**MEETING RECORD**

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| **NAME OF GROUP:** | PLANNING COMMISSION |
| **DATE, TIME AND PLACE OF MEETING:** | Wednesday, July 2, 2008, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska |
| **MEMBERS IN ATTENDANCE:** | Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jim Partington, Lynn Sunderman and Tommy Taylor (Leirion Gaylor Baird absent). Marvin Krout, Ray Hill, Brian Will, Christy Eichorn, Brandon Garrett, Jean Preister and Michele Abendroth of the Planning Department; media and other interested citizens. |
| **STATED PURPOSE OF MEETING:** | Regular Planning Commission Meeting |

Chair Gene Carroll called the meeting to order and requested a motion approving the minutes for the regular meeting held June 18, 2008. Motion for approval made by Sunderman, seconded by Francis and carried 8-0: Carroll, Cornelius, Esseks, Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Gaylor Baird absent.

**CONSENT AGENDA**
**PUBLIC HEARING & ADMINISTRATIVE ACTION**
**BEFORE PLANNING COMMISSION:** July 2, 2008

Members present: Carroll, Cornelius, Esseks, Francis, Larson, Partington, Sunderman and Taylor; Gaylor Baird absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 08028, CHANGE OF ZONE NO. 08029, CHANGE OF ZONE NO. 08034, SPECIAL PERMIT NO. 1624A, SPECIAL PERMIT NO. 1658A AND SPECIAL PERMIT NO. 08026.**

Ex Parte Communications: None

Larson moved to approve the Consent Agenda, seconded by Sunderman and carried 8-0: Carroll, Cornelius, Esseks, Francis, Larson, Partington, Sunderman and Taylor voting 'yes'; Gaylor Baird absent.

Note: This is final action on Special Permit No. 1624A, Special Permit No. 1658A and Special Permit No. 08026, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by Planning Commission.

**COMPREHENSIVE PLAN CONFORMANCE NO. 08015**
**(DECLARATION OF SURPLUS PROPERTY);**
**STREET & ALLEY VACATION NO. 08002;**
**and**
**CHANGE OF ZONE NO. 08032**
**FROM R-6 RESIDENTIAL TO B-3 COMMERCIAL,**
**ON PROPERTY GENERALLY LOCATED AT**
**S. 21ST STREET AND K STREET.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION**: July 2, 2008

Members present: Cornelius, Larson, Taylor, Esseks, Partington, Francis and Carroll (Sunderman declared a conflict of interest; Gaylor Baird absent).

Ex Parte Communications: None.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the declaration of surplus property and street and alley vacation, and conditional approval of the change of zone, subject to a conditional zoning and development agreement.

Staff presentation: **Christy Eichorn of Planning staff** present this proposal. The alley requested to be vacated is a small alley running north/south just on the edge of the surplus property. The change of zone is to B-3, which provides for local commercial uses in redeveloping neighborhoods. The applicant is proposing a restaurant and convenience store on the property. The site would circulate in a counter-clockwise manner with one access on L Street, one access on K Street and no access on South 21st Street. The proposed site plan does not include the property of the vacated north/south roadway of S. 22nd Street. Unlike previously applications similar to this proposal, this application does not include a car wash and it limits parking to four parking stalls east of the existing building. The staff and applicant have negotiated the conditional zoning agreement. A revised agreement was submitted at the public hearing which includes additional landscaping and more wording in regard to pedestrian crossings along K Street.

Esseks expressed interest in further discussion on the development and conditional zoning agreement, particularly the pedestrian actuated traffic signals on K Street and 22nd Street. The agreement reads that the developer will pay to install this type of public safety facility when warranted and recommended by the Director of Public Works. How will that be determined? How will the Director determine that it is warranted? Eichorn responded, stating that Public Works would do the same with any other crossing. The number they are looking at is about 100 people per hour to generate the warrant for that pedestrian crossing. She did not know how they determine when to start counting people.

