MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, January 8, 2003, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Patte Newman, Greg Schwinn Mary Bills-Strand and Tommy Taylor; (Cecil Steward absent). Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Becky Horner, Duncan Ross, 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

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held December 11, 2002. Larson moved to approve the minutes, seconded by Bills-Strand. Motion for approval of minutes carried 7-0: Carlson, Duvall, Larson, Newman, Schwinn and Bills-Strand voting 'yes'; Krieser abstaining; Steward absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: January 8, 2003

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

The Consent agenda consisted of the following items: **SPECIAL PERMIT NO. 1610C, SPECIAL PERMIT NO. 1994, FINAL PLAT NO. 02019, FINAL PLAT NO. 02036, FINAL PLAT NO. 02047, COMPREHENSIVE PLAN CONFORMANCE NO. 02011, COMPREHENSIVE PLAN CONFORMANCE NO. 02012, COMPREHENSIVE PLAN CONFORMANCE NO. 02013, COMPREHENSIVE PLAN CONFORMANCE NO. 02014 AND WAIVER OF DESIGN STANDARDS NO. 02024.**

Item No. 1.6, Comprehensive Plan Conformance No. 02011; Item No. 1.7, Comprehensive Plan Conformance No. 02012; Item No. 1.8, Comprehensive Plan Conformance No. 02013 and Item No. 1.9, Comprehensive Plan Conformance No. 02014 were removed from the Consent Agenda at the request of Commissioner Newman and scheduled for separate public hearing. Carlson moved to approve the remaining Consent Agenda, seconded by Newman. Motion to approve carried 8-0: Carlson, Duvall, Krieser, Larson, Newman, Schwinn, Bills-Strand and Taylor voting 'yes'; Steward absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 02011
REVIEW OF PROPOSED DECLARATION OF SURPLUS PROPERTY AS TO CONFORMANCE WITH THE COMPREHENSIVE PLAN ON PROPERTY GENERALLY LOCATED AT NORTH 9TH STREET AND "Q" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

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

This application was removed from the Consent Agenda and had separate public hearing at the request of Commissioner Newman because she believes the public should be aware of the purpose of the declaration of surplus property.

Joel Pedersen, Asst. City Attorney, explained that this declaration of surplus property involves a portion of the new Haymarket Parking Garage which was identified in the agreement of purchase. There were two owners of the site and one of the conditions of the city acquisition to build the garage was that the retail space be reconveyed back to the property owner, B & J Partnership. This proposal proposes to surplus the area covered by retail space. B & J Partnership is paying $90,000 for the land. B & J has also agreed to pay for logistical improvements for the common wall and the other improvements related to the garage.

There was no testimony in opposition.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Larson moved to approve a finding of conformance, seconded by Carlson and carried 8-0: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor, Krieser and Schwinn voting 'yes'; Steward absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 02012,
REVIEW OF PROPOSED DECLARATION OF SURPLUS
PROPERTY AT SOUTH 6TH STREET AND PEACH STREET;
COMPREHENSIVE PLAN CONFORMANCE NO. 02013,
REVIEW OF PROPOSED DECLARATION OF SURPLUS PROPERTY
AT SOUTH 40TH STREET AND RANDOLPH STREET;
and
COMPREHENSIVE PLAN CONFORMANCE NO. 02014,
REVIEW OF PROPOSED DECLARATION OF SURPLUS
PROPERTY AT 6400 WEST BENNET ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

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

These applications were removed from the Consent Agenda and had separate public hearing at the request of Commissioner Newman because she believes the public should be aware of the purpose of the declaration of surplus property.

Proponents

1. Bill Austin appeared on behalf of **LES** for all three proposals for declaration of surplus property.

#02012 involves property at 6th and Peach Streets. This was a former LES substation site many years ago and LES has now concluded that it would be in the best interests of the city to get this off of the public ownership. It is a relatively small parcel. The sole purpose of coming before the Planning Commission is to fulfill the requirements of the City Charter that surplus and sale of the property be first reviewed by the Planning Commission.

#02013 involves property at 40th & Randolph Streets (south of the intersection on the southwest side of the intersection). This was a former LES substation site as well and has not been used for many years. It is zoned R-4 and it is hoped that the property can be put to a better use than it is now.

#02014 involves property at 6400 West Bennet Road. This was not an old substation but was an acquisition-in-fee accomplished for the purpose of installing a 345 kv transmission line, which is actually in place diagonally across these properties. At the time, it made more sense to acquire the property even though only an easement was needed. Now the desire is to find a buyer for the remaining portion of the property.

Newman inquired whether LES has buyers for the Peach and Randolph properties. Austin was not aware of any purchasers. LES has found that there are a lot of people that may or may not be interested in the property but they have no buyers at this point.

Carlson inquired as to the next step in the process as far a advertising the property for sale, etc. On the assumption that the City Council passes an ordinance authorizing LES to proceed, Austin indicated that it depends upon how much interest is generated on the property. If there is interest, LES may send out bid packages to other property owners or interested parties. There is no firm policy as to how they proceed but they would look at anyone who approaches them to acquire the property. Austin does not believe the properties are advertised for sale in the newspaper.

