division of Public Works specifying that there is adequate downstream capacity in the sanitary sewer system to serve this development. Czaplowski then revised the staff recommendation to delete

Condition #1.4.1 in response to the memo from the Wastewater Division.

--an amendment to Condition #2 regarding alcohol sales, to add the sentence: "The on-sale of alcohol shall be limited to businesses which derive more than 50% of their gross business receipts from food sales."

--deletion of Condition #5 because the applicant will withdraw the request to have a 6'4" fence.

Proponents

1. **Michael Rierden** appeared on behalf of the applicant and submitted additional information in a booklet setting forth the history of the Slosburg Company, being established in the late 1800's, and beginning real estate development in 1918. Slosburg does not sell their properties, but operates and manages them. Their projects are "live, work and shop" projects, located close to commercial areas on arterial streets. Their first project in Lincoln was the Lions Gate project on 50th & R Streets. One of the other projects in Lincoln is the Tanglewood Apartment complex just north of Roper's Mortuary and east of Wyuka Cemetery. Slosburg contacts all of the neighbors that may be affected by their projects. The additional information contains a letter in support from the current owners of the property, Glen and Jack Herbert.

Rierden advised that a series of meetings were held with the property owners, beginning on June 24th with the abutting property owners; on July 8th with the entire neighborhood, with there being over 300 invitations; and a third meeting on August 7th with the neighborhood. The last meeting was moderated by the Planning staff. Rierden also submitted letters in support from two property owners and the Crown Pointe Townhome Association.

2. **Jerry Kavan**, of the **Slosburg Company**, 6439 Boxelder Drive, discussed the original approved site plan of Herbert Brothers, which showed the building 30' off the property line. One-half of that property is designed to develop as phase 1 of the total development. It has always been the intent of the seller that the entire property would be developed. If built as previously approved, there would be commercial plus 227 apartment units. The PUD allows for 500 additional dwelling units to be built and additional commercial. This proposal represents the last 13 acres available in the PUD to be developed. Slosburg goes through many, many renditions of the site plan to come up with the best plan. The goal on this proposal was to develop the "live, work and shop" type of environment. As they refined the plan they considered comments from the city and the concerns of the neighbors.

Kavan then explained the commercial element of the site plan, being two buildings--one in-line and one pad. The in-line building will be similar to the Lenox Square Shopping Center building. The commercial uses are along 84th Street, separated topographically from the

apartments by a grade separation of 15' with 15' retaining wall around two sides of the commercial. The type of tenants would be neighborhood service commercial—hair salon, sandwich shops, casual dining, dry cleaners, etc.

The apartments will be at the main entrance off of Rockledge with a clubhouse at the main entrance. They are proposing to use a two-story apartment building with tuck-under garages, with the larger apartment units being 1200-1500 sq. ft. The three-story apartment buildings will have tuck-under garages. There are 65 tuck-under garages and 66 detached garages around the perimeter. The exterior of the buildings are primarily brick, incorporating some stone, using fine architectural features. Behind the clubhouse there is a recreational courtyard with pool, spa and other features with a fitness center in the clubhouse.

In comparison with the previously approved plan of three 4-story buildings, the development now has four apartment buildings behind the homes, one of which is two-story, and all being 70' away from the property line. The gas station has been removed. Every one of the four buildings that back up to the neighbors' homes are 10' below the floor elevation of those homes. Slosburg has been working with Campbells Nursery regarding the area between the homes and the apartment buildings and intends to provide much bigger and more trees than required. Dick Campbell is recommending that the developer meet individually with each homeowner.

It is anticipated that the typical resident is going to be a 25-40 year old professional who is a renter by choice. Their careers include medical, law, computers, education, administration, and sales. The second largest rental group are those people who have raised their children and want to stay in the neighborhood. Slosburg then described the interior features of the units.

3. J.D. Burt of Design Associates, 1609 N Street, also testified on behalf of the developer. He advised that the traffic circulation is similar to the previously approved plan, with the addition of access to 84th Street. There are several improvements to public right-of-way proposed, at the developer's expense. There will be an access at 82nd & Van Dorn, with right turn lane for east-bound to south-bound vehicles. Construction will include a continuous right turn lane from west of 82nd and proceeding over to 84th Street. The 84th Street access would line up with the center of the commercial building, with access for right turn in and out, and with a right-turn deceleration lane, at the developer's expense. Proceeding further south to Rockledge, it will be a very similar situation with a right turn lane in 84th at Rockledge, at the developer's expense. With regard to the intersection of Rockledge Road, as part of the city's project, they built the intersection and allowed left turn ingress. Public Works has agreed to allow modification to the existing median to provide a full left turn, through and right turn movement at the intersection of Rockledge Road on the west approach. This results in a traffic pattern that will provide left and right turns from 82nd onto Van Dorn and full movement at the intersection of Rockledge. It is believed that these two accesses will alleviate any of the traffic generated from this development.

The city has two projects pending that will impact this development, one of which is 84th Street that ends south of here at Monticello. That project is going forward. The other project is the widening of Van Dorn from Normal over to 80th Street, which is shown in the Comprehensive Plan. With that project, the developer has been advised that a median will be installed as part of that project which will eliminate the ability for left turns in and out of the site at 82nd Street. Public Works indicates that with the intersection design of 84th & Van Dorn, there will be signalized U-turn movement to allow leaving the site to make a right turn onto Van Dorn and make a convenient U-turn at the intersection of 84th to proceed back west-bound on Van Dorn.

Burt acknowledged that the neighbors have a concern about Rockledge. They have raised a concern that there will be a considerable amount, or some traffic generated by this development that would have a tendency to make a trip down Rockledge, up Crown Pointe Road and ultimately ending up at 79th & Van Dorn. With the intersection improvements this developer is making and the ability to make left turns at 82nd & Van Dorn, Burt believes that problem will be very unlikely to happen.

Burt noted that the neighbors have also shown concern about a traffic signal at the intersection of 84th & Rockledge. Public Works has indicated that is not something in which they are interested. However, the developer would support it and it is the developer's opinion that a traffic signal would do a lot to help the neighborhood with any potential of diverted trips from this development back to the neighborhood.

Rierden then addressed the conditions of approval, withdrawing the fence waiver request and the building separation waiver request. Building 1 has now been moved to 70' from the property line east to comply with the staff recommendation. Rierden proposed amendments to Condition #1.1.5 and Condition #1.1.12; requested to move Condition #1.3.12 to Condition #6.4, and requested to delete Condition #1.5.

Marvin inquired as to Building 1. Rierden stated that it is the 3-story apartment building.

Carlson requested an explanation of how the apartment dwellers will be moving to and from the commercial area. Jerry Kavan explained that because of the grade separation, they are unable to do a vehicular drive between the commercial and the apartments within this development's property. Two stairways are shown on the site plan, one of which is at the 90 degree turn of the retaining wall and the other being directly behind the southern end of the in-line building.

Carlson then inquired about an internal sidewalk system and the pedestrian easement in the Crown Pointe connection. Kavan advised that currently, there is a pedestrian easement through one of the residential properties with a concrete sidewalk. The existing plan called for an additional sidewalk from that point to this development's property down to Rockledge and up to Van Dorn. This connection will stay in place due to the staff recommendation.

However, the neighbors wanted it removed because the commercial has been moved. There will be sidewalks through the community if that easement is not removed. Kavan acknowledged that the Planning staff wants to discuss additional sidewalks and they are in that process now.

In response to a question by Steward regarding the detention cell, Kavan acknowledged that it is a dry detention cell, with the intent to plant trees in that area to make it like a park.

Support

1. **Ken Skunkwiler**, owner of property at 7020 LaSalle, testified in support based upon his experience with the Lenox Village Square development. This developer works very hard to please the neighbors and follows through with everything they have said they are going to do.

Opposition

1. **Kurt Suhr**, 8030 Thornview Road, testified on behalf of the members of the Crown Pointe Homeowners Association and presented 192 signatures in opposition. They do not agree with the layout and content of the proposed development. They believe that the developer has shown minimal, if any, concern about the neighborhood. Suhr suggested that the proposal is not consistent with the PUD in that they are requesting 124 more apartments (129% increase), on approximately 3.6 more acres of land (or only 60% more land). With respect to the commercial uses, the developer is requesting 23,000 sq. ft. (230%) more commercial, on only about 40% more land. The neighborhood outlined their concerns about traffic during the neighborhood meetings, only to hear about the developer's long list of wisdom and experience in development. This developer does not live in Lincoln. The first meeting was only for the adjacent homeowners, who asked that the developer include the entire neighborhood. There are 228 homes in the neighborhood and the developer did not notify all of the neighbors or the surrounding area. At each of the meetings the developer's presentation included the statement that "quality and density are our friends".

Suhr suggested that the neighborhood should have been involved when they began this project over a year ago. The association sent a letter to the Planning Director expressing displeasure with the process and the proposed amendment. The neighborhood also sent a letter to the developer indicating that the neighborhood would support a development plan that limits the use of the Crown Pointe neighborhood streets and promotes and encourages the use of either 84th Street and/or Van Dorn Street; and the neighborhood would support a development plan that respects the intent and concept of the R-3 zone and follows more traditional planning rules and methods that have been utilized throughout other neighborhoods within the City.

Suhr reported on the final meeting that the neighborhood had with the developer and two

planners from the Planning Department. The Planning Department provided information regarding other developments with the same densities and setbacks. The neighbors did take photographs of some of the examples, and they struggled to find a development that was like theirs. Most did not have high density apartments next to people's homes. This last meeting was the same as others. All of the same issues were discussed and the response by the developer was the same: "this proposal is what you need--it is what's best for you." The only positive result of the last meeting was that Dennis Bartels did admit that the neighborhood streets would no doubt incur increased traffic.

Suhr suggested that there is no data or facts available to support what's going to happen. The developer was not willing to offer any compromise other than: 1) no wall-pack lighting on the west side of the structures facing the neighborhood; 2) move the southwest building 5' to the east (which they have now agreed to do); and 3) reduce the density by 5 apartments (220-215). None of these compromises were listed or discussed in the staff report.

Suhr suggested that the cost of the development to this neighborhood is too high. The neighbors' financial investment should be no less important than that of the developer.

This neighborhood already endures traffic congestion with Lux Middle School. 79th & Van Dorn is a mess that is not going to get any better. This amendment magnifies traffic congestion. The encouraged use of Rockledge Road creates an unsafe burden on the neighborhood.

There are many issues that need to be resolved prior to approval. The Crown Pointe Neighborhood Association approves the plan that was adopted in 1993, keeping the apartments the same and going to the outlot for any further development.