Francis inquired as to the proximity of Lincoln High School. Eichorn stated that the parking lot is about 107' on the other side of the right-of-way – maybe 500' from this property. Francis assumes it will be a fast food restaurant and assumes that Lincoln High has open

campus for lunch so there would be a high volume of walking traffic across K Street from Lincoln High. Francis is concerned about the pedestrian traffic in that regard. Eichorn indicated that this issue is being addressed in the zoning agreement. The staff has requested that the applicant provide two different types of pedestrian crossings. 100 crossings per hour would require a more signalized crossing. Anything less might be a painted crosswalk with warning signs. Francis believes that both K and L kind of curve so it sometimes could be a blind corner with the volume and speed of traffic. Eichorn suggested that K Street is relatively straight until you get past the property. L Street does curve right at this property. Public Works has looked at the site plan and has worked with the applicant to develop something workable for both pedestrians and vehicles.

It was confirmed that the entrance on L Street on the north side is a left in and left out

Esseks expressed concern about the standard of 100 crossings per hour – is that across 8 hours? He believes the lunch hour at the high school is the relevant time. If we have 50-75 crossings and there is no traffic signal there, we could be inviting a real tragedy. It is Eichorn's understanding at any one hour during a 24-hour period that generates more than 100 crossings is the trigger.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Whitehead Oil Company,** indicating that this proposal is similar to one approved by the City Council in 2005. The access points have been modified after discussion with staff, i.e. the left in and left out access on both K and L Streets. The K Street access is protected because the lane that enters from K Street is not a thru lane.

Hunzeker stated that they have arrived at this design after a number of meetings with Public Works, the Mayor, Urban Development and Planning. All of the issues are reflected in the proposed zoning and development agreement. Hunzeker indicated that the applicant and staff are now in agreement with all the major provisions of that agreement. That agreement includes the architectural control that requires brick and matching canopy columns, restricting signage and lighting, pedestrian amenities, extensive landscaping, street trees on all sides, etc. As the staff report points out, the B-3 district is appropriate because it is a transitional area between the traditional Downtown and Antelope Valley areas. It is not uncommon to see B-3 on the fringe of Downtown and Antelope Valley. This parcel is ideally located for these uses and it is at the very edge of the Downtown and Antelope Valley redeveloping areas.

With regard to the traffic signal and crossing, Hunzeker clarified that the warrants are statutory. Public Works cannot place stop signs or traffic signals at any place along a street without meeting statutory signal warrants. Those warrants are referred to in the agreement and the applicant agrees that if those warrants are met and the Traffic Engineer recommends installation, it will be done. Hunzeker further went on to state that between

now and when the traffic warrant is met, it is not as if you are crossing at a very busy full four-movement intersection. This is a one-way street. People will only have to look one direction for traffic; the students at Lincoln High are mature enough to understand looking before they cross the street; they have to do it every day further down to the east where they cross both directions of traffic. They will also have benefit of a signal which will stop traffic on K Street only 300' away. There is not very much traffic on 21st Street. If that proves to be inadequate and there is a warrant for a signal at 22nd Street, the applicant will install it. The signal at 21st Street will create gaps in traffic. There is also a crosswalk signal at 21st Street.

Larson wondered about the interior traffic. Is it going to be easy for someone coming from the east to enter the property and then exit onto K Street and go east? Hunzeker explained that coming from the east, there is a turn lane that gets out of traffic on Capitol Parkway and gets you into the site. There is a standard parking lot width aisle to come through into the filling bays and then you have another driving aisle that can take you out to exit onto K Street or turn around and go back out onto L Street.

Carroll referred to f.3 of the agreement having to do with perimeter trees, assuming those are to the east of the project on property owned by the City. Hunzeker stated that it refers to all the trees that are around the perimeter of the applicant's site. The Planning Director added language allowing some discretion on placement of the sidewalk in order to save some of the trees. They will not remove any trees that are not on the applicant's property and will save as many of the trees on the applicant's property as they can. The existing trees around this site will not be removed and street trees will be added, particularly along L Street and 21st Street, and probably some in part of K Street.

Carroll is concerned about shielding of the drive-thru area for people coming from the east. Hunzeker suggested that this project is very, very close to the surface parking area that is there today. They are not really changing the footprint of the hard surfaced area on that site.

There was no testimony in opposition.

**COMPREHENSIVE PLAN CONFORMANCE NO. 08015**
**ACTION BY PLANNING COMMISSION**: July 2, 2008

Larson moved a finding of conformance with the Comprehensive Plan, seconded by Francis and carried 7-0: Cornelius, Larson, Taylor, Esseks, Partington, Francis and Carroll voting 'yes' (Sunderman declaring a conflict of interest; Gaylor Baird absent). This is a recommendation to the City Council.