There was no testimony in opposition.

Public hearing was closed.

COMPREHENSIVE PLAN CONFORMANCE NO. 02012
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Duvall moved to approve a finding of conformance with the Comprehensive Plan, seconded by Taylor.

Carlson commented that it would be interesting to figure out what the standing policy might be as far as listing or advertising the properties.

Newman commented that she wanted to hold public discussion on these applications because many times the Commissioners do hear from people who say they knew nothing about the surplus property and she wanted to have it discussed in public.

Motion to find in conformance carried 8-0: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor, Krieser and Schwinn voting ‘yes’; Steward absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 02013
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Duvall moved to approve a finding of conformance with the Comprehensive Plan, seconded by Carlson and carried 8-0: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor, Krieser and Schwinn voting ‘yes’; Steward absent.

COMPREHENSIVE PLAN CONFORMANCE NO. 02014
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Carlson moved to approve a finding of conformance with the Comprehensive Plan, seconded by Newman and carried 8-0: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor, Krieser and Schwinn voting 'yes'; Steward absent.

COUNTY CHANGE OF ZONE NO. 210
FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT SO. 176TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: Deferral until the fiscal impact study is completed and performance standards are developed. Denial if action is requested.

Proponents

1. Jack W. Duke, Jr., the applicant, 300 N.W. 126th Street, presented the application, indicating that he wants to divide the property into two 10-acre lots and to continue to reside on the same property. He bought the 20 acres in order to pass the property down to his children, and that is the purpose of this change of zone request. He was unaware of the standards to which he needed to comply and in that process he found out about the need to change the zoning in order to subdivide the property and proceed.

2. Fred Nass, 600 N.W. 126th, his property abuts the Duke property on the north side. He is in support of this subdivision (change of zone request). He sees no reason that it should not be approved because this application is very consistent with the character of the whole neighborhood. Right next to the Duke property to the south there are two small 6- and 10-acre acreages; to the east on Hwy 6, there are four acreages on the south side of the road; going north 1/4 mile and then west, there are four acreages on the access road that runs parallel to the south side of the Interstate. Section 17, which is one mile north of the subject section, contains probably 20-25 acreages. All of this land lays on the east side of the road that runs along the west side of Pawnee Lake. It is highly traveled and there are a lot of acreages out there that abut the back of Pawnee Lake. To summarize, Nass stated that this proposal is very consistent with what exists. He does not know the criteria that needs to be reviewed, but what is in place is very consistent with the 20 acres being divided into two 10-acre parcels.

Nass understands that there has been some opposition raised because Mr. Duke is allegedly running a business from this property. Nass does not believe Mr. Duke will deny

this. He is a demolition contractor and this is his home. He goes to work throughout the region as a contractor and this is where he resides. This is very consistent with the whole neighborhood. Nass does not believe the fact that Mr. Duke is using this as his home from which he is operating a demolition business is detrimental to the neighborhood. He does have some big equipment, but most farmers are going to have the same kind of equipment on their farms.

There was no testimony in opposition; however, the record consists of two letters in opposition.

Staff questions

Carlson inquired about dividing the property under the current AG zoning. Mike DeKalb of Planning staff advised that a "farmstead split" requires that the property be there for at least 5 years. The house on the property is only 2-3 years old. Carlson then confirmed that in order to get two dwellings they need two lots and they cannot do that in AG zoning. DeKalb concurred. AG is 20-acre minimum lot size with one dwelling unit per lot. A "farm" can have more than one dwelling, but we attempt to insure that density requirement by saying no more than 1 per 20. In this case, we have a 20-acre parcel with one house; the second manufactured home has been moved in and is now occupied, so we have two units on one lot, which is not allowed. The AGR zoning would allow 3-acre minimum lot size and presumably Mr. Duke would follow up with a subdivision permit to create the two 10-acre lots. The zoning action alone approves AGR zoning which allows 3-acre lots. A CUP requires 75 acres in the AG district.

Carlson noted that an AGR zoning designation conflicts with the Comprehensive Plan. DeKalb concurred that it is not shown in the Comprehensive Plan as an area set aside for acreages. In the new Comprehensive Plan, we are required to develop a point system or standards in analyzing AGR zoning, plus another study for cost of service for acreages. Neither of these studies is done so there are no standards for staff to apply in analyzing this change of zone request. The staff report includes the typical review and analysis. This is prime ag land.

Carlson inquired about the issue of running a business in the county. DeKalb's response was that running a contractor's yard in the AG district is not a permitted use.

Schwinn noted the staff recommendation of deferral--what does this mean? DeKalb indicated that, according to the new Comprehensive Plan, this application is supposed to be reviewed against a point system and the recommendation of approval or denial is to be based upon that point system. The staff is recommending deferral until that point system is in place in order to be fair. The point system is to be developed by June of this year.