2. Bill Boehler, 2801 Crown Pointe Circle, testified in opposition, stating that the "undue concentration of population" is subject to wide interpretation. This proposal increases the density from earlier plans and the Commission should consider its responsibility to conserve the value of property and control traffic if this plan is approved. Boehler did meet with Mr. Kavan. The northern entrance into the development will have a path of car lights moving through his house all night long. He suggested that the development include trees in the southwest corner of the entrance or even in his own yard. If the developer were to formally commit to altering the plan to include a tall evergreen screen on the northern entrance of the development and some screening trees in his back yard, the value of his property could be maintained. Boehler is also concerned about the traffic and congestion on Van Dorn. Lux is the city's largest middle school with over 1000 people, students and staff. In addition to Lux, this area has seen Silver Crest show up with 200 residents coming on board, and, in addition, there is another new development that is even larger that is nearing completion. Lincoln Benefit Life has several hundred employees flowing through the neighborhood on a regular basis. Thus, the volume on Van Dorn is quite substantial. If the Commission approves this plan, the city should be prepared to put in a genuine street

light at 79th & Van Dorn.

3. Bill Olson, attorney, appeared on behalf of the Somerset Apartments, located at the northwest corner of 84th & Van Dorn. He stated that he has mixed emotions because of the obvious implication that Somerset does not like competition. He stated emphatically that not to be the case. He is testifying to discuss the density. Somerset is 192 units on 13.6 acres of land, with a density of 14.07 per acre. Somerset has a swim pool, clubhouse, garages, tennis courts, and a lot of landscaping. There is no commercial area on that 13.67 acres. The proposal today covers the entire 13.2 acres--that's an additional ½ of what's already approved in terms of acreage which would allow for more density. The current plan calls for 96 multi-family units on 8.6 acres, along with the 10,000 sq. ft. of commercial space. The proposed amendment adds only 5 acres of land and 33,000 sq. ft. of commercial space. This puts 220 units on 9.5 acres, which is 23.2 units per acre--about a 50% increase over Somerset's density. Somerset is concerned about that many units on that small acreage compared to what is already there. Somerset agrees with the increased density of 40-50 more units. Apartments are fine and commercial is fine, but Olson requested that the Commission consider the density of the area and what they are asking for. Olson believes they have overdone it.

Approximately 15 people stood in support of Olson's testimony. Olson was contacted by his client and asked to cooperate with the homeowners and guide them through the process. He attended three meetings with the homeowners and listened to their concerns. The Slosburgs were not invited to their meetings, but Somerset was not invited to the Slosburg meetings. Olson did not call the meetings of the neighborhood.

4. Margaret Washburn, 619 So. 42nd Street, testified in opposition to the on-sale liquor. She has two grandchildren that live on Crown Pointe Road just behind this proposed development. There is nothing credible about making alcohol available. She is concerned about the proximity of Lux School.

5. John Porter, 3016 Crown Pointe Road (the southeast corner of Crown Pointe Road and Rockledge Road), testified in opposition. This development is not good for the neighborhood nor for the City. The traffic is a major issue in getting to the commercial area. He now has to leave 30 minutes earlier once school starts to get to work on time. He serves the citizens to the east of 84th Street as a volunteer fireman. By adding 440 parking places with these units, traffic is going to be even worse. "We have gone way beyond what this was ever intended to do." The developer has requested an inordinate amount of waivers. Why do we have to have waivers once we set the rules? Alcohol is an issue. The people who live in the apartments are not going to be paying the property tax for the schools. Porter requested that the proposal be deferred or denied. The developer did not work with him. He received notification on June 24th and they have been working on this over a year. He was not notified until the second letter went out. He is not here as part of the grand plan to eliminate development of this area. He welcomes the apartments as previously approved. Rockledge will be heavily traveled and he requested that

Rockledge not be made a through street. This will cause traffic to come through his neighborhood. There is no flexibility here. Porter asked that this application be put aside until the developer complies with all of the changes that are being requested. He thinks they can make it work, but it is not now a good situation.

6. Dan Spiry, 7910 Thornview Road, testified in opposition. The developer has the misfortune of having two architects that live in this PUD, and he is one of them. A site plan is worth a thousand words. This site plan is all about maximizing density. He enjoys a well-designed, dense, live, work, play environment, but as he looked at this site plan, it is an exercise in maximizing density. The natural features on the site are being bulldozed. Yes, there are some spots of green area, but it's all about buildings, driveways and parking lots. The remnants are the green space. Where are you going to put the recreation plan unless it is in the bottom of the detention cell? The site plan shows two disjointed uses separated by a 15' retaining wall. For the pedestrian, you've got two stairways that end up in a service drive of the commercial space. There are a lot of things that throw up red flags in his mind about design. His biggest concern is that his street is going to become a very convenient shortcut for the added density on this site. With regard to the traffic pattern, he foresees that Rockledge to Crown Pointe to 79th to Van Dorn is going to be the most convenient. It is worse if you are visiting the commercial center and want to head west after your visit. If you leave the commercial center, you are going to cut through the neighborhood. He suggested that the neighborhood does not need Rockledge—don't connect it and let it serve the apartment complex and the commercial center.

7. Gene Morrissey, 8030 Brookfield Drive, is concerned about the amount of traffic that this will create. A lot of the traffic is going to come out and wind up at 79th & Van Dorn. There are already 800 employees at Lincoln Benefit Life and it is difficult to get out now before school even starts. There are 1,406 apartment units in the square mile and there are 110 empty at the present time. There are 184 units that are currently under construction, leaving 294 units that are presently available.

8. Larry Dahl, 2810 Crown Pointe Circle, testified in opposition. He purchased Lot 12 in 1994. All of the abutting properties will have maximum green space of only 20' and then a garage or two behind their properties, which will be like having a house behind his back yard. The 3-story apartment building will only be 70' from their lot lines. This is unacceptable. There is lack of green space--a 20' buffer is totally inadequate. Their covenants state that the rear yards can have no out buildings, yet these 1400 sq. ft. garages will be behind their homes. This affects the quality of life. The driveway at 82nd and Van Dorn will become a thoroughfare to Rockledge Road. There is traffic and noise and car lights shining in his windows 24 hours a day. There will be a loss of privacy with the apartment buildings with balconies 70' from his lot line. This will also produce noise and air pollution. The sense of security he has grown accustomed to will be gone. The landscaping offered by Slosburg is not adequate. Light pollution is also an issue. This plan is not neighborhood friendly and does not fit into the neighborhood.

9. Del Weed, 2940 Crown Pointe Road, testified in opposition. When he moved into his home in 1995, he knew there would be some apartments behind his home. For 10 years he has lived with that plan and has come to accept it. Up until a year ago, there were still people moving into the neighborhood and receiving the 1993 information, but then in June of this year, we understood there to be a new plan. We had trusted that the 1993 plan would be what would be constructed. He requested that this proposal be delayed so that the neighborhood can get back into harmony with the developer and the Planning Commission. Bigger is not always better.

10. Carol Brown, 2201 Elba Circle, testified in opposition. This is the same thing that happened to her neighborhood at 24th & Dodge. We were told what was going to happen and then it got changed. All you are doing is telling people to not believe what people say is really going to happen. Beware to the public. There's a school there that generates traffic. We need some traffic lights in this neighborhood. Density does not revolve around the automobile. There are way too many automobiles to dump on this area. These people deserve a chance to go back and work with the developer. How many apartments do we need in this community? Aren't we over-burdened with apartments?

11. Jack Fields, 8121 Arrow Ridge Road, testified in opposition to the median down Van Dorn Street. A good share of the residents of the Somerset Apartments and Arrow Ridge Townhomes come out 82nd Street onto Van Dorn and make a left turn to go to 84th to go north or south. A median there will force us to go back down through the neighborhood, hit Devoe and then 79th Street, and again causing more confusion and congestion at 79th & Van Dorn. There need to be right and left turns at 82nd Street.

Response by the Applicant

With regard to the traffic issues, Rierden does not believe anyone can say for certain that the traffic is going to go into the neighborhood. Once someone tries, they probably won't do it again. In regard to the traffic on 84th & Van Dorn, he referred to p.8 of the staff report, paragraph 9, which states that, "The impacts of this development will be a small portion of the overall increase in trips along Van Dorn and 84th Streets. The City has already committed and planned for transportation improvements that will likely precede extensive development of the areas east of 84th Street."

With regard to density, Rierden suggested that there are several different components. The Comprehensive Plan and the philosophy of the city has changed in the last few years, that being to encourage some higher density to better utilize our infrastructure and city utilities. The traffic flow on the approved plan is basically the same—this proposal simply adds another curbcut for the commercial buildings. It is important to note (and Rierden thinks this is a clear case of be careful what you wish for) that the commercial directly abuts Mr. Dahl's property in the approved plan and the closeness of the apartments. The Slosburgs have moved the buildings by 70+ feet. Rierden then submitted a letter from Richard Campbell of Campbell's Nursery which recommends that the developer talk to all

of the residential property owners west of the project. This is being done. The Slosburgs have offered to go into their individual homes and back yards and plant appropriate plantings and trees.

With regard to lighting, Rierden pointed out that at the third meeting with the property owners, one of the overtures the developer made was that they would not utilize any wall-pack lighting on the walls along the west property line, and they got no response. That overture will continue to be open and they will continue to work on the lighting and hire a lighting consultant.

As far as property valuations, Rierden submitted an article from the National Home Builders Association indicating that between 1987 and 1997, single family detached homes located near multi-family structures, on average, appreciate at somewhat higher rate than single family attached homes that were not located near multi-family buildings.

Rierden also submitted a letter written to the Somerset apartment residents from the owner of the apartments, Gene Wilczewski. Based upon this letter, Rierden believes that competition is in fact their concern. Now they have to compete with Lenox Village and they are now more concerned about competing with another Slosburg Development. This is a clear situation of "watch out what you wish for". Rierden cannot believe the property owners to the west really want the original development approved with the commercial and apartment complexes so close. Mr. Herbert makes it clear that they had two phases planned, with phase two coming later. If developed along the same lines of the original proposal, there would be 227 units. The Herberts also had an offer to purchase from Wilczewski.

Rierden urged that this is a great project that is good for the City of Lincoln and good for the neighborhood. The developer agrees with all conditions of approval, with the proposed amendments, and will comply and provide the information still being required by Public Works.

Schwinn noted that the applicant is still seeking to eliminate the pedestrian easement and staff is recommending denial of that waiver. Rierden explained that they are requesting this waiver as an accommodation to some of the home owners to the west.