**STREET & ALLEY VACATION NO. 08002**
**ACTION BY PLANNING COMMISSION**: July 2, 2008

Larson moved a finding of conformance with the Comprehensive Plan, with the conditions set forth in the staff report, seconded by Francis.

Cornelius commented that this alley serves only the property served by the owner so there is no reason to worry about any of the other neighbors.

Motion carried 7-0: Cornelius, Larson, Taylor, Esseks, Partington, Francis and Carroll voting 'yes' (Sunderman declaring a conflict of interest; Gaylor Baird absent). This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 08032**
**ACTION BY PLANNING COMMISSION**: July 2, 2008

Larson moved approval, subject to a conditional zoning and development agreement, seconded by Francis.

Carroll commented that the Commission understands there is a need in this area for a convenience store. He expressed appreciation to the applicant for changes made to the store and the site. It will fit in with the new Antelope Valley project. We want to protect the view of that corridor and he appreciates the applicant doing that and working with the city on the agreement.

Motion carried 7-0: Cornelius, Larson, Taylor, Esseks, Partington, Francis and Carroll voting 'yes' (Sunderman declaring a conflict of interest; Gaylor Baird absent). This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 08033**
**FROM R-3 RESIDENTIAL TO R-2, R-4 AND R-5 RESIDENTIAL;**
**FROM R-2 RESIDENTIAL TO R-4 AND R-5 RESIDENTIAL;**
**AND FROM R-5 RESIDENTIAL TO R-4 RESIDENTIAL,**
**and**
**SPECIAL PERMIT NO. 1174G,**
**AMENDMENT TO THE CHATEAU LA FLEUR COMMUNITY UNIT PLAN,**
**ON PROPERTY GENERALLY LOCATED**
**AT N. 56TH & HOLDREGE STREETS AND 6100 VINE STREET.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION**: July 2, 2008

Members present: Cornelius, Larson, Taylor, Esseks, Sunderman, Partington, Francis and Carroll (Gaylor Baird absent).

Ex Parte Communications: Commissioner Esseks disclosed that he contacted the Planning Department to alert staff to the questions he would be asking on this proposal.

Staff recommendation: Approval of the change of zone and conditional approval of the special permit amendment.

Staff presentation: **Brandon Garrett of Planning staff** discussed the several issues surrounding these applications. Based on the current zoning and approved community unit plan (CUP), the density would allow 792 dwelling units. The site plan has been previously approved for 776 dwelling units. If the zoning was not changed, there would still be 16 dwelling units that could be developed before the CUP reaches the maximum allowed density. The proposed change of zone and amendment to the CUP would increase the allowed density from 792 dwelling units to 1294 dwelling units. The application currently before the Commission, however, only proposes to add 144 dwelling units to the existing 776 approved dwelling units, for a total of 920 dwelling units for the entire 83 acres.

With regard to floodplain concerns and related issues, the floodway for Deadmans Run flows through the CUP from the southeast at Cotner and Vine to the northwest at N. 56th and Holdrege. Portions of the existing and proposed dwelling units are in the 500 year floodplain and the locally adopted floodprone area. On February 25, 2008, the City Council approved the Comprehensive Plan Amendment for the Deadmans Run Watershed Master Plan, outlining the series of flood control projects to remove homes and businesses from the floodplain. Garrett displayed a map indicating the areas that would remain in the floodplain or floodprone area, and the areas that would be removed from the floodprone or floodplain areas if the projects outlined in the Master Plan were implemented. According to the Deadmans Run CIP results map, much of the Chateau property would be removed from the floodplain. One of the projects detailed in the Master Plan is a two-cell detention project located partially on the Chateau property. With respect to Cell A, Public Works has expressed their concern over losing the opportunity for this key element of the Master Plan. The Lower Platte South Natural Resources District (NRD) states that the NRD Board has authorized staff to begin the process to acquire the necessary easements to enclose the basins, one being on the Chateau property.