Mel Goddard and Dale Stertz of Building & Safety appeared to answer questions. Carlson asked how Duke was able to move in the second dwelling. Goddard stated that Building

& Safety was unaware that the manufactured home had been moved onto the property. Building & Safety only became aware of it when Mr. Duke had to put in some footings and had begun excavating for a lagoon and septic system.

Dale Stertz advised that a “contractors yard” is not permitted in the AG District nor in the AGR District. Schwinn thought there was some kind of waiver system to allow this. DeKalb disagreed. The county would require business or industrial zoning to allow a contractors yard so it would require a change of zone. The only exception is home occupations which are allowed for the residents of the home and members of the family producing a product in the home. There is also a special permit provision for farm contractors in the business of building dams and contour lines.

Carlson wanted to know how the city draws the line between a farmer who has a dump truck versus someone who has a backhoe. DeKalb suggested that the intent is that the AG district is designed for agriculture and you expect the normal type of farm equipment to be there.

Response by the Applicant

With regard to the business, Duke stated that he runs an interior building construction company. All he has on this property are some vehicles that park there. He does not operate any work on the land. He has his business phone going to a small office on the property. There are no signs and no indication that he is operating a business that someone could visit. He does no manufacturing. He “destroys stuff”. He does his estimating from his home and answers the phone from his home. His employees do not work on the property. He does not see how this constitutes operating a business. He does not own a “cat”–he owns a skidster and four trucks. The employees park on his land, get in the truck and leave. If he cannot have a phone in his home to do his estimating, then he will correct the problem; however, he did not believe this would be such a large issue.

With regard to the additional home, he believes he obtained all of the required permits. He got permission from the Health Dept. to dig the lagoon and just got approval. He had to either move the house to this property that he had already purchased or he was going to be charged storage. If this is turned down, he is $80,000 in the hole because he purchased the home based on the information he got by calling Health and Building & Safety. He was told by Building & Safety that he did not need a building permit on 20 acres. He also indicated that his real estate agent told him that there was nothing further that needed to be done in order to do what he wanted to do. He does not believe he is asking for anything outrageous. He should be able to believe what he is told by Building & Safety. He is only asking to take his land and split it into two 10-acre lots. He purchased the property for his family. He invited the Commissioners to visit the property--there is no construction activity going on. There is nothing there. It looks clean and there is no sign of construction activity.

Schwinn noted that there is no subdivision application before the Commission. DeKalb explained that it would be an administrative subdivision and would not come before the Commission. Duke has not yet had the property surveyed. He cannot apply for a subdivision permit unless the change of zone is approved.

If the change of zone is approved, Schwinn wondered whether an application for three 6-acre lots could be approved administratively. DeKalb explained that a subdivision can be done administratively without creation of a road for up to four lots. Eight lots or a different configuration would have to come before the Planning Commission. Schwinn suggested that if the change of zone is approved, the owner has been given a carte blanche to do some other things. DeKalb explained that if an administrative subdivision is submitted that meets all of the requirements of the law, the Director has an obligation to approve it. A plat for two lots cannot be made a requirement of the change of zone request.

Duke stated that he does not plan to split up the land. If he is given this opportunity for two 10-acre lots, he will not be back to further subdivide.

Carlson confirmed with Duke that he called Building & Safety and they told him that he did not need the permit to put up the second house. Duke stated that he called Building & Safety before he purchased the house. He got verbal approval from the Health Department face-to-face.

Carlson asked Building & Safety to respond to the allegation that Duke was told he did not need a building permit. Dale Stertz acknowledged that the regulations have changed and it could have been a misunderstanding as to how the question was asked. Before September 12th, if someone posed the question as to whether they needed a permit on 20 acres or more, the answer would have been “no”. Stertz confirmed that there are no permits for the second residence on file with Building & Safety.

DeKalb believes that the Health Department is still working with Mr. Duke on the permits for the lagoon.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Newman moved to defer, seconded by Carlson.

Newman noted that this is AG land surrounded by AG land. There is a way to solve the problem–the house is there–but she doesn't know what it is. The only thing we can do safely is to defer it until something happens.

Larson does not understand what can happen other than waiting for the new regulations. Schwinn believes that's going to be in July. Larson wondered whether the house will be allowed to stay in the meantime. Schwinn does not believe it would require removal of the house if the action is deferred. It may be a problem on the lagoon permit. Larson does not want Mr. Duke to suffer with a deferral for six months.

Schwinn will vote against the deferral. He thinks the change should be approved. It is like the property around him. He knows that misunderstandings occur. It should be settled here.

Duvall agreed with Schwinn. It appears that the applicant has tried to address the issues. It appears to have been a miscommunication and some confusion. He does not believe the applicant should be penalized and he believes the zoning should be changed.

Motion to defer failed 3-5: Carlson, Newman and Taylor voting 'yes'; Bills-Strand, Larson, Duvall, Krieser and Schwinn voting 'no'; Steward absent.