Marvin asked the applicant to discuss the history of the proposal to let traffic out on Rockledge. He understands that it is the city's request that it be connected. Kavan responded, noting that Rockledge was on the original PUD and the city was wanting that connection to 84th Street. When the neighbors brought up the issue about Rockledge, Slosburg agreed, but the city's position is that that road needs to be connected. Marvin asked whether the developer insists on having the Rockledge access. Kavan's response was, "beyond getting access to our property, we would support closing Rockledge".

With regard to the on-sale alcohol, Rierden found it an interesting issue because in a PUD,

the underlying zoning remains (in this case R-3), but it does allow 10% commercial. One of Slosburg's intended uses is perhaps a restaurant and they desired the ability to have a restaurant that may serve alcohol--on-sale only. They have avoided a bar. The language is crafted as such and it is the developer's intent that it will be a restaurant, and perhaps something like a Spirit World with deli and fine wines that you would take home. Steward clarified that the staff has revised the condition regarding alcohol sales such that the on-sale alcohol must be in a restaurant, and Rierden agreed.

Staff questions

With regard to Rockledge Road, Bills-Strand recalled that there were concerns when the church came forward about delaying the development of this road because of emergency vehicles having access into the single family residences. She also thought there was some issue about the sidewalk with the church. Dennis Bartels of Public Works stated that the street has been platted for a number of years. Along with the platting of Rockledge would have been the requirement to build sidewalks within a 2-year timeframe and there was requirement for sidewalks along the south side of Rockledge. The church had requested and received some extensions of the requirement to complete those improvements. They have gone past their completion date again and they received another extension.

Larson is concerned about the U-turn on 84th Street. Bartels advised that the city is allowing U-turns to avoid having to signalize so many intersections, i.e. North 27th Street and other places along 84th Street and Pine Lake Road. When the city approved Lincoln Benefit Life, it would have required a signal 900-1,000 feet from Van Dorn Street. If we put signals at all the median openings, it starts to impair the ability to get progression along the arterial streets. That is why a left-in and right-out only design was required when Lincoln Benefit Life was approved. The U-turns are a relatively new concept for the City.

Marvin asked staff to discuss the potential for a light on 79th Street. Bartels indicated that this is an issue that is continually monitored and required to reach signal warrants. Marvin asked whether the staff has ever given any thought to denying this project access into Rockledge? Czapski does not believe there was an indication from staff that the access to Rockledge should be relinquished. The approved plan had access to Rockledge at one location instead of two. Bartels added that the street was already there and it defeats the purpose of a neighborhood shopping center if the neighborhood has to go into the arterial street system to access a shopping center or commercial area in their own neighborhood.

Bills-Strand asked whether the staff would allow only one entrance with that number of residents. Bartels does not know if there is a specific number for apartments. Staff objected to one driveway serving 220 apartments.

Carlson inquired about the internal sidewalk plan which Rierden indicated they were engaged with staff upon, yet he does not see it in the conditions of approval. Czapski

agreed that it is not a condition and he believes the applicant would agree to add that as a condition.

Carlson moved for four-week deferral, seconded by Marvin.

Carlson believes there are design elements in this proposal that are very attractive. But, he is not sure the multiple uses are mixing or functioning together quite right. He is not convinced that the overall use and overall flow is quite right. He thinks the point of getting people back together might be helpful.

Marvin believes that someone needs to give some thought to the traffic that is going to go through the neighborhood. If you have 200 units, that's 1400 auto trips and a huge number of those are going to go through the neighborhood. If you want to go west, he thinks the logical way would be to go to Rockledge and curve through to get over to 79th Street.

Bills-Strand stated that she would not support deferral. She thinks it is a nice project. With the extra trees, screening and sidewalks, she believes it makes a good neighborhood. It is apartments and commercial reconfigured--it's not a change of use. Traffic is always an issue, but Rockledge was there before. She thinks people will go out on the arterials as opposed to through the neighborhood.

Schwinn does not believe this is the same as 24th & Dodge. He lives in this neighborhood and probably lives closer to this than Lenox Square or Van Dorn Plaza. There are 1400 units already existing today. There was a great uproar in his neighborhood over Lenox Square, yet the Slosburgs gained approval and went forward and there have been no complaints. He believes it is an upscale apartment complex that looks good and you have to have the density to make it economical. It is also interesting to note that after Lenox Square, we did Pioneer Woods and no one came down to complain after the success of Lenox Square. While the neighborhood opposition has been well orchestrated, he is not sure that its particular purpose was right. They were told there would be apartments behind them. He believes the numbers are close. He will vote against deferral.

Taylor stated that he will support the deferral because of the concern of the neighbors. He clarified that this does not propose a bar, but a restaurant. He agrees with this plan design--it looks good--but he thinks we need to have some breathing space so that there is a little more contact with some of the aggrieved neighbors.

Steward stated that he will support the deferral. He would like to see this project succeed. He thinks the density in an of itself it not incorrect. He agrees with the staff assessment in general; however, we are a ways away from the design to accommodate the marriage between the single family residential area and the commercial and the higher density. The idea of the terrain change has presented some difficult problems The idea that you can only get from the apartments by steps to the commercial is not a pedestrian friendly notion. It is not a pedestrian friendly notion not to have an intent to have pedestrian movement from

the single family area into this commercial area. It is not a health friendly idea not to have recreation and more green space. He thinks delay is necessary if the project can be saved.

Motion to defer four weeks, with continued public hearing and administrative action on September 17, 2003, carried 5-4: Krieser, Carlson, Taylor, Marvin and Steward voting 'yes'; Larson, Duvall, Bills-Strand and Schwinn voting 'no'.

*** Break ***

SPECIAL PERMIT NO. 2019,
FOR AN EARLY CHILD CARE FACILITY,
and
SPECIAL PERMIT NO. 2020,
RANDOLPH SQUARE COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT SO. 40TH STREET AND RANDOLPH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 20, 2003

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

Staff recommendation: Denial.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted an email in opposition.

Proponents

1. J.D. Burt of Design Associates, 1609 N Street, testified on behalf of **Steve TeSelle** and others involved with the project.

The day care is located at the southwest corner of the site, with frontage along Randolph Street. 40th Street is the westerly boundary with J Street along the northerly boundary of the CUP. The day care is proposed for a maximum of 100 children; however, that 100 may not be the right number and the applicant has asked for some guidance. The staff had suggested it be limited to 100, even though the applicant had suggested a lower number. The day care center will also have to comply with state and county licensing. The day care center will be new construction built to building and safety code. Parking for the site is located along the east side and the north side adjacent to the day care, so anyone, both employees and the parents, picking up children will not be required to cross any of the travel ways of motor vehicles. To minimize access to the site (and understanding that

Public Works does their best to minimize access points along arterials streets), the proposal suggests a shared driveway along Randolph Street fairly close to the west property line (20-25' from the east property line) to provide buffering for neighbors to the east. Access would be through an easement as well as the shared parking easement along both sides of the day care. With nonconcurrent uses, the parking can be shared.

Burt believes that the site is a wonderful place to locate a day care. The city has standards with respect to day cares and requirements as far as locating day cares along local, collector and arterial streets. One standard requires that a day care of more than 30 children be located on an arterial street and this proposal complies. The standards also require the submittal of a conversion plan. An assumption was made that the community unit plan for the multi-family area was in place and that the lot for the day care would be included in the community unit plan calculations. Based on trip generation rates for day cares from national studies, this particular day care would have 40-45 vehicles entering in the am peak hour (7:30-8:30 a.m.) and 38-40 exiting the site. When dividing those trips into two locations/accesses, we are looking at minimal traffic numbers and, on the average, 1.5 minutes between cars.

Burt agreed with all staff conditions of approval on the Special Permit No. 2019 for the day care center.

With regard to the community unit plan, Burt pointed out that this is a very unique site. This particular piece of ground has always been vacant. It is a remnant parcel of bad planning. It is a 600 ft. square between 40th and 42nd, Randolph to J--a remnant parcel with one property having a huge unusable piece of internal real estate. It's an oasis. There is no way to get to it. This developer/owner had the foresight to go in and buy all of this property. There are four homes on J Street, two on 40th Street and two on Randolph Street, with a combined area of something less than 3 acres. This site has over 2.25 acres of residential property.

Burt clarified that this is not a request for change of zone or anything special or extraordinary. This proposal works with the density that the city prescribes in the ordinance. This is a unique fill-in property with the existing zoning. The developer fully expected opposition from the neighbors and had two neighborhood meetings to find out their objections. The number one objection is density. The applicant understands that the area is single family/two family, but how do you do any project in there that makes any economic sense? You cannot pay the kind of price for real estate in Lincoln and retrieve anything without something of some density. The developer did consider single-family and two-family, and the dimensions of this remnant parcel do not allow dwellings to be put on both sides of the street. This project does not seek any subsidies or any infrastructure extensions. The applicant will build a storm sewer to take care of some drainage and will be paying impact fees.

With regard to the conditions of approval, Burt requested that Condition #1.1.5 on the

community unit plan be deleted (approval from Public Works regarding the turning movements that will be allowed along Randolph Street). He also requested that Condition #1.2.3 be deleted (provide a community recreation plan that provides recreational opportunities for all ages).

Burt further informed the Commission that as a result of the meetings with the neighbors, where they expressed concern about “rental units/tenants”, the developer wants to offer each and every unit in the community unit plan for sale and the prices will be comparable to the surrounding neighborhood.

Opposition

1. Kevin Bernedt, 4140 Washington Street, testified on behalf of the 40th & A Neighborhood Association, in opposition. The Neighborhood Association passed a resolution on May 27, 2003, that the 40th & A Neighborhood Association supports the neighbors directly to the north in their endeavors to enhance the area and to add to the quality and character of the area. The 40th & A Neighborhood Association claims the north side of Randolph. This development does not fit the character of the existing 150 year old neighborhood. The Neighborhood Association supports infill and mixed use area, but it needs to be consistent with what is already there and must blend with the character of the neighborhood.

2. Kevin Ward, 3754 H Street, appeared on behalf of the Witherbee Neighborhood Association, and submitted two letters from the Neighborhood Association President in opposition. The Witherbee Neighborhood Association boundaries are from 33rd to 56th, “O” to Randolph. Although they are a relatively young neighborhood association, they were able to build a constituency of over 400 people who have signed a petition in opposition to this project. Approximately 30 people stood in support of this testimony.