The site circulation and connectivity of the CUP is another issue of concern for Planning, Public Works and Fire. A major concern is that the proposed site plan would add 90 dwelling units to Abbey Court, currently developed with 96 units. The proposed site plan would then result in 186 dwelling units on a dead-end street with one way in and out onto N. 56th Street. An additional vehicular connection has been added as a condition of approval (#2.1.8):

> Revise the plans to show a second vehicular access and a looped water supply system to the proposed development on Abbey Court.

Condition #2.1.9 requires a note stating that:

> ...A second open vehicular access with a public access easement or common access easement shall be constructed prior to the issuing of building permits for any dwelling units south of Abbey Court.

That note is very important in terms of addressing the timing of any development in the area of the proposed 90 units. If they do develop that area, there is going to be a need for the additional access.

Larson suggested that the detention cells will get quite deep. What will they be used for other than detention? Garrett responded that Cell A is the primary cell that would receive the stormwater. Cell B would only be lowered by 13' so it would be sort of an overflow to Cell A. Currently, the Lincoln Lutheran High School football field, practice field or soccer field is on this site.

Esseks asked for the definition of a “locally adopted floodprone area”. Garrett explained that the floodprone area is basically equivalent to the FEMA adopted 100-year floodplain.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Chateau Development.** This project/complex is one of the earlier multi-family complexes in Lincoln to develop under a CUP. There are 776 dwelling units and probably more residents than many, many of the small towns in Nebraska. Over the 40 years, it has grown both in dwelling units and amenities. It is nearly unique in that it has not changed ownership since 1974. It represents a great example of long term investment in this community and commitment to a very high standard of management. Chateau has s similar complex near 70th & Van Dorn which is currently being expanded. This project is next on the list of continuing upgrades and improvements.

This project was begun by meeting with staff, with a positive reaction from staff. There are a number of Comprehensive Plan criteria, including maximizing the community’s present infrastructure investment by planning for residential and commercial development in areas with available capacity; encouraging greater amount of commercial space per acre and more dwelling units per acre; adoptive reuse and infill development; and multi-family and single family residential uses in areas with varying densities from 15 to less than 1 unit per acre, to name a few. Thus, Hunzeker submitted that this project is clearly in conformance with the Comprehensive Plan.

Hunzeker stated that there is little disagreement between staff and the developer and very little opposition to the substance of this proposal. There is only one issue to which the staff and developer have not reached complete agreement, and that is the access issue. The

developer does not argue with the potential safety concerns, although Hunzeker suggested that they are somewhat exaggerated. He believes that the Fire Department can find a way in and out with or without a second access. Hunzeker proposed amendments to the conditions of approval as follows:

2.1.8 Revise the plans to show a second emergency vehicular access and a looped water supply system to the proposed development on Abbey Court.

2.1.9 Add a note to the Sheet 2 General Site Notes that states, "A second ~~open~~ emergency vehicular access with ~~a public access easement or common~~ emergency access easement shall be constructed prior to the issuing of building permits for any dwelling units south of Abbey Court".

Hunzeker stated that the developer has been working with the school on a potential secondary emergency access. Hunzeker pointed to at least four examples of CUP developments with one access – Waterbrook with several hundred units accessing Folkways Boulevard; Villa Tierra on S. 27th Street & Tierra Drive, with one access to Tierra Drive; the Fountain Glen apartments at N.W. 1st & West Fletcher, with over 400 units and single access; Salt Valley View CUP, amended to add 162 units to existing 270 units of Ruskin Place, with single access point. There is a second access required to be constructed within two years following final plat approval on the Salt Valley View CUP; however, that access is onto a much heavier speed and traveled roadway than N. 56th Street. Chateau La Fleur does not have a second access today because they developed under a CUP and did not subdivide. Hunzeker submitted that the secondary access being requested by staff is not something which is required by the CUP design standards or anything in the zoning ordinance. Hunzeker suggested that Fire would have the ability to open the gates electronically, when necessary for emergency.

With regard to the Deadmans Run floodplain issue, Hunzeker noted the letters in opposition to this proposal based on the future possible public use of some of this property. It is kind of like addressing a possible future public park. Just because you put something in the Comprehensive Plan does not mean that it exists or that the private property owner has no use of it. It means that someday, if the city chooses, it may go forward with a park on that property. In this case, the city might, at some point, go forward with a public use of a portion of this property. If it does, then it has the power to do so and this developer has no objection to the city going forward; however, this developer is not in a position to wait indefinitely. This developer has had a plan to move forward with expansion of this site for some time and "a possible future public use" is not a permissible reason to deny this project or impose burdens not routinely imposed on similar projects because there might someday be a use for this property. This application must be treated as an application on its own merits – not on a possible future public use.