Duvall moved approval, seconded by Larson and failed 4-4: Bills-Strand, Larson, Duvall and Schwinn voting 'yes'; Carlson, Newman, Taylor and Krieser voting 'no'; Steward absent.

Krieser moved to deny, seconded by Carlson and failed 4-4: Carlson, Newman, Taylor and Krieser voting 'yes'; Bills-Strand, Larson, Duvall and Schwinn voting 'no'; Steward absent.

This application is held over for administrative action at the next regular meeting of the Planning Commission on January 22, 2003.

COUNTY SPECIAL PERMIT NO. 197,
CEDAR GROVE ESTATES COMMUNITY UNIT PLAN,
and
COUNTY PRELIMINARY PLAT NO. 02026,
CEDAR GROVE ESTATES,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 176TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: Conditional approval.

Proponents

1. Jered Morris of Olsson Associates presented the applications on behalf of the developers, **Art Knox and Lyall Luff,** consisting of 160 acres on the east side of the County near the county line, for a community unit plan with 9 lots. The 9 lots are placed in a configuration which would have the least amount of agricultural degradation as far as crop land. Lot 9 has 99.25 acres, which will remain in agricultural production and that is almost the entirety of the crop land and production on the site. On the north portion is mostly pasture land and a lot of "junk" trees. It's a very nice area for the lots to be placed. It is secluded and the developer believes that it will not degrade the landscape and cause any issues with the adjacent properties.

Morris requested to delete Condition #1.1.1 concerning the dedication of 60' of right-of-way along 176th Street and Old Cheney Road. The developer would request to maintain the right-of-way at 50', as shown on the site plan. Because of its proximity in the county, the developer believes that this is so far out from the city that the need to dedicate the full 120' of right-of-way for major arterial streets is not necessary.

Morris also requested to delete Condition #1.9, which requires a future access easement to the north. The developer believes that an easement through this property to the north for a future connection on the north is not really necessary and that it would cause some adverse impacts on landscape. There is fair amount of drainage that would come through that in a major storm and the placement of a bridge would not be a pleasing view and use between any of the lots. If this easement is required, it is envisioned between Lot 4 and Lot 5.

Staff was asked to respond to the requested amendments to the conditions of approval. Mike DeKalb of Planning staff stated that Condition #1.9 is a provision to show a road going to the north. The staff concern is that we would like to provide access to the north so that it is consistent with the Comprehensive Plan, and if the property owners to the north

would want to do the same thing. Staff did not have enough information to designate the specific place. It is suggested that the applicant find the proper location and show it on the plan. DeKalb acknowledged that the County Engineer did not ask for this and we are not sure it can be done. The Commission needs to determine what is appropriate.

With regard to the 50' versus 60' right-of-way, DeKalb indicated that to be a comment from the County Engineer. The Comprehensive Plan calls for 120' in the tiers of the City. This is not in the tiers. 100' right-of-way would be consistent with the land. The County Engineer would prefer 60', but would accept 50'.

Opposition

1. Kyle Gowin, 16950 Old Cheney Road, expressed concerns about flooding. There is a waterway that runs through the northern part of the property. He has lived close to the property for 18 years and he does a lot of walking at night. In 18 years, he has seen this waterway flood--literally wash the road out--so this is his concern with houses being built here. He is talking about the area off of 176th Street. There is a pond to the west and another larger pond to the north and it is a watershed for those two ponds. It drains from the west to this property to the east.

Taylor asked staff to respond to the flooding issue. DeKalb acknowledged that the property is quite low. There is a creek through there. It shows on NRCS maps as wetlands but it is not a designated floodplain. We do know it is a waterway. We do not have any staff comments regarding flooding. That is part of the purpose of locating a crossing at the proper place. As far as locating lots, the applicant indicated that the six to seven to eight-acre lots should have sufficient room outside of the low land for a house and septic system. Health has asked for additional information on the pond elevations to make sure it will work. Other than that, the staff believes all of the lots are buildable and out of the drainageway issues.

2. Deb Kampschneider, 176th & Old Cheney, about .3 mile south of the proposal testified in agreement with Mr. Gowin's concern about flooding. She spends a lot of time in the "junk" trees and wildlife area looking for deer tracks and raccoon tracks. It is a wet area and almost every time she walks she can find new tracks as evidence that the road is wet.

Response by the Applicant

Morris retracted his description of the trees as "junk" trees. He agrees that it is a very pretty area. He did analyze the drainage patterns and he showed a drainage map showing the drainage pattern of the site. The contours are 10' and his analysis shows that the channel is a fairly poor crossing at 176th Street. The culvert pipe does look like it has been washed out several times. However, in looking at the 10' contours, there is ample area on each lot to develop home sites and lagoon systems.

Public hearing was closed.

COUNTY SPECIAL PERMIT NO. 197
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Taylor moved approval of the staff recommendation of conditional approval, seconded by Carlson.

Carlson commented that this area in the county is where we want to place acreages. It is outside of Tiers I, II and II and there will not be a future service limit conflict.