Ward advised the Commission that they just recently found out that Runza wants to build at 40th & Randolph. The Neighborhood Association believes this potential Runza only exacerbates the concerns regarding the proposed community unit plan and the day care. The home owners chose to buy in this neighborhood because of its unique homes and its safe tree-lined streets, some of which have no sidewalks. Combined with several churches, schools and a very low crime rate, this neighborhood is a buyer’s dream. Despite J.D. Burt’s comments, the main point of opposition of the neighborhood is not density. The main point of their opposition to this project is that it does not live up to the general purpose of the community unit plan, which calls for protecting the health, safety and general welfare of existing and future residents of surrounding neighborhoods. Ward referred to F15 of the Comprehensive Plan, where it talks about neighborhoods being one of Lincoln’s greatest assets. The 400 signatures represent only part of the strengths of this neighborhood’s opposition.

When it comes to design standards, Ward pointed out that the community unit plan purpose

calls for creative design. Page F18 of the Comprehensive Plan states that: "Construction and renovation within the existing urban area should be compatible with the character of the surrounding neighborhood." The Witherbee Neighborhood Association sees nothing creative nor compatible about this proposal. The Witherbee Neighborhood Association is not anti-development, but rather pro-"reasonable" development. A reasonable development would not be one that puts the health, safety and general welfare at risk.

Ward pointed out that the Public Works Department and the Police Department have concerns about the neighborhood safety. He talked with Sgt. Woolman who says that LPD is not only concerned with the inherent traffic problem at 40th and H, but the negative ripple effect of increased traffic as well.

Ward explained to the Commission that the neighborhood meeting was held in a dilapidated house with poor lighting and no heat. When asked whether there were any alternatives researched, the response by the applicant was that this was the only economic viable plan for the investors. Why should the economics of a few have an impact on the entire neighborhood? Ward requested that the applications be denied.

3. Edward Hoffman, property owner at 3845 Randolph, testified on behalf of the Witherbee Neighborhood Association in opposition and to discuss the ramifications of this project in regard to traffic, safety, parking and other issues. Hoffman submitted correspondence dated April 30, 2003, from J.D. Burt which points out that the access to Randolph Square has two joint accesses to discourage the use of adjacent local streets. Burt indicates that they intend to fully develop this area—completely fill as many units as they can into this property. Burt's letter assumes the adjacent arterial streets have been designed by the city to accommodate development of this property under its current zoning. However, Hoffman does not believe the streets have been developed to maintain this type of usage. What about Randolph and 40th? The neighborhood has taken the potential Runza into account. It will be a drive-in facility with parking; Runza has already purchased the LES land and the plumbing business. The traffic survey that has been evaluated was taken in 2001. Hoffman assured that the traffic has increased since 2001. In essence, Hoffman submitted that there has not been an appropriate evaluation of the traffic. LPD has already expressed concerns that the traffic backs up from H and 40th

Street. If it's a problem now, what is going to happen when the folks have to get into the day care? They will have to make a left-hand turn at Randolph and that traffic is going to be backed up all the way. Sgt. Woolman has already indicated that there is an existing problem and that is indicative of this entire project.

Hoffman pointed out that the City Traffic Engineer also has concerns. Public Works has expressed concern with the traffic and the safety. What are they suggesting to take care

of the problem?--a pork chop. Randolph and 40th are minor arterials which lead to major arterials. The major arterial that this leads to is "O" Street. "O" Street is a right-turn only on 40th. Where are people going to go to get downtown or to the University? They're going to go through J Street and H Street. The cars park on both sides of the street. There are no sidewalks for the children to walk on.

Hoffman stressed key points: Public Works, Traffic Engineering and LPD have pointed out that there is a traffic problem right now. This project is going to exacerbate the problem. The additional traffic will utilize the smaller streets because they have nowhere to go. There are safety issues. (As far as the day care, Hoffman thinks it is a red herring and they are going to throw 6 more units in there.) There are going to be parents coming into this facility off of Randolph Street. If we have 10 employees with 23 spaces, that will leave 13 spaces--where are the parents going to go? The parents will be stopped on Randolph Street to pick up their children. They have an unloading and loading zone that they are allowing the apartment dwellings to go through. There is no playground equipment. "This is a square peg in a round hole."

Hoffman went on to state that the Witherbee Neighborhood Association is not against growth--they are for "reasonable" growth. This project is unsafe, poorly planned and will open up a pandora's box of problems.

4. Mary Morin, 703 So. 37th Street (37th & H), testified in opposition. She will focus on the real concern for the safety of the children who will be at greater risk due to the increase in traffic. There are three nearby grade schools: Randolph with 400+ students, Hawthorne with 300+ students, and St. Teresa Grade School with 300+ students. This is a neighborhood of walkers, including the children. Many of the children walk to and from school. Morin painted a picture of how many children who go to St. Teresa are walking in this neighborhood: 15 students who cross 40th; 11 who walk down H Street with no sidewalks; 46 students cross Randolph; 18 students cross J Street (most at 36th & J); 25 students walk by a variety of other routes, for a total of 115 students (over one-third), who walk to school. Add the children who walk to Randolph and Hawthorne. J Street has no sidewalks from 40th to 47th Street. For all three grade schools she believes there are 250-300 children that walk to and from elementary school. In addition, Lefler has 570 students. This is a very serious safety problem.

5. Tanja Buchholz, 4100 Randolph, member of Witherbee Neighborhood Association, is very concerned with the loss of privacy resulting from this proposal. She has 495' that will touch this development. She disagrees with the landscape plan submitted. Some of the landscaping shown is on her property and there is no landscape screen behind her property. They will be removing trees. She will incur substantial expense to replace this landscape screen and put it on her property. The fence will not block the apartment building from her kitchen window. The developer should not be granted the waiver of landscaping. They should not be allowed to count her landscaping or that of her neighbors.

6. Josh Sovereign, 645 So. 42nd, Treasurer of the Witherbee Neighborhood Association, testified in opposition with concern about the massive size of commercial building in the middle of a neighborhood. The applicant used “only viable option” at the neighborhood meeting and he is offended. It’s all about the money. There are already licensed day care providers in the neighborhood for 1500 children. Child care facilities of this size are generally sited along higher volume arterials in areas with other uses of similar scale and traffic generation. He has talked with many of the neighbors in person, by phone or by mail. Please let us keep believing that this is a neighborhood worth fighting for.

7. Lee Koch, 3821 Steele Avenue, testified in opposition and submitted two photos of houses in the Near South neighborhood, showing that the Near South neighborhood has been degraded by the “insertions” that occurred in the 1960's. He knows that Near South missed rehab opportunities because of that infill. The Randolph Square development will do exactly the same thing to the Witherbee neighborhood. He is not anti-development, but he is against bad development and he believes this is bad development where a couple people profit and a lot of people get hurt. The best solution for this tract is for the six existing houses to be rehabbed and turned back into single family dwellings to stay with the character of the neighborhood. The second best solution is duplex or townhomes. Either of these two solutions would be totally better than slapping a big two-story apartment complex in the center of the single family homes.

8. Darrell McGhghy, 640 South 40th Street, testified in opposition. He is retired from the Nebraska State Patrol and currently secretary of the Witherbee Neighborhood Association. He discussed density and the issue of crime. The Comprehensive Plan calls for density as high as 15, which is scary. That is to promote efficient use of the infrastructure. What this developer wants is 12.3 units per acre. Currently there are about 2.9 units on that block. The whole neighborhood is around 4.3 to 4.5 units per acre. However, the neighborhood does experience a density of about 6 units up in the 47th Street area just south of the businesses on “O” Street. The neighborhood wants an emphasis on single family dwellings of single family ownership and a density of 4.5 units per acre maintained. McGhghy displayed a map of crime locations from LPD. One of their primary concerns is the increased crime from increased density and the loss of an owner-occupied neighborhood. He believes the issue of density needs further research and study. “What you save on infrastructure you may spend on increased policing.”

9. Rev. John Tyler, 3855 Steele Avenue, testified in opposition with concerns that this proposed development just doesn’t fit into the character of this single family/duplex neighborhood. To have a huge slip-in of a huge apartment complex in a single family neighborhood just doesn’t really fit. It will be destructive to the neighborhood. Keeping out slip-ins of large developments of apartments would be helpful for the long term stability of the neighborhood. As you go on Randolph Street at 40th, there is a left turn lane to go south. If you are coming out and want to turn into this development, how are you going to

do that?

10. Margaret Washburn, 619 So. 42nd Street, testified in opposition. The part of Randolph Square adjoining her back yard was a big vegetable garden. Now, when she stands at her back yard fence, she tries to imagine a two-story apartment building housing 16 families just 25 feet from her fence. And then she looks at two buildings housing eight families each, and then further down to the day care for 100 children--unbelievable--how could any developer with concern for the health, safety, beauty and general welfare of this neighborhood ever conceive of plopping any such large and out-of-character development in this established neighborhood? The neighbors are all here in the interest of planning for a safe, healthy neighborhood, maintaining its character and integrity. Now is the time to do some real careful thinking and some very wise planning. "An ounce of prevention is worth a pound of cure." She believes that the city has the opportunity and an obligation to help guide plans for the development of this property in a way that will protect the safety of the residents and character of the area. If this proposal is allowed, it would forever negatively impact this neighborhood. There would not be a way to change it later. If the developers are urged to yield to the neighborhood's vision, Randolph Square can be an asset of which everyone can be proud. She displayed pictures of the homes in the neighborhood to which this project needs to be comparable. A principle that has guided her in her 70 years through life is: "It is always right to do right, even if we suffer personal loss or disappointments." It is right to deny the permits being requested to help assure the Randolph Square property is developed in keeping with the best interests of the existing area.

11. Tracy Mueller(sp), 3824 H Street, 2 ½ blocks west, testified in opposition primarily because of concerns about the probable dramatic increase in population density and the traffic and safety concerns. She is one of the newest residents in the area. She bought her home in the neighborhood because of the lack of traffic on this street, the fact that there are families that work and play on the street and its appeal as a quiet, safe place to begin her family. Imagine our shock to hear about this potential development after we've made the biggest investment in our lives. Any development in the area should be more in tune with the existing single and dual family character of the neighborhood to keep the moderate population density in place. She requested that the Commission allow her to continue to work in a restful and safe neighborhood, not a race track.

12. John Sidlik, 601 South 40th, corner of 40th & "J", testified in opposition. His corner receives a lot of traffic and he sees near-misses all of the time and he has helped so many people on that intersection after accidents. People cannot back out of their driveways. There are a lot of cars that park on J Street, and H Street is full of cars anyway. He is not opposed to some sort of development, but it needs to be developed in a way that is compatible with the neighborhood and this proposal is overkill.