With respect to the project affecting this property in the Deadmans Run Watershed Master Plan, the City Council very specifically resolved that prior to final design and construction,

the preliminary engineering reports will be brought before the City Council for public hearing and approval. So there is not even a tentative approval of a project on that site. We know that the NRD has given direction to commence discussion for acquisition of this property, and Hunzeker is not suggesting that they do not have that power, but if they do, they need to come forward and do so in the manner provided by the Nebraska state statutes, not by denial of an application for a project of this nature.

Esseks noted that part of the development at N. 56th called Adrianna Court is in the floodprone area already – both the existing dwelling units and part of the area being added. He believes that to be a serious issue, particularly in an area where we already have a lot of high flood risk – 700 homes vulnerable to flooding. It does not appear to be a good area to impose further impervious surface. Esseks takes the position that this is a serious limitation to this application with land in the local adopted floodprone area where you want to add additional impervious surfaces. Hunzeker pointed out that the staff recommendation does not make any sort of reference to that as a limitation for a very good reason; that is, that the city's floodplain and floodprone regulations do not limit the ability of property owners within the developed city (which this is) from going forward with projects such as this and bringing those areas out of the floodplain. There is plenty of dirt on this site which can be excavated, providing additional flood storage outside the building envelopes of the proposed units, to protect them from flooding and maintain the existing flood storage on the site. Esseks inquired whether that is incorporated into this plan. Hunzeker responded, "yes". It will show up in the grading plan. It will be a part of the review for buildings permits. The floodplain regulations and the floodprone regulations permit this kind of project as it would in any other floodplain or floodprone area in the city that is within the defined areas of the existing city.

Carroll noted that the change of zone increases the maximum allowable to 1294 units. This application seeks a total of 920 dwelling units. Are you really going to want the maximum number? Hunzeker does not think they will get there, but because of the massive area they thought it made sense to bring the entire project under one zoning district. The maximum number permitted will be the number being requested today and anything more will require another amendment.

Carroll inquired about the recreational areas being eliminated. Hunzeker noted that there is a condition of approval to add recreational area to make up for what is being removed.

Carroll also inquired whether the issue of a unit being built over a sewer easement has been resolved or corrected. Hunzeker stated that they will revise the building envelope to be sure no building gets placed within that easement area.

Carroll confirmed that detention will be built on the site to not displace any of that water in the floodprone area. Hunzeker stated that the grading plan will take some dirt off the existing site and place it in the building pads for these buildings. They will probably end up with no net loss of flood storage on the entire site and very likely, although not required, a

no net rise situation relative to the existing conditions. They are not showing detention and staff is not requesting it. It is not necessary or desired in areas immediately adjacent to the stream and downstream from upper reaches of the watershed.

Opposition

**1. Russell Miller** testified in opposition. He also submitted a letter in opposition. He displayed a photograph at 37th & Baldwin showing the 100 year flood height. There is major flood damage occurring in this area. The Planning Commission has the authority to remove that risk by denying this request and using the land for flood detention cells. He also submitted data from the County Assessor about property values in this area from about 33rd to 48th and Huntington to Cleveland. Too many times the developer makes a very good pitch that the project is very good and will bring benefits to the city; however, the people that suffer from the flood waters never show up at the hearing. He pointed out that the assessed value of this area would total slightly over 50 million dollars. There are a string of apartment complexes from about 35th to 44th, and if there was a flood, there would be a lot of people impacted by this. This water will be slimy, dirty, and contaminated. The Planning Commission has the opportunity to make sure that never happens in Deadmans Run by using the land that this application wants to develop. The assessed value of this area is almost as much as a Gateway Shopping Center. If Gateway was in that kind of floodplain, we would be taking steps to save it. Here we have a chance to take great steps to save this area.

Miller also suggested that flood insurance is a burden that many people have to bear and it is not something of their own making. It is caused by people who have developed upstream without provision to detain the flood waters.