Bills-Strand is not in favor of increasing the right-of-way to 60'. She believes it should be 50'. Bills-Strand moved to amend to delete Condition #1.1.1 and Condition #1.9, seconded by Duvall and carried 5-3: Carlson, Bills-Strand, Larson, Newman and Duvall voting 'yes'; Taylor, Krieser and Schwinn voting 'no'; Steward absent.

Main motion, as amended, carried 7-1: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor and Schwinn voting 'yes'; Krieser voting 'no'; Steward absent.

COUNTY PRELIMINARY PLAT NO. 02026
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Duvall moved approval of the staff recommendation of conditional approval, with amendments deleting Condition #1.1.1 and Condition #1.9, as requested by the applicant, seconded by Bills-Strand and carried 7-1: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor and Schwinn voting 'yes'; Krieser voting 'no'; Steward absent.
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CHANGE OF ZONE NO. 3290
FROM AGR AGRICULTURAL RESIDENTIAL
TO R-1 RESIDENTIAL
and
PRELIMINARY PLAT NO. 02018
FRONTIER MEADOWS,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 68TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat.

The Clerk announced that the applicant has submitted a written request for a two-week deferral.

Motion to defer made by Newman, seconded by Carlson, with continued public hearing an administrative action scheduled for January 22, 2003, and carried 8-0: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor, Krieser and Schwinn voting 'yes'; Steward absent.

CHANGE OF ZONE NO. 3386
FROM H-3 HIGHWAY COMMERCIAL
TO I-1 INDUSTRIAL,
and
PRELIMINARY PLAT NO. 02022,
G & C ADDITION,
ON PROPERTY GENERALLY LOCATED
AT S.W. 24TH STREET AND WEST "O" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat.

Proponents

1. Rick Onnen of Engineering Design Consultants testified on behalf of the applicant, **Gary Christensen.** The proposed development is industrial and one commercial lot, at approximately Coddington & West "O". Streets.

The applicant agrees with the conditions of approval on the preliminary plat, except Condition #1.1.1, which denies the waiver of improvements to South Coddington. This discussion occurred in another proposal less than a year ago. In that case, the City Council denied the waiver but they did give the developer the option that if they could not form a paving district within 3 years, to come back and request the waiver again. The primary argument not to improve the street is that it is a rural section paved roadway. The traffic volume is low. The street functions fine as it is and the developer would rather not incur the costs. It also impacts the other owners along the street as it is difficult to improve due to drainage issues.

Onnen then discussed Condition #1.1.3, which requires the vacation of West M Street and West N Street west of South Coddington Avenue. West M Street exists as a right-of-way (a stub to the west) on a plat done in the late 1800's and has never been constructed. That part is integral with this plat and the developer has no problem with the vacation of M Street. They will essentially be replacing the piece of vacated right-of-way in kind with the cul-de-sac to the south and the developer would like to be able to acquire the vacated right-of-way without having to purchase it.

With regard to the vacation of West N Street, Onnen advised that West N Street is not within the boundaries of this plat and not in control of the ownership of this developer. The owner has consented to petition for the vacation and the property has since changed hands. The new owner has also agreed to petition for the vacation. The biggest problem is that that vacation is also going to require an administrative plat on that property to not provide lots without frontage. There is a time factor involved in processing that vacation and the developer does not want the vacation of West N Street to hold up this plat. This developer supports the vacation of West N Street, but would prefer it not be a condition of approval on this plat.

In response to a request for clarification by Carlson regarding West M Street, Onnen stated that the developer would essentially like to trade. The developer is moving the street and, rather than having to purchase that right-of-way at market value, the developer would like to swap that land. As part of the Ford Van Lines administrative subdivision, the developer has already bonded for the improvements for that portion of the street. Ray Hill of Planning staff suggested that the developer contact Clint Thomas of the Real Estate Division of Urban Development regarding this issue. These arrangements should be made before the street vacation gets to the City Council. The street vacations are reviewed by the Planning Commission as to conformance with the Comprehensive Plan. If that's the case, Carlson believes the condition should remain n place and let them work the land swap out prior to

City Council. Hill commented that no one disagrees with the vacation of M Street. The developer is just asking that he be given consideration not to have to pay for the land when the city vacates M Street and then turn around and dedicate an equal amount of land with the final plat. That agreement to swap is a discussion that should take place with the City Appraiser.

Carlson noted the applicant's testimony that the existing road is functioning adequately. If you add 15 new industrial users, why doesn't the curb and gutter need to be brought to urban standard? Onnen responded, stating that the uses envisioned would be low volume traffic uses such as body shops and small businesses, i.e. contractor/warehouse type facilities. Carlson believes that anything can happen in I-1 given the lot size and restrictions. Onnen noted that the lots are small.

Onnen further advised that the developer has requested an assessment district for the paving. Public Works asked that it be addressed all the way from "O" Street and the developer has requested an assessment district for that piece. The agreement was if that assessment district would not be established within three years, the developer could come back and ask for the waiver again at that time.