Response by the Applicant

As far as blending with the neighborhood, Burt stated that he will give the neighbors the fact that this is a multi-family building and there are none in the immediate area. This proposal does not, however, tear down existing residences along J Street or 40th Street. They will be removing one house on Randolph Street that needs a lot of work, and one house that has no lights and no heat, having been vacant for probably two years. The proposed building will be back away from the street and not likely visible from the motoring public with the trees along the perimeter of the site. The elevations, floor plan and roof line have been modified to bring the scope of the building down.

Burt suggested that the traffic problems at 40th & H need to be addressed by others. If there is an existing problem, there needs to be something done at that level and not by this developer.

With regard to the stacking at the intersection of 40th & Randolph, Burt pointed out that the information provided by Public Works suggests that the intersection at 40th & Randolph operates at Level of Service A or B at peak hours. Typically, the city looks for Level of Service C, and this project is well above that as far as capacity.

Burt indicated that the developer indeed shares the concern about kids and their safety. He realizes that there are some safety issues that go along with children and he suggested that part of the problem is outside the realm of what this developer can deal with. If the city has not enforced installation of sidewalks, Burt would encourage them to do that. There is a pedestrian signal at 36th or 37th.

With regard to the parking at the day care, Burt suggested that this is no different than any other location around where there is 90 degree parking. He believes they have some nonconcurrent peaks and the opportunity to share some parking. He did point out that the parking specific to the day care meets all the city requirements.

Burt also pointed out that there is a condition of approval on the community unit plan that requires recreation for all ages. This developer fully intends to condo the three buildings and allow individual ownership, and Burt believes that it would be the opportunity for the homeowners association to provide age appropriate equipment. State requirements are already in place for the day care play equipment.

The applicant contacted the previous owner of the property on the east side and asked them to participate in selling the rear portion of that lot and made an offer on the entire parcel. That owner chose not to respond and sold the property to the Buchholz's without this developer's knowledge. This developer requested that the seller of that property forward information to the buyer and obviously, that did not happen.

Burt believes that the landscaping has been shown correctly. If not, the developer will agree to make those adjustments.

Burt also informed the Commission that the neighbors had been informed that the previous people involved in this project had looked at assisted living, but it was deemed not feasible with the market and that was the reason that this property was initially acquired. With that not being a viable option for users, this owner/developer looked at alternatives, including single family and townhouses. With the investment that is in this real estate, you cannot retrieve the land costs by developing the property with single family and two-family homes. This is a proposal for single family attached units in a condo that would be in the same market range as the existing properties around them.

Burt also suggested that this is not a slip-in like in the Near South. Houses are not being torn down to put in a large apartment complex. This will be individual ownership.

As far as working or playing in the street, Burt does not believe people should be playing in the street and he suggested that sidewalks be initiated.

In closing, Burt stated that the applicant believes this is a wonderful location for independent ownership of property.

Staff questions

Czaplewski appeared to address the applicant's proposed amendments to the conditions of approval. He agreed that Condition #1.1.5 be deleted from the community unit plan as it was an oversight. With regard to the request to delete Condition #1.2.3, the staff cannot regulate ownership of these units. The requirement for a recreation plan is part of the city design standards so the staff would oppose deleting this condition. The applicant did not request that waiver.

Considering the fact that this is a very unusual piece of property, Steward assumes that staff suggested alternative strategies and uses to the applicant. Was there a lot of exploration? Czaplewski acknowledged that the staff did have several meetings with the developer and suggestions were made regarding duplex/townhome type development. The developer feels that this proposal is the best one for them. They have made some changes to the site plan based on some of the staff comments.

SPECIAL PERMIT NO. 2019

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 20, 2003

Taylor moved to deny, seconded by Carlson.

Taylor is opposed in terms of the tenor of the neighborhood and the concerns that have not been adequately addressed.

Carlson will support the motion to deny and agrees that this is not the right fit.

Duvall stated that he was President of the 40th & "A" Neighborhood Association about ten years ago and the same problem came up with a 5-acre lot. The developer was successful in working together with the neighborhood and put in a 29-unit duplex and multi-family plus

60-unit day care center and it went very well. There are excellent examples in the neighborhood of how to do development right. He is happy that the neighborhood got organized.

Schwinn believes that the traffic issue is a very real problem. He sees real problems on 40th Street with east-bound traffic trying to turn left into the day care center. He also sees problem with left turns off of 40th both ways. The traffic problem for a 100 child care center is insurmountable in this particular case.

Bills-Strand does not believe this blends in harmony with the single family neighborhood.

Motion to deny carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

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

SPECIAL PERMIT NO. 2020

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 20, 2003

Taylor moved to deny, seconded by Carlson.

Schwinn stated that he has a lot more trouble voting to deny this project because he understands the R-4 zoning in this neighborhood can bring a little higher density to the neighborhood. To allow some multi-family, he would have liked to have seen a better concept of what the buildings are going to look like and how it was going to fit in. He also understands that this is a piece of property that should be developed and we should not deny the owner the ability to develop it; however, he has looked at property like this and realizes that the price is too high. You make that choice and the price of your property has to be relative to what you can do on development. He will support denial, but he would like to see something come through on this project like Three Pines.

Taylor agreed that one of the things that hurt this project was not having an illustration of what it was going to look like.

Steward commented that the Commission often avoids talking about design; however, this

is a unique parcel of land, has unique opportunities and unique requirements. He does not know of any way that the typical planning “bird’s eye” perspective is going to convince anyone that this is a reasonable approach. What makes Three Pines attractive is the way it was designed and laid out—not the density. And, therefore, it probably affected the price of the market value. There are other solutions but it is going to have to come about in a serious design of other alternatives.

Motion to deny carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting ‘yes’.

CHANGE OF ZONE NO. 3416
FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL
ON PROPERTY GENERALLY LOCATED AT
SOUTH 37TH AND “J” STREETS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 20, 2003

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

Staff recommendation: Denial.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted two items of additional information, including an email and a letter from the Everett Neighborhood Association in support.

Proponents

1. **Kevin Ward**, 3754 H Street, presented the application on behalf of the Witherbee Neighborhood Association and expressed appreciation to the Commissioners for their support in the Landon’s Neighborhood and Antelope Park Neighborhood petitions to seek downzoning in their neighborhoods. There are 133 homes included in this change of zone request, generally from 37th to 42nd, Randolph to “J”. Out of those 133 homes, the Association was able to gather 103 signatures in support of this application, equating to 77%. But the real point is that 100% of the people that were contacted were in support. This support included people who live on non-standard lots and people who rent. The Comprehensive Plan endorses neighborhoods as one of Lincoln’s greatest strengths. Witherbee plans to ultimately seek a rezone for the entire neighborhood from 33rd to 56th, Randolph to “O” Street.

Ward believes there to be an error in the staff report on p.7, Analysis #11, where it states that this area is not adjacent to any existing R-2, noting that R-2 zoning starts at 48th Street, which is six blocks to the east. Ward suggested that R-2 will essentially solve the density, traffic and safety concerns. Given the character of the Witherbee neighborhood, the

neighbors do not believe this area was meant to accommodate multi-family units and the effect it will have on their health, safety and welfare. Ward urged that this change of zone be granted to protect the future of this neighborhood.

2. Ed Hoffman, 3845 Randolph, testified in support and showed photographs depicting the unique character of this neighborhood. There are many, many beautiful trees within the neighborhood and they need to be preserved. The architecture is unique. The concerns are the same as the Antelope Park Neighborhood Association downzone. This is a very desirable, unique location. The homes sell almost immediately.

3. Tanja Buchholz, 4110 Randolph, owns two properties in the area and testified in support. There is a good mix of single family, duplex, triplex, commercial properties as well as churches. This is a beautiful low density neighborhood and the density is lower than other neighborhoods because of the large lots. There are also many large properties close by the proposed rezoning. All of these large properties have single family homes on them. This is how the neighborhood was laid out in the 1930's and the property owners would like to preserve it. Areas with large lots such as Sheridan and Piedmont are zoned R-2. Newer neighborhoods such as Highlands and South Pointe are being zoned R-3, allowing them to be closer to the street with bigger back yards. As R-3 they will never see the slip-ins. Newer development needs to be more dense and is better able to plan for traffic. This change of zone is long overdue to maintain this standard and prevent massive apartment buildings.

4. Carol Brown, 2201 Elba Circle, testified in support. What a beautiful neighborhood and what an asset to our community. We need to continue the R-2 zoning for this neighborhood and continue building out what started 60 years ago. It does not have the infrastructure to stick in the R-4 or R-3 zoning.

5. John Olson, 3750 Randolph, testified in support. His property sits on three lots. He has been approached for infill housing to be put on either side of the house. He does not think it is compatible to any of the insert development that you see.

6. Fred Freytag, 530 So. 38th, testified in support. He believes this will help keep the neighborhood as owner-occupied single family homes and owner-occupied duplexes. The R-2 zoning will help preserve the neighborhood.

There was no testimony in opposition.

Staff questions

Schwinn asked the Planning Director whether there is a plan concerning these neighborhood downzones. Marvin Krout stated that the Comprehensive Plan does say that we should grow more compact as we grow in a stable manner, and those are conflicting goals. There is no easy solution to this, but he thinks the Commission has already touched

on some of the issues that design has something to do with. Our neighborhood design standards don't fit the situation. Three Pines certainly wouldn't meet what you would come up with immediately as the design standard for this neighborhood, yet it is a good contributing asset to this neighborhood. The other compensating factors with Three Pines have to do with the design and the layout. We don't know the answer. We don't know whether the answer might be modified R-2, modified R-3 or modified R-4, or some kind of overlap on top of existing zoning. We just don't think that the answer is R-2 zoning to freeze a neighborhood to prevent some infill development. Almost half of the area you are looking at today is an area that obviously can accommodate some infill with more flexibility than R-2 permits today. But, it has to be done carefully. We don't have any answers. We are going to invite people on both sides of this issue to come to the table. If you approve R-2 today, you heard that their ultimate goal is to downzone everything from 33rd to 56th to R-2, and you have support from other neighborhoods that probably want to come in and do the same. It might end up being just as efficient to try to come up with a scheme that will answer most of the problems.

Taylor wondered what to do in the meantime. Krout believes that the Commission has already sent a signal to people who want to do development in this neighborhood that what came forward wasn't good enough, and any community unit plan that wants to get above a single family or duplex is going to have to come through a public hearing process, so the neighborhood has that protection. We don't want to put you and the neighborhood through that process over and over again. This neighborhood has done very well with its R-4 zoning for many years. Krout does not think we should rush to make a change that might not be the best change in the long run.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

August 20, 2003

Schwinn moved to deny, seconded by Larson.