Miller served on the Mayor's Floodplain Task Force and the Deadmans Run Task Force.

**2. Malinda Burk,** President of **University Place Community Organization,** testified with concerns about the floodplain and potential implications of this development. Flood insurance is a hardship. UPCO represents the area from 33rd to 60th, Holdrege to the railroad tracks.

Staff questions

Cornelius asked for confirmation of the Planning Commission responsibilities in terms of not holding up an application based on potential public use in the future. Carroll had asked the City Attorney to be present today but he was not available. However, the City Attorney agrees that the Planning Commission cannot meld the two into this decision. The other is a decision in the future that has not been made. The Planning Commission is voting on what is in front of them today and cannot deny based upon what might happen in the future.

Esseks believes that the Comprehensive Plan contains some broad responsibilities and one of those is to protect the neighbors, property owners and residents from actions taken by their neighbors, either adjacent or upstream, that may adversely affect the value of their properties. He asked if staff believes that to be a reasonable interpretation. Garrett agreed that it is the city's responsibility to protect the health, safety and general welfare of its citizens.

Carroll asked staff to comment on the flood storage issue. Being in an existing urban area, Garrett explained that the floodplain and storage requirements do not apply. **Dennis Bartels of Public Works** further explained that if it is a subdivision, the staff will ask the developer to provide storage to protect the downstream property. Subdivision detention and retention storage type requirements limit the flow as it leaves the property. When adjacent to the floodplain or major channel, there is really no downstream property to protect. We could have asked for storage strictly within the boundaries of the CUP, but Bartels didn't see any significant benefit to local detention storage with this project.

Carroll wanted to know where the water goes. **Ben Higgins of Watershed Management** explained that if the development is in the existing urban area, the developer can put fill in the floodplain area. The water will probably have an impact somewhere else and whether that is negligible or not, he does not know. The developer will be requested to show that that is not the case. Most typically in the existing urban area, that is not a requirement according to the state, federal and local regulations.

**Marvin Krout, Director of Planning,** did have a communication with the City Attorney and he agrees with Hunzeker that this is a situation where, if you look at this property compared to any other property, you would be recommending approval except for the possibility of a future use for public purpose. It could be considered a "taking" if the Planning Commission resigns the property to the public use and no economic value, even though similar to other properties that have been developed. We are always going to find something in the Comprehensive Plan to support a decision, but looking at it on the whole including density, compatibility, infrastructure, capacities, etc., this is a low density apartment complex in a generally low density area (about 3.5 units per acre), we do desire to have a higher density in areas like this to take better advantage of the infrastructure that is already available. Looking at this proposal without the issue of public purpose in the future clouding it, the staff could not find enough argument in the Comprehensive Plan to say no.

Esseks was puzzled. We already know that lots of homes downstream are currently at risk of flood. Here we are adding density to property that has been in existence for some years reaching buildout in its current zone, realizing considerable financial benefit. We are adding to the density and we have a neighboring apartment house owner who expects to receive the same treatment when he asks to increase his density. It looks to be a precedent to increase density increasing flood risk.
He does not see why the courts would say we cannot protect the people downstream from

this higher density and additional impervious surface. Krout suggested that if the Planning Commission or City Council want to test this issue in the courts, the City Attorney does not believe this is a case we could win. We could not show that this property would have a significant adverse effect beyond the flooding problem that already exists in this area. Its runoff is going to be way downstream before the peak of the storm hits the areas that are downstream.

Esseks is still concerned about setting a precedent. Krout observed that there is property being developed in this basin everyday. That is why we have a floodplain map and plans, but here we are going to have to solve it by structural improvements and not by managing the land in the whole basin.

Taylor sought confirmation that this development does not increase any risk at all. Krout clarified that he is suggesting that there is no "significant increased risk" by developing this 4 or 5 acres of land.

Staff response

Garrett believes that at least two of the examples of apartment complexes referred to by Mr. Hunzeker had two access points rather than just one.

Garrett advised that the staff is not in support of the amendments to the conditions of approval proposed by the applicant because the amendments would change it from an open vehicular access to everyday residents to an emergency access only. Emergency access was not the sole purpose for the additional access but for the connectivity for the development and additional connection for those 186 units to Vine Street as well as 56th Street. The recommendation was in fact for a full access or common access for all of the public and residents to use.