There was no testimony in opposition.

Public hearing was closed.

CHANGE OF ZONE NO.3386
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Carlson moved approval, seconded by Newman and carried 8-0: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor, Krieser and Schwinn voting 'yes'; Steward absent.

PRELIMINARY PLAT NO. 02022
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Carlson moved approval of the staff recommendation of conditional approval, seconded by Newman and carried 8-0: Carlson, Bills-Strand, Larson, Newman, Duvall, Taylor, Krieser and Schwinn voting 'yes'; Steward absent.

SPECIAL PERMIT NO. 1968,
PIONEER RIDGE COMMUNITY UNIT PLAN
and
PRELIMINARY PLAT NO. 02008,
PIONEER RIDGE,
ON PROPERTY GENERALLY LOCATED
AT SO. 112TH STREET AND PIONEERS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: Revised on January 8, 2003, from deferral to conditional approval.

Mike DeKalb of Planning staff submitted a revised staff recommendation of conditional approval. Upon further review, it appears that this application complies with the exception set forth in the Mayor's letter to the City Council, County Board and Planning Commission dated June 11, 2002, i.e. that parcels that were Ag clusters with no community systems, and 80% or more of the land was set aside, would be exempt from the "build-through" standards during this transition period. This is one of the eight subdivision applications that had been submitted prior to the new Comprehensive Plan and was in process at the time. The exception applies in this case and thus the staff recommendation is revised to conditional approval.

Proponents

1. Brian Carstens appeared on behalf of the developer, the **Carrol C. Ketelhut Irrevocable Trust.** The developer is asking for the typical waivers and one block length waiver. Potable water will be provided by means of wells. At this point, a gravel road is anticipated. The property is now carved into seven 20-acre parcels but the owner would rather do the CUP to preserve the open space for future development. The 20% bonus was not requested so that the outlot would not have to locked up for 99 years. Carstens agreed with the conditions of approval as set forth in the staff report.

Opposition

1. Richard Littrell, 10500 Pioneers Blvd., testified in opposition with two concerns. He does not believe the proposed 3-acre parcels are consistent with the character of the area which is 20-acre and 5-acre parcels. The reality is that the ownership is 3.5 acres and some future development could be out of character with the area. The second concern is that his well is located above this property. He is concerned about the impact of seven or

more wells below his property drawing water on his well and water supply. He would like to be more confident that punching wells in that area will not affect the water supply on his own acreage.

Response by the Applicant

Carstens clarified again that this is a cluster development without any bonuses. The owner could do seven units by right on 20 acres. The well report indicated that there would be no problems with the seven additional lots.

Public hearing was closed.

SPECIAL PERMIT NO. 1968
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Bills-Strand moved to approve the revised staff recommendation of conditional approval, seconded by Taylor.

Carlson stated that he will vote against this proposal on the basis of its location. He believes it is a mistake to be putting acreages in the future service limit. It causes stress on the county road network, it encourages sprawl and it causes conflicts for future urbanization. Piecemealing close to the city with acreages causes all kinds of problems.

Newman agreed with Carlson. Newman was comfortable with a deferral until the "build-through" standards come forward. She would be more inclined to be in favor if the development were on a paved road.

Motion for conditional approval carried 5-2: Bills-Strand, Larson, Taylor, Krieser and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Duvall and Steward absent.

PRELIMINARY PLAT NO. 02008
ADMINISTRATIVE ACTION BY PLANNING COMMISSION: January 8, 2003

Bills-Strand moved to approve the revised staff recommendation of conditional approval, seconded by Larson and carried 5-2: Bills-Strand, Larson, Taylor, Krieser and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Duvall and Steward absent.

STREET & ALLEY VACATION NO. 02017
TO VACATE THE NORTH-SOUTH ALLEY
GENERALLY LOCATED AT
SO. 7TH STREET AND HATCH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: Deferral.

Greg Czaplewski of Planning staff advised that the staff is requesting a deferral until February 5, 2003. The applicant has agreed to the deferral.

Bills moved to defer, with continued public hearing and administrative action scheduled for February 5, 2003, seconded by Newman and carried 7-0: Carlson, Bills-Strand, Larson, Newman, Taylor, Krieser and Schwinn voting 'yes'; Steward and Duvall absent.

STREET VACATION NO. 02018
TO VACATE NO. 69TH STREET
GENERALLY LOCATED AT
NORTH 69TH STREET AND LOGAN AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: A finding that the proposed street vacation does not conform with the Comprehensive Plan.

Proponents

1. Cathy Kolb, 6835 Logan, testified in support. She has lived there and taken care of this lot for 25 years. It is platted to be a street but in October they put a natural gas relief valve right in the middle of that street. Kolb wants to put up a fence and extend her lot so that she does not see the gas relief valve and to keep people from driving through that lot. She has pictures showing that the neighbors to the south have taken over their lots by parking boats, campers, and storing car parts. She wants a privacy fence to eliminate this view. The gas relief valve is at the north end of her lot.