Schwinn is the only one who voted against the last one of these, but he believes that there is a need to put an end to this to move forward with what the Planning Director wants to do. The Witherbee neighborhood has done very well for the last 50 years with R-4 zoning with no trouble. He sees no rush to change the texture and any community unit plan would have to come through this body. The unintended consequences of this is that if Randolph Square comes forward with something more upscale and brings up the property values in the neighborhood, that has positives and negatives. This change of zone will increase values and eliminate families from being able to buy in that neighborhood. Nationwide, raising the price of a house \$1,000 takes 80,000 families out of the housing market. He would like to end this rush to R-2 zoning right now. Schwinn stated that he is willing to serve on a committee to help figure this out.

Taylor will vote against the denial simply because there have been neighborhoods in the past that have to watch out for their own future and he really applauds them for standing up. Sometimes our Planning Department and other resources in the city have to respond

to the common good and people coming down and voicing their concerns. They have been very articulate and very reasonable. Taylor wants to start responding to that right now. By taking this step, it will cause the Planning Department to immediately become more creative and to think in terms of making solutions and making changes. This shows that the neighbors are willing to pay more taxes to get their neighborhood back.

Bills-Strand would like to put this on pending to give notice that the Commission is open to modification and to protect the neighborhoods without having to force every neighborhood to come forward and ask for a change of zone.

Bills-Strand moved to amend to place on pending, seconded by Duvall.

Carlson stated that he will vote against putting this on pending and against denial because he thinks it should be approved. There is overwhelming support for this, they've done the leg work, they've sat down here for five hours and we have evidence that there is overwhelming support. He is not sure we want to put an end to people making their democratic prerogative. He does not think it will deny the superior project coming forward. This is a good trend across the city because it puts the burden of proof on the person requesting the change. We do upzones all the time. They can come back with a superior project and request the change of zone back to R-4.

Taylor is against putting this on pending. He does not think that what is done today is going to negatively affect the future of our city but will definitely affect the future of this neighborhood.

Marvin does not think the change is going to jeopardize the three-acre parcel. It may protect some of the smaller acre parcels, but he suspects whatever the developer comes back with, it's not going to make any difference whether it's R-4 or R-2.

Bills-Strand thinks that the R-2/R-4 issue needs to be investigated for all of the neighborhoods—not just this one.

Carlson does not understand how having this particular applicant wait will benefit these people and the community. Bills-Strand believes there is a way to protect some of these neighborhoods.

Steward suggested that the larger principle is the Comprehensive Plan. If we attempt to do planning, one neighborhood at a time, we are negating the value and the benefit of a so-called Comprehensive Plan. It's very much like trying to do spot zoning. It's just a little bit bigger spot and you begin to change one, and another, and another, outside of the principle and outside of the context of public input and professional development of a Comprehensive Plan. Let's not forget that there are unintended consequences attached to the Comprehensive Plan. We've seen it just this last week where the Council refused to support a recommendation that came out of the CIP which is now tied to the

Comprehensive Plan, which means there is a direct relationship to the tax value operation of the city. We are looking at the possibility of some strong recommendation and some creative ways to begin to deal with what the inner city is to be, at the same time that we are struggling for the edge to not continue to sprawl. These are not disconnected issues. The

Planning Department is doing everything possible to support the Comprehensive Plan to come up with new tools that relate, and this is a process that has grown outside the principles of comprehensive planning, and that is not in the best interest of the city.

Motion to amend to place on pending carried 6-3: Krieser, Larson, Duvall, Bills-Strand, Steward and Schwinn voting 'yes'; Carlson, Taylor and Marvin voting 'no'.

Carlson was concerned about placing it on pending without a date certain. Brian Will of Planning staff believes the City Council could ask the Commission to make a recommendation.

Main motion, as amended, which places this change of zone on the pending list, carried 6-3: Krieser, Larson, Duvall, Bills-Strand, Steward and Schwinn voting 'yes'; Carlson, Taylor and Marvin voting 'no'.

MISCELLANEOUS NO. 03009,
TEXT AMENDMENT TO TITLE 26
REGARDING SUBDIVISION PROCESS PROCEDURES
and
MISCELLANEOUS NO. 03010,
TEXT AMENDMENT TO THE DESIGN STANDARDS
TO AMEND THE PROCEDURE FOR WAIVERS.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 20, 2003

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

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

Brian Will of Planning staff explained that this is actually connected with the applications reviewed at the last meeting on the fee increase and processing procedures. These are clean-up adjustments.

There was no testimony in opposition.

MISCELLANEOUS NO. 03009

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: August 20, 2003

Bills-Strand moved approval, seconded by Larson and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

MISCELLANEOUS NO. 03010

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: August 20, 2003

Bills-Strand moved approval, seconded by Schwinn and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

ANNEXATION NO. 03002,
CHANGE OF ZONE NO. 3411
FROM AG AGRICULTURAL AND
AGR AGRICULTURAL RESIDENTIAL
TO B-5 PLANNED REGIONAL BUSINESS,

and

USE PERMIT NO. 150,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 91ST STREET AND HIGHWAY 2.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 20, 2003

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

Staff recommendation: Approval of the annexation and change of zone, and conditional approval of the use permit.

Ex Parte Communications: None.

The Clerk announced that the applicant has made written request for deferral until November, 2003.

Taylor moved to defer, with continued public hearing and administrative action scheduled for November 12, 2003, seconded by Bills-Strand and carried 9-0: Krieser, Larson, Duvall, Carlson, Bills-Strand, Taylor, Marvin, Steward and Schwinn voting 'yes'.

*** Break ***

COMPREHENSIVE PLAN AMENDMENT NO. 03004
TO ADOPT THE SOUTHEAST UPPER SALT CREEK

**WATERSHED MASTER PLAN AND TO AMEND THE
LAND USE PLAN.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 20, 2003

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

Staff recommendation: Approval, as revised on August 20, 2003.

Ex Parte Communications: Taylor reported that he had a discussion with Marilyn McNabb. Marvin disclosed that he visited with Bob Hampton, Mark Hunzeker and Mike Carlin.

Proponents

1. Steve Henrichsen of Planning staff submitted additional information, including a revised staff report and revised Executive Summary, a letter in support of Concept A from the League of Women Voters, a response to six specific questions which had been asked by Commissioner Marvin, and a letter in support of Concept A from the Friends of Wilderness Park.

The revised Executive Summary dated August 20, 2003, is almost identical to the summary distributed on August 6, 2003, with one minor change on page 5, item 2, in regard to water quality and the question raised as to cost difference. The last sentence of the first paragraph under point #2 was revised.

The revised staff recommendation still recommends approval of the study. The only amendment is the adoption of the Watershed Study, as amended, with the new Executive Summary including the adoption of both Concept A and Concept C, with Concept C as an option within Concept A that could be utilized on a case-by-case basis. The amendment eliminates the amendment to the land use plan.

2. Glenn Johnson, Lower Platte South NRD, made a presentation, beginning by stating that approximately six years ago the city and the NRD began the cooperative process of developing a master plan for each of the drainage basins to address current and future stormwater flooding issues. Watersheds are dynamic and they react to changes within their boundaries. Rural and urban land use changes bring about changes in the amount and timing of stormwater, impacts downstream, impacts to the floodplain and flood prone areas, and changes in water quality. These issues don't need to be inevitable and adverse. Through the master planning, those are some of the goals that they have tried to address and manage to avoid some of those problems. A few examples of adverse changes that accompany watershed changes when going from rural to urban are that streams become unstable and deepen; side slopes erode; concrete liners unravel; stream bank erosion gets close to utilities and close to some of the public infrastructure; increases in runoff quantities and velocities; the floodplains expand; water quality becomes impaired; sedimentation can

increase. Even some of the smaller drainage ways are affected. These are the kinds of both main channel and tributary channel problems being addressed in the master planning.

Beal Slough was done first. The Southeast Upper Salt Creek Watershed Master Plan (hereinafter SEUSC), east of the Salt Creek line between Yankee Hill Road and the South Beltway is before the Commission today. The next two basins being studied are the Cardwell Branch on the west side of Salt Creek coming into Wilderness Park, and the Stevens Creek Watershed on the east side of Lincoln.

Johnson explained that current aerial photographs, current topo mapping, and updated hydrologies are used to develop a computer stormwater runoff model. The existing conditions are evaluated; problem areas are identified; and solutions are offered. The future conditions then are modeled using that stormwater runoff model, which acts interactively with changes in land use and other changes such as structure or detention or retention. As to the SEUSC, there was public involvement solicited in several stages and the results were incorporated. Four public open house meetings were held with all property owners invited, interest groups and the general public. Also one-on-one landowner meetings were held. The public input helped identify the existing conditions and problems, evaluate options on future project conditions and to get feedback on proposed master plan components.

The following goals were identified through public involvement process: 1) preserve stream bed and banks that are stable, and improve stability of those at risk; 2) reduce flood hazard to existing and future buildings and to infrastructure; 3) coordinate components to provide multi-purpose use potential; 4) improve water quality and preserve or restore instream and riparian habitat; and 5) identify funding opportunities.

3. Nicole Fleck-Tooze of Public Works and Utilities explained that after the goals were established, they set about evaluating the existing conditions and future conditions based upon projected growth. We are looking at how the watershed will change in the future and what we can do to offset the impacts – flooding, water quality and stream stability. Nine homes in the basin are at risk today. If the 100-year floodplain were approached today, we would have increases in flood heights of about 3-4 feet in the downstream portions of the basin and significant increases in flow. We also looked at stream stability and expect to have about 8,800 ft. more “at risk” stream channels if we don’t do something in advance. Two different concepts were evaluated with public input, Concept A and Concept B. Concept A was evaluated at a cost of about 8.5 million. Generally, Concept A preserves the existing floodplain area below 70th to Salt Creek; it includes three smaller detention facilities; water quality wetlands; bioengineering for stream stability; and replacement of undersized bridges and culverts.

Concept B is estimated at a cost of 12.1 million and includes the same elements, except that it only identified preservation of a 400' corridor below 40th Street, and identified one large regional stormwater storage facility west of So. 40th and four other detention facilities.

The costs would be funded over many years' time.

Fleck-Tooze noted that as the study was brought forward in May, there were some concerns raised by landowners in the basin. Since then, the public process has continued and there have been about 13 meetings just with landowners and their representatives with additional correspondence, and the revisions to the Executive Summary provided today reflect the inclusion of a Concept C.