Response by the Applicant

Contrary to the position of the Lincoln Neighborhood Alliance, Hunzeker stated that the Planning Commission does not have the power to fix the Deadmans Run flooding problem by denial of this project. In fact, he suggested that denial of this project will not fix that problem. We are not here today to argue the relative merits of the Deadmans Run Watershed Master Plan or the wisdom of spending 50 million dollars to implement that plan. We are here today to discuss the merits of this application based upon regulations that apply today. Furthermore, the Comprehensive Plan is not a regulatory document. It is a forward looking guide to the future development of the community and has absolutely no regulatory effect. Hunzeker does not dispute the city's right to acquire part of the property to implement the Deadmans Run Watershed Master Plan. If the City chooses to implement that plan, this developer will negotiate in good faith for just compensation to the owner of that property. The city does have the power to protect those properties, but that power must be executed not by the denial of projects which are otherwise permissible on

private property, but by implementation of a plan of acquisition of rights and construction of improvements as provided in the master plan. This property cannot be held hostage to a "possibility sometime in the future". That is illegal. The appropriate action here is approval.

With respect to the condition relative to access, Hunzeker pointed out that the only reference to that access in the entire staff report is in the Fire Department comments asking for it as a safety concern. There is not one word referenced in that report relative to connectivity. The Adriana Court area is connected by a bike path to a bike path that leads right through Gateway Shopping Center. The limited connectivity of streets is no more limiting than many of the existing projects already in place. He does not believe any of the examples have two access points. It is a safety issue – not a connectivity issue.

**CHANGE OF ZONE NO. 08033**
**ACTION BY PLANNING COMMISSION**: July 2, 2008

Larson moved approval, seconded by Sunderman.

Esseks accepts the legal advice offered, but he will vote against this change of zone, not because it would obstruct the successful conclusion of negotiations to achieve a detention cell on the property, but because he is convinced that we have created improper medical response. We have 807 homes that are going to be in the floodplain subject to the terrible experiences of flooding. We must do everything possible to help those people out. We should not approve additional densities in this drainage basin. It would be a precedent for others currently using their properties for commercial purposes to seek higher densities.

Larson stated that he will vote in favor because voting it down is not going to change the floodplain and flood insurance requirements upstream or downstream. Most of the property affected immediately is owned by the applicant. If there is a risk, it's greatly his own risk. If he is willing to make further investment and take the risk, it makes it worthwhile.

Cornelius commented that he is sympathetic to all the views stated by his colleagues. The overriding concern in terms of flooding is the Deadmans Run Watershed Master Plan. That is the point where we are creating risk for other property owners along Deadmans Run. He believes it is the case that we are bound to take this application simply on its own merits and not the possibility that this land could be acquired and used to the public benefit in the future. For that reason, he feels compelled to vote for approval.

Carroll stated that he will vote no based on the application and its merits. This increases the density from 9.3 units per acre to 15.5 units per acre. He believes that is just too much for this area. Yes, it is in the floodway and floodprone area, and adding this much density in this area is just not good planning. We will have other people in this area coming back wanting to increase density and this is just the wrong area.

Motion for approval failed 3-5: Larson, Sunderman and Partington voting 'yes'; Cornelius, Taylor, Esseks, Francis and Carroll voting 'no'; Gaylor Baird absent.

Francis moved denial, seconded by Cornelius and carried 5-3: Cornelius, Taylor, Esseks, Francis and Carroll voting 'yes'; Larson, Sunderman and Partington voting 'no'; Gaylor Baird absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 1174G**
**ACTION BY PLANNING COMMISSION**: July 2, 2008

Larson moved to approve the staff recommendation of conditional approval, with the amendments as requested by the applicant. Motion failed for lack of a second.

Cornelius moved to deny, seconded by Francis.

Cornelius stated that he was persuaded by the Chair's argument. He had been so focused on the floodplain issue and Cell A that he had not stopped to consider the issue of density and changed his vote for that reason.

With regard to a setting a precedent, Partington observed that any other application can also be denied or approved based on its own merits. It is not a given that another application would be approved.

However, given the 14th Amendment requiring equal protection and treatment, Esseks suggested that like applications should be treated by the same body in a like fashion.