Schwinn inquired whether Kolb would purchase the property from the city if the street vacation is approved. Kolb stated that the property cannot be improved upon and if the price is right they will agree to purchase it.

Carlson suggested that Kolb file a complaint with Building & Safety about the parking of boats, vehicles, etc. Kolb indicated that she has done this and has received no results. There was no testimony in opposition.

Staff questions

Carlson inquired about the gas relief valve. Greg Czaplewski of Planning stated that it is a relief valve in line with the 69th Street right-of-way but actually placed in the Logan Avenue right-of-way. The likelihood of 69th Street ever being paved and actually used is probably pretty low. Public Works is opposed to this street vacation because vacating just this one block would leave a dead-end right-of-way. It will not be paved.

Bills-Strand wondered whether the city would consider putting a walkway/bikeway through there. Czaplewski stated that it would create an awfully long block but he agrees that there should be a pedestrian access.

Schwinn noted that one of the conditions if this street vacation is approved is that the entire block be vacated and there are more petitions required. Schwinn wondered whether Condition #1.3 could require a pedestrian easement between Kearney and Logan. Ray Hill of Planning staff clarified that this only addresses one-half of the street. If the Commission desires to put in a pedestrian easement, then the city should be asked to retain a pedestrian easement when they dispose of the property, just like they do for utility easements. If the Commission finds this proposal to be in conformance with the Comprehensive Plan with a pedestrian easement, then that should be made a part of the Commission's finding. As long as that is a public street on the south half, there is a public access and the City Council could ask that that sidewalk be constructed. If the Commission finds this proposal to be in conformance, then both ends of the street should be vacated.

Larson confirmed that the landowners adjacent to the south half would have to sign the petition. Hill concurred. Larson then wondered whether this applicant would have to wait for those petitions. Rick Peo of the City Law Department clarified the standard, i.e. the abutting property owners should petition for the vacation. The only thing before the Commission today is the request to vacate this portion of the street. Public Works has recommended denial because we don't have the property owners to the south also petitioning. However, the applicant has been unable to get those petitions. The Commission can either deny the application, or, if the Commission believes it is appropriate to vacate this portion of the street, that is the recommendation the Commission can make.

The city can retain any easements it may desire and the city would indeed retain a pedestrian easement if the city felt it necessary. Larson believes Condition #1.2 could be deleted and it would still have the sidewalk all the way through.

Peo again clarified that the city has the ability to retain a pedestrian easement.

Carlson asked about the process for the petition to vacate. Peo indicated that it requires petitions from 100% of the abutting property owners.

In terms of free storage on the south end, Schwinn asked whether this is something that Building & Safety should be investigating. Peo believes the city typically does do this and can require that it be moved.

Newman wondered who would pay for the pedestrian easement if it is required. Peo assumes the Commission would be asking just for retention of the easement and not necessarily construction. Peo does not believe the owner could be required to pay for it.

Czaplewski pointed out that this portion of the right-of-way is currently zoned R-2.

Response by the Applicant

Kolb does not know why anyone would want to build a house on a lot with a relief valve on it and no entrance to the street. Schwinn pointed out that they could build a curb cut and get a single family dwelling. Kolb disagreed. The only thing she wants to do is to put up a privacy fence. The gentleman on the east end is dying and is moving to Arizona; the property behind her is not interested in petitioning. The alley is open and is used.

Dennis Bartels of Public Works clarified that if there was a city need for the street, the gas company would be obligated to remove that gas relief valve.

Kolb indicated that she would rather have a street than the gas valve.

Bartels also suggested that it is probably a buildable lot. If a private property owner wanted to build on it, they would have to pay to remove the relief valve. If it were a city project such as building the street, it would be the obligation of the gas company to remove the valve.

Carlson wants someone to investigate the illegal parking of boats, etc., and made a motion to defer for four weeks until February 5, 2003, seconded by Newman.

Larson doesn’t think anything is going to happen in four weeks.

Motion to defer, with continued public hearing and administrative action scheduled for February 5, 2003, carried 6-1: Carlson, Bills-Strand, Newman, Taylor, Krieser and Schwinn voting 'yes'; Larson voting 'no'; Steward and Duvall absent.

STREET & ALLEY VACATION NO. 02019
TO VACATE THE EAST-WEST ALLEY
GENERALLY LOCATED AT
SOUTH 16TH STREET AND SOUTH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: Deferral

Carlson moved to defer, with continued public hearing and administrative action on January 22, 2003, seconded by Newman and carried 7-0: Carlson, Bills-Strand, Larson, Newman, Taylor, Krieser and Schwinn voting 'yes'; Duvall and Steward absent.

There was no public testimony.

ANNEXATION NO. 02004,
CHANGE OF ZONE NO. 3362,
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL,
and
PRELIMINARY PLAT NO. 02012,
BIG THOMPSON CREEK,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 56TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

Staff recommendation: Approval of the Annexation, subject to an annexation agreement; approval of the change of zone and conditional approval of the preliminary plat.