Fleck-Tooze explained that Concept C represents a significant commitment of time and effort on both sides to work through the issues and arrive at some middle ground. We don't have a FEMA floodplain map with open space land use designation. The information for this area is evolving even as development is already taking place. Concept C is a tool to implement the master plan. It is intended to provide greater flexibility for development. It allows for flood prone area encroachment as long as the site meets the goals of the Master Plan. Page 4 of the Executive Summary sets forth the four criteria for Concept C. Fleck-Tooze stated that Concept A is still very much a part of this master plan. In the short term, our needs exceed our funding in the basin, so Concept C might facilitate some implementation of the goals through public/private partnerships. Consideration for public funding for Concept C measures would be based upon the degree to which efforts are also made to balance the areas of flood prone encroachment.

Fleck-Tooze further explained that an approved master plan opens up the opportunity to seek other funding sources, i.e. grants, interagency partnerships, public/private partnerships. The city does have funding available to begin to implement some of the elements of the plan. This has been a 2.5 year process.

Support

1. Mark Hunzeker appeared on behalf of **Sundance L.L.C., Lococco Joint Venture and Sonja Heckel**, all property owners within the watershed affected by this master plan. They have discussed the possibility of adding this Concept C. The intent is pretty well stated in the Executive Summary as one of providing additional flexibility and allowing for some encroachment into the 100 year flood prone area, if the spirit and intent of the master plan is met and if floodplain encroachments are offset by measures to address both flood storage and conveyance, water quality and stream stability as they relate to the master plan goals. To the extent that there is any degree of discomfort by some who think that this is undermining the goals and the intent of this plan, the property owners who have participated in this process are a little uncomfortable, too, because the generality of the language leaves a lot to the imagination in terms of what these things mean. There is a great deal of detailed engineering work that is going to have to be done by any property owner who intends or wants to make any encroachment into those 100 year flood prone areas, and, in accordance with Concept C, those things will require not only extensive work on the flood storage and conveyance issues (which require extensive modeling, etc. to not only store the 100 year storm but also to assure that the conveyance of that 100 year storm

is at the same rate as would be in Concept A), but it is also going to require an awful lot of work to determine where and how various wetlands may be needed or constructed to address water quality issues, where and how we address areas of open space and multi-use potential as well as the very broad term “riparian habitat”. Hunzeker is confident this document at least provides an opportunity to utilize land in a way that makes sense, both for the purpose of preserving flood control capacity and water quality, and to try to make some sense out of the use of that land in what will be an urban environment.

Hunzeker stated that there was a very significant concern on the part of landowners with Concept A in that all of this area would simply be off-limits to anything. Without a little bit of flexibility, we think it would be very difficult to implement and the cost of acquiring conservation easements over that area would be much greater if implemented solely under Concept A as opposed to having the flexibility of Concept C.

Hunzeker supports the revised staff recommendation and Executive Summary as submitted today.

2. Janet Jodias, 2425 Folkways Blvd., owns land on 38th & Saltillo. She is looking at this land to provide some retirement money. Concept A stresses land acquisition for these areas. It seems like there is a limited amount of money to meet the wastewater requirements. If the city acquired the land rights and had to make some of the development, it seemed like that would be much more expensive than if they worked together with the landowners on these developments and did not have to spend extra money to gain the land rights. She believes this would be better handled by landowners working with the NRD and the other complements of government so that the costs can be spread out.

Opposition

1. Mike Carlin, 2700 W. Paddock Road, testified in support of Concept A, stating that a very potentially serious precedent could be set by adopting Concept C. Whatever format you choose for this basin is what you will see in the other basins. As part of this amendment, the wording to include the master plan in the land use plan portion of the Comprehensive Plan is being removed. And the reason for that is that they can't have that wording in the land use plan and have Concept C at the same time because it would be classified as green space in the land use plan and in Concept C, the development would be allowed to encroach into green space. They also would like to not include the watershed master plan as part of the Comprehensive Plan, but make it a subarea plan. That's also scary. If you have read the Wilderness Park Subarea Plan, you would know that it is unenforceable, and he believes we could find that in every subarea plan. Back in May, Concept A was great. But it got delayed for three months as negotiations were held and about mid-way through there Concept C emerged. There was some verbage in there about Concept C costing 1.9 million more than Concept A. The 1.9 million isn't in the text anymore.

Carlin believes there are several other concerns with Concept C. The stated purpose is to provide greater flexibility to landowners and developers. One at a time, they can come in and petition to encroach upon the floodplain. Carlin foresees that they will stay underneath the maximum, but the cumulative effect will exceed the maximum. Concept C is a compromise to what was already a compromise. In fact, Concept A is a compromise. The taxpayers will pay 8.7 million to offset the development in that basin. He understands that the landowners and developers have an interest in maximizing their profit off their land. But nobody is going to lose money with Concept A. They may not make as much, but no one is going to lose money.

2. Steve Larrick, 920 So. 8th Street, who was elected to serve on the NRD in Subdistrict 5, testified in support of Concept A. There are a lot of residents and businesses along the Salt Creek floodplain area, including South Bottoms, North Bottoms and Haymarket. They will begin to get some protection under Concept A. We need the added flood protection structures that are planned under Concept C even without any development in the floodplain. Larrick believes that Concept C is a big mistake. Concept A allows development over a long public process and is a very good plan. We need to stop filling in the floodplain. If we continue to allow development in the floodplain, it will just get worse.

3. Tim Knott, representative of the **Wachiska Audubon Society**, submitted a letter in support of Concept A and in opposition to Concept C. They are primarily concerned about the precedent setting nature of this decision. If encroachment is allowed into the floodplain, we will have a host of problems to deal with in the future. Concept A is the least expensive, the fairest and most easily understood and administered. Concept C costs are not clear, but he understands that up to 230 acres of the floodplain area in Upper Salt Creek could be developed, and that certainly will cost money if that happens. Lincoln will continue to pay the cost for this structural method of preventing flooding for a long time to come.

Knott is concerned about the fact that the public process that selected Concept A and Concept B was open and lasted for two years. Concept C was done with very little public input and leaves a bad taste in the mouths of those that followed the rules and participated in the public process.

4. Marilyn McNabb, 1701 West Rose Street, who has served on environmental committees and the Floodplain Task Force, testified in support of Concept A. It is effective and the least expensive. She is also worried that Concept C is too vague, obscure, fuzzy and general as to exactly what measures are included. Concept A and Concept B have a number of very specific components, whereas, Concept C gets pretty mushy. Concept C protects only the minimum flood corridor, not the whole floodplain and may include provisions of Concept A. Concept B was very specific about what part of costs developers

pay for quality wetlands. That is not specified in Concept C. She believes the following sentence is most obscure: "Consideration for public funding of alternative measures will be based upon the degree to which efforts are also made to balance flood prone area encroachments with the goals of the Master Plan". How would this be applied as projects came in? Would it be measured by area, by cost, by affect on wildlife? What is an "alternative measure"? Does every parcel call for its own balancing test? How much staff time will that require? Under Concept C, public funds would be used to permit encroachments in the floodplain—it would be part of the package. In other places in the country, units of government are paying to get people out of the floodplain. This seems to actually channel public money to mitigation that under this plan would permit encroachments into the floodplain. Concept A does not. Concept A preserves the 100 year floodplain; it locates the water quality wetlands in the floodplain; it is a definite plan; it is backed by detailed study and it should be amended into the Comprehensive Plan.

5. Mary Roseberry Brown, 1423 F Street, President of Friends of Wilderness Park, pointed out that protecting the floodplain and preserving it is not a new unanticipated concept in Lincoln. The 1952 and 1960 comprehensive plans state that lands which lie in the floodplain are designated to be part of the community's park system. Where not possible to include in the park system, the development of the land within the floodplain is to be kept at an absolute minimum.

Roseberry Brown urged that the Commission approve Concept A, not just as a subarea study, but as incorporated into the Comprehensive Plan wording and into the land use map. Many studies show that vegetative food control is far less expensive than building structures. Vegetative control is Concept A. The Army Corps of Engineers did a study on the Charles River and determined it would be far less expensive to buy 8,000 acres of natural wetland and use conservation easements to buy development rights on additional floodplain acreage than to build structures. Further expenses would have to be paid for streambank stabilization. We know that in the future Concept C would need constant maintenance for streambank stabilization because there would be uneven flows created by development. Also in economics, currently developers pay for their own detention ponds. Under Concept C, city funds would be available for stormwater mitigation areas.

Also, we know that these detention areas are going to need constant maintenance and constant monitoring forever. City funds would be needed to maintain and make sure those detention areas are cleaned out regularly or they would lose all flood benefit. City funds would also be needed to hire additional hydrological engineering staff to monitor and negotiate each individual development. Another big difference between Concept A and Concept C is that the water quality programs would be very, very different. Concept A wetlands would be on the site, in the flood prone area and would filter specific pollutants coming off of that specific site. Concept C wetlands can be anywhere in the watershed. Concept C encourages building in the floodplain.

Roseberry Brown believes that property values would go way up if this is passed. Property

that is in close proximity to green space goes way up in value.

Roseberry Brown stressed that Concept A is far superior.

She held up petitions from 5 years ago (6,337 petitions) gathered by Friends of Wilderness Park calling for no building in the floodplain.

6. Rusty Banks, 5411 So. 37th Street, agreed with the previous testimony opposed to Concept C. Wildlife corridors are important to maintaining genetic diversity among wildlife. You can have a lot of little green spaces that are islands in and of themselves but do nothing for wildlife habitat unless connected. Concept C would allow for development that would fragment that wildlife corridor. Keeping encroachment out of the floodplain can be valuable to sportsmen. Building a wildlife corridor is extremely expensive. But if you already have one, maintaining it is almost free. All you have to do is keep the zoning such that they do not get developed.

Concept C endangers the usefulness of a wildlife corridor. It allows a greater fragmentation of the wildlife corridor. Having acres and acres of green space is useless if it is not connected. Concept C is problematic from an economic standpoint. Concept C is problematic from a taxpayer standpoint. Concept A is a significantly lower cost and has so much more public input. Why would you have two years of public hearing so that in a handful of meetings you can undo it?

7. Tom Paddock, 1508 Irving Street, lived in southern Ohio where 13 inches of rain fell in 24 hours. The consequences of that flood were economically disastrous for the county. It was a loss of bridges and roads and sewers more than anything else. FEMA came in and made it clear to this county that unless they had clearly delineated floodplains and enforced zoning that prevented building in the floodplains, they would not receive a federal bail out the next time a flood came. He believes we are possibly taking the same risk. We should not build in the floodplains. Concept C does sound good on paper but he does not think the reality would be the same. The Army Corps would be inspecting these encroachments into the floodplain and, according to the National Research Council, the Corps rarely conducts compliance inspections. He is very concerned about the process – not the two years that did involve lots of public input – but it's the last couple months where suddenly Concept C has come about. This is frustrating – trying to be a part of it and suddenly up comes a concept that he did not know about and did not think was a part of a public process. He does not see enough evidence that Concept C is going to work or equal in cost to Concept A.