Speaking to the density issue, Larson observed that one of the battles we are all fighting is to increase the density or have more density in the core areas of the city to eliminate urban sprawl on the edges. He believes this is a good opportunity to do that.

Motion to deny carried 5-3: Cornelius, Taylor, Esseks, Francis and Carroll voting 'yes'; Larson, Sunderman and Partington voting 'no'; Gaylor Baird absent. This is final action unless appealed to the City Council.

***(Editorial Note: This special permit amendment was appealed to the City Council by the applicant on July 2, 2008, and is scheduled for public hearing before the City Council on July 21, 2008, 1:30 p.m.)***

**CHANGE OF ZONE NO. 08035**
**and**
**MISCELLANEOUS NO. 08008,**
**TEXT AMENDMENTS TO TITLE 27 AND TITLE 26**
**TO REMOVE THE PLANNING DEPARTMENT**
**FEE SCHEDULE FROM THE ZONING AND**
**LAND SUBDIVISION ORDINANCE TO A**
**RESOLUTION APPROVED BY THE CITY COUNCIL.**
**PUBLIC HEARING BEFORE PLANNING COMMISSION**: July 2, 2008

Members present: Cornelius, Larson, Taylor, Esseks, Sunderman, Partington, Francis and Carroll (Gaylor Baird absent).

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Marvin Krout, Director of Planning,** reviewed the history of fee increases for application filing fees in the Planning Department. Two years ago, a proposal was brought forward to increase the filing fees by 10%, which was approved by the Planning Commission but denied by the City Council. Therefore, the Planning Department filing fees for City applications have not been increased since 2003, yet costs continue to rise.

Krout explain that technically, what is in before the Commission today is not a request to increase fees but to remove the reference to the fees from the Zoning Ordinance and Land Subdivision Ordinance. Until now, we have always had to amend the zoning ordinance, subdivision ordinance and the chapter on rights-of-way vacation. The fee for Comprehensive Plan Amendments is currently done by separate resolution of the City Council. Therefore, it required three ordinance amendments in the past to make any changes to the fees. This proposal will simplify the issue of fees, removing them from the zoning, subdivision and rights-of-way vacation ordinance so that the fees would be adopted by one resolution of the City Council. Thus, the Planning Commission would no longer be reviewing and making a recommendation on increasing fees. There are no charter or ordinance requirements for the Planning Commission to review the Planning Department budget in any other regard. The Planning Department is not an enterprise fund. These fees represent a very small proportion of the cost of processing the applications.

Krout did provide the Commission with the proposed fee schedule for an increase that is about 20% on the average, representing the cost of living increase from 2003 to September of 2008, which is an attempt to maintain the same proportion of the Planning Department budget as in the past.

Partington inquired as to the ratio between public and private sector. Krout explained that he has not done a detailed cost of services study but he would estimate the cost to process 600 applications per year to be about $600,000, which is less than one-half of the Planning Department budget. Of that $600,000, about 1/5 is coming from application fees. Other Planning Departments in other communities also do not charge the full cost of service. It would become very expensive, or probably five times the fees of today. He estimates that the increase on a per lot basis would be about $20.00.

Partington suggested that it is more palatable to raise the fees at 4% a year rather than 20% every four years. Krout agreed, but the proposal he brought forward in 2006 did not pass, so we are behind.

There was no testimony in opposition.

**CHANGE OF ZONE NO. 08035**
**ACTION BY PLANNING COMMISSION**: July 2, 2008

Motion for approval made by Larson, seconded by Francis.

Larson believes it is a matter of keeping pace and as long as we have this kind of ratio there is no reason not to raise the fees.

Motion for approval carried 8-0: Cornelius, Larson, Taylor, Esseks, Sunderman, Partington, Francis and Carroll voting 'yes' (Gaylor Baird absent). This is a recommendation to the City Council.

**MISCELLANEOUS NO. 08008**
**ACTION BY PLANNING COMMISSION**: July 2, 2008

Francis moved approval, seconded by Cornelius and carried 8-0: Cornelius, Larson, Taylor, Esseks, Sunderman, Partington, Francis and Carroll voting 'yes' (Gaylor Baird absent). This is a recommendation to the City Council.

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

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on July 16, 2008.

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