Proponents

1. Kent Seacrest appeared on behalf of **Ridge Development Company** and **Southview, Inc.**, the developers. This is a subdivision for 157 single family dwellings generally south of Campbells Nursery at 56th & Pine Lake Road. Seacrest indicated that he is requesting a two-week deferral because the motion to amend which he will be presenting contains a

waiver request which was not advertised. The applicant is also interested in meeting with Planning, Public Works, Law, Fire, LES and any neighbors if they have any concerns in the next two weeks.

Seacrest submitted the proposed motion to amend the conditions of approval. One set of amendments deals with the dedication of So. 56th Street right-of-way and the corresponding LES transmission line that goes up and down the street. He believes that the remaining amendments can be worked out with the staff in the next two weeks.

The big issue is, what is the appropriate right-of-way dedication on So. 56th for a residential development of this nature? This all ties back into what was previously called "public way corridors". There was a packet of text amendments in front of the Commission in May of 2002, consisting of 125 pages of ordinance amendments and design standard amendments to interpret and reflect these standards. At that hearing, city staff requested that it be put on pending so that they could continue to work on the details. It is still on the Planning Commission pending list and everyone thought it was going to come back. Now the administration indicates that the package is not coming back. The Comprehensive Plan shows 120' right-of-way. This leaves the Planning Commission to interpret what we do with the 120' right-of-way desire.

In this project, the staff is asking this developer to move an LES power line at a cost of ½ million dollars. The Planning Commission needs to give the staff some wisdom as to what to do with this issue.

Seacrest went on to state that the fact pattern is a city-wide issue. What do we do with big power lines? We had a standard of 100' right-of-way to build 4-lane roads and LES went around this community and put in the transmission lines right outside the 100' right-of-way and spent money acquiring easements. The city now wants 120' right-of-way and thus the LES powers lines are in the public right-of-way. We've been building 4-lane roads in 100' of right-of-way in some instances, but if you want the 28' boulevard and the wide landscaped medians with double rows of trees, you might have to move the power line in some instances. Who pays to move power lines? In the subject fact pattern, someday 56th Street will be 4-lanes and it will cost $450,000 on this developer's frontage to build 4 lanes. The power line relocation is estimated at over ½ million dollars. The city can't get LES to move the power line because they were there first. Now the city wants this developer to move those power lines. If we did that, we would pay three times the amount of any impact fee. And if the impact fee ordinance is adopted, we won't get a credit. If the city was building that road today, they wouldn't move those power lines. They can build all the four lanes they want in 100' and 110'. They do not need 120' in all instances.

Seacrest further pointed out that the developers have given the city 120' in some projects, but we've never sat down and figured out what the 120' corridor standards should be. Seacrest submits that the 120' width is not necessary in this project.

Seacrest urged that this is a big issue because it goes back to the Planning Commission pending list. His clients are caught in the middle of "two elephants dancing–LES and the City". What are we going to do as a community to address this? Seacrest stated that he helped draft a compromise to the 120' at the time, and the standard says it is the desired width, not the mandatory width. Seacrest requested that this development be allowed to give the city the additional 10' through a landscape easement.

Seacrest also pointed out that this development is paying for one-half of the road if there are no impact fees. If there are impact fees, this development would be paying the $2500.

Bills moved to defer for two weeks, with continued public hearing and administrative action scheduled for January 22, 2003, seconded by Krieser and carried 7-0: Carlson, Bills-Strand, Larson, Newman, Taylor, Krieser and Schwinn voting 'yes'; Duvall and Steward absent.

There was no testimony in opposition.

CHANGE OF ZONE NO. 3389
FROM B-1 LOCAL BUSINESS TO
H-2 HIGHWAY BUSINESS
ON PROPERTY GENERALLY LOCATED
AT SOUTHWOOD DRIVE AND HIGHWAY 2.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

The Clerk announced that the applicant has submitted a written request for an additional two-week deferral.

Larson moved to defer, with continued public hearing and administrative action scheduled for January 22, 2003, seconded by Bills-Strand and carried 7-0: Carlson, Bills-Strand, Larson, Newman, Taylor, Krieser and Schwinn voting 'yes'; Duvall and Steward absent.

WAIVER OF DESIGN STANDARD NO. 02023
TO WAIVE STREET TREES, STREET LIGHTS,
SIDEWALKS, PAVING AND FLOODPLAIN REQUIREMENTS
ON PROPERTY GENERALLY LOCATED
AT SOUTH 7TH STREET AND N STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 8, 2003

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

The Clerk announced that the applicant and staff have agreed to a four-week deferral.

Carlson moved to defer, with continued public hearing and administrative action scheduled for February 5, 2003, seconded by Newman and carried 7-0: Carlson, Bills-Strand, Larson, Newman, Taylor, Krieser and Schwinn voting 'yes'; Duvall and Steward absent.

There being no further business, the meeting was adjourned at 3:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 22, 2003.

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