8. Marge Schlitt, 2600 C Street, referred to an article in last Thursday's paper about floodplain restoration. We need floodplain preservation, not restoration. Right now, the Planning Commission needs to take the leadership to go with the right plan for our future. As far as she can tell, the difference between Concept A and Concept C is "follow the money". Where is it coming from? The people who are going to get the benefits and going

to make the money should be the ones who pay for mitigation of the downstream.

9. Larry Tue(sp), 1345 H, testified in support of Concept A from the perspective of a user of these wild spaces, particularly Wilderness Park. He is interested in any measure that will preserve green spaces and open spaces. His concern is overuse of the same areas. Property values contiguous to green space have higher value than properties more distant. The challenge for the Planning Commission is, how do we see tomorrow? How do we see the future? How do you preserve the character of our community? It is being done in other areas of the United States.

Tue believes it is common sense to say that you have an area of green space and open space that exists in Wilderness Park and others in the floodplain, and that they are desirable to all kinds of users for different reasons and it is common sense to keep them in their current condition for present and future uses.

10. Roxanne Smith, 711 Peach Street, urged that the Planning Commission not follow the staff recommendation but to follow the desire of citizens who attended the meetings which developed the Comprehensive Plan. Citizens spoke very strongly about the need to preserve floodplains and to stop filling with development of the floodplains. Citizens should not be expected, as Concept C suggests, to spend our tax money to enable developers to circumvent the public's desire to protect the functioning and integrity of the Upper Salt Creek floodplain. Please enact the least cost alternative which will provide the most protection for the floodplain and set the precedent that citizens' desire to save money and protect water quality is more important than short term profit. Please adopt Concept A.

Response by the applicant

Steve Henrichsen responded to the testimony, clarifying that the staff recommendation is that this Master Plan be listed under the subarea plans, but also that we create a category under watershed studies that lists all of the watershed studies. These would be equal in terms of emphasis and implementation of the Comprehensive Plan.

Nicole Fleck-Tooze believes that the staff recommendation does support the goals and objectives of the master plan. She clarified that any additional costs that might be a result of a Concept C approach on a particular site, which are above and beyond what was projected to implement Concept A, would be expected to be borne by the private sector.

Fleck-Tooze responded to the comment about stormwater detention and clarified that the stormwater detention requirements would still be the responsibility of the developer in terms of runoff on the site. One of the things that Concept C has the potential to do is to provide the flexibility we talked about in trying to reach a little bit of a balance between the goals and objectives that we are trying to achieve and the concerns of property owners and the environment. Concept C also recognizes the reality that we do have limited funding for implementation and there may be some opportunities that are afforded by Concept C. She agrees that Concept C is more complex, and probably more subjective, and in order to have the flexibility on the site you are going to have greater complexities and some subjectivity. The recommendation has outlined some very specific criteria and there is some very specific modeling to be done. Any additional costs to comply with the criteria outlined in the master plan for meeting water quality standards would be borne by the private sector.

Fleck-Tooze further clarified that there would be some negotiation on site and this would be folded into the development negotiation process.

Henrichsen noted there to be a lot of concerns about this permitting encroachment in the floodplain. This plan is coming forward based on where we are today. Our own floodplain regulations do allow encroachment in the floodplain, not the floodway. This recommendation provides that there may be some encroachment, but the developer needs to make up for that encroachment. It is clear that this is a compromise and neither side is 100% satisfied, so he believes it is a pretty good compromise.

Steward suggested that technically, any subarea plan that is accomplished and approved by this body is a part of the Comprehensive Plan. Henrichsen concurred.

Steward asked Fleck-Tooze to explain how the process would work for a major development that did propose something to be constructed within the floodplain. Would we be looking at something like our staff review of the development proposal where the criteria would be enumerated as stated in this document? Fleck-Tooze stated that the staff would certainly “walk through” the criteria given what is proposed. She anticipates that as

there was negotiation and discussion, some of those things would change as it becomes a staff report. This would be public information in every case.

Marvin wondered whether the hydrology studies, due to changes to the terrain in Concept C, would require more staffing costs. Fleck-Tooze stated that one concern is that the review of those studies will cause need for additional review by staff. There is also a concern about the cost to monitor. She did advise that once the master plan is adopted, there is a computer model and the staff intends to evaluate each development based upon the model. She does not believe looking at Concept C alone is going to cause a greater amount of time. The city also has the ability to require bonds for some of these measures to make sure they are constructed as they are shown on the plan.

Marvin asked staff to contrast Concept A with Concept C. Fleck-Tooze explained that under Concept A, the proposal is to purchase conservation easements over the 100 year flood prone area outside of the minimum flood corridor. If we don't have funding available to purchase, we risk losing an opportunity to protect because we don't have the ability to purchase the easements. Concept C gives the city the ability to still ask that these things be addressed if there is encroachment into the flood prone area. There is still an expectation that impacts be offset. Henrichsen added that Concept C gives us another tool to work with to implement the same goals of the master plan.

Marvin also inquired about the minimum flood corridor. Fleck-Tooze explained that the minimum flood corridor is required by our current zoning and subdivision ordinances. There is a formula used to determine how wide the flood corridor has to be – basically 60' wide, plus the width of the channel bottom, plus six times the channel depth.

Marvin has concerns about Concept C because there are ideas that you can do some land swapping. Is there any limit to what a person could do? Fleck-Tooze responded that Concept C is really trying to achieve a balance. If you reduced a 40 acre floodplain area to only 5 acres of storage, one of the criteria is open space potential and riparian habitat. If open space and riparian habitat were not provided, it would be suggested by the staff that the criteria had not been met and that's part of the balance. The staff would bring forward a recommendation and the Commission would make a recommendation to the elected officials. Henrichsen added that because the minimum flood corridor is already in our regulations, there will already be an area that is basically preserved. Fleck-Tooze noted that there are a lot of subjective elements that go into negotiations on any individual development site. There is no hard and fast point and it would be up to the staff to evaluate the proposal based on the information submitted and to provide a recommendation to the Commission. Henrichsen pointed out that in order to have the encroachment, the developer still must address the conveyance, the water quality and stream stability. The more you encroachment, the more difficult it is going to be to meet the other goals.

Marvin asked the staff to walk through the mechanics of how to negotiate the cost. For

example, if he had 5 acres but it's in the wrong location, could he fill it and swap it? Do I still get paid an easement on 5 acres? Fleck-Tooze explained that the conservation easement is only for the protection of floodplain areas that are left open in perpetuity. Marvin then assumed that once he touches the area, he loses the right to the easement. Fleck-Tooze agreed.

Speaking purely in terms of the environmental benefits and stormwater benefits, Marvin believes that Concept A is a better practice than Concept C in that narrow focus. Fleck-Tooze suggested that in an ideal world, the ultimate would be to preserve the entire 100 year floodplain area. This recommendation tries to reach a balance.

Fleck-Tooze clarified that the total basin is 8.1 square miles (approximately 5,184 acres). Carlson then asked how many acres would eventually be impacted by this need to do some sort of engineering or offset. Fleck-Tooze stated that under Concept A, there are 132 acres within the minimum flood corridor. The 100 year flood prone total area, including the minimum flood corridor, is 370 acres, so the difference between those would be the area that under Concept A is proposed for purchase of conservation easements, i.e. 240 acres.

Fleck-Tooze further clarified that the staff will be looking to the Comprehensive Plan for guidance in making a recommendation. Theoretically, the ordinance could be written based on the Comprehensive Plan, further delineating the requirements. If Concept A is implemented, it does not mean we lose the opportunity for negotiations. Henrichsen further explained that with Concept A, there will still be areas where we will need to encroach in the floodplain for roads, utilities and other things.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: August 20, 2003

Schwinn moved to approve the staff recommendation, as revised on August 20, 2003, seconded by Bills-Strand.

Carlson moved to amend to strike those portions of the recommendation that refer to Concept C, seconded by Marvin.

Henrichsen believes that, in essence, this would be the staff recommendation proposed in May, which reflected Concept A.

Carlson pointed out that this is a Comprehensive Plan amendment. It is an attempt to be proactive and do things in the new areas and undeveloped areas. We have rules right now and he has voted for projects he would have preferred not to because of the rules that exist. We have an opportunity to try to be proactive and set aside areas that are ripe for conflict and get a tangential benefit of water quality and environmental quality, in addition to the stormwater preservation. From an engineering standpoint, Carlson is very attracted to this idea that we can use mitigation techniques. But at some point we lose the secondary benefits and get to a point where we undercut what we're trying to achieve in

the first place. If we are trying to give guidance to the future and best practice, he believes the answer is Concept A--to stay out of those areas--that is important and it should be supported. To Carlson, the 240 acres that represent the area in play here (and not all of that would even come up) versus the 5100-5200 acres that are in the basin--that tips the balance. He will lean toward the best stormwater and best environmental practice.

Bills-Strand sees it as an opportunity to get some private funding involved. We have to be willing to compromise and negotiate sometimes and we need to leave the door open a little bit.

Marvin is all for flexibility, but he just thinks what is being done with Concept C allows people to make huge modifications in the terrain, even though that may not be the intent. He believes that Concept C allows for a lot of change and does not provide the protection.

Taylor stated that he will support Concept A.

Steward stated that he will support the motion to amend (in support of Concept A), guided by large principles. There are no natural disasters. There are only human disasters within the natural environment. As long as we continue to build and have a document which suggests that it is okay to build in nature's most devastating and dynamic influences on this particular environment, then we are derelict in helping the community to keep those disasters from happening. Secondly, since these performance specifications have been developed in the search for compromise, he believes they are going to be forever in our language. If not, they should be in terms of the negotiations that will inevitably take place. The Comprehensive Plan is only advisory in any event. And every project that comes through the Comprehensive Plan process will have negotiation. He is just concerned about backing off too far from the standards and expectations, which should be in every way possible keep development out of the floodplain.

Motion to amend carried 5-4: Krieser, Carlson, Taylor, Marvin and Schwinn voting 'yes'; Larson, Duvall, Bills-Strand and Steward voting 'no'.

Main motion, as amended, which removes any reference to Concept C from the recommendation, carried 5-4: Krieser, Carlson, Taylor, Marvin and Steward voting 'yes'; Larson, Duvall, Bills-Strand and Schwinn voting no.

There being no further business, the meeting was adjourned at 8:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 3, 2003.