

**THE MINUTES OF THE REGULAR CITY COUNCIL MEETING HELD  
MONDAY, APRIL 16, 2001 AT 1:30 P.M.**

The Meeting was called to order at 1:35 p.m. Present: Council Chairperson Shoecraft; Council Members: Camp, Cook, Fortenberry, Johnson, McRoy, Seng; Joan Ross, City Clerk.

The Council stood for a moment of silent meditation.

**READING OF THE MINUTES**

JOHNSON Having been appointed to read the minutes of the City Council proceedings of Apr. 9, 2001, reported having done so, found same correct.

Seconded by McRoy & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

**PUBLIC HEARING**

APPLICATION OF TWISTED STEELE, INC. DBA "LAZZARIS" FOR A CLASS "C" LIQUOR LICENSE AT 1434 "O" STREET AND 1430 "O" STREET;

MANAGER APPLICATION OF MATTHEW VRZAL FOR TWISTED STEELE, INC. DBA "LAZZARIS" AT 1434 "O" STREET AND 1430 "O" STREET - Gretchen Herrin, Atty., 1500 Woodman Tower, Omaha, NE. I am here with Matthew Vrzal and Neal Grummert from Twisted Steele, Inc. dba as Lazzaris, 1434 "O" Street. We would be happy to have any questions you might have.

This matter was taken under advisement.

MANAGER APPLICATION OF MATTHEW J. KEMPSTON FOR B&R STORES, INC. DBA "SUPER SAVER #17" AT 2525 PINE LAKE ROAD - Matthew Kempston, 200 Parkview Drive, Seward, Nebraska, too the oath and came forward to answer questions. I am applying for a Class "D" Liquor License.

This matter was taken under advisement.

MANAGER APPLICATION OF RONALD SOMMERS FOR B&R STORES, INC. DBA "SUPER SAVER III" AT 5440 S. 56TH STREET - Ronald Sommers 1229 S. 27th, took the oath and came forward to answer questions.

This matter was taken under advisement.

APPLICATION OF LINCOLN P STREET CATERING CO. DBA "EMBASSY SUITES HOTEL" FOR A SPECIAL DESIGNATED LICENSE FOR AN AREA IN THE BACK DECK AREA OF EMBASSY SUITES HOTEL AT 1040 P STREET ON MAY 4, 11, AND 18, 2001, FROM 3:00 P.M. TO 8:00 P.M. - Craig Pomrenke, 626 Lynncrest Drive, took the oath and came forward to answer questions.

Coleen Seng, Council Member: Can you just tell me, what is the back deck area?

Mr. Pomrenke: It is the same area that we use during the football season for the tailgate parties.

Ms. Seng: That loading area?

Mr. Pomrenke: Yes Mam, on the north side, we just want to do something a little different in May, since we have other things going on in the community downtown different months, we thought we would try something in May.

This matter was taken under advisement.

DECLARING PORTIONS OF THE HIGHLANDS SOUTH PARK AS SURPLUS PROPERTY, GENERALLY LOCATED AT N.W. FAIRWAY DRIVE AND W. HARVEST DRIVE - Lynn Johnson, Parks & Recreation: What I would like to do is provide a little background on the proposed sale of an area around the perimeter of Highland South Park. To orient you, this is Highlands Park, the existing Highlands Park, which is the designated neighborhood park to serve the Highlands area. This is Freedstrom Elementary School. This is NW 1st Street. This is Fletcher, NW Fletcher as it extends through the area. And this area, this T-shaped or Y-shaped area is the area that is Highlands South Park. My understanding is that this area was originally part of golf course that had been proposed out in the Highlands and when the area was annexed, this became an outlot that was then transferred to the city. The area contains a drainage channel, that this is an unnamed tributary to Lynn Creek. About three years ago when we were master planning this site, the intent that was that this essentially be maintained as conservation native grasses, kind of a habitat area. There were three areas identified within the park that would have mowed turf, that would be open for lawn games and those types of activities. There was one kind of in the eastern portion

of the park, one more in the western part of the park and then one at the entrance of the park up the fairway. During discussions with the neighbors on development of this, there were several neighbors, particularly on the north side of the park who expressed an interest in acquiring a small area of land behind their lots, essentially to acquire a land area that they had already been using. This gives you some indication of what the uses area. This is the utility pedestal in this location and they extend down through. It appears that over time that when this was privately owned, that a number of the neighbors established uses out on the property before it became city owned and so there are gardens, there are garden sheds, there are play courts, people have established lawns out there. In some cases it appears that the developers graded the lots out when they built the house and then built retaining walls. So in a number of areas there are retaining walls that actually extend beyond the property boundary and extend out on to the park site. And the intent on this side of the park, the north side of the park, is to essentially kind of clean up these pre-existing uses that were there at the time it was annexed. And then on the south boundary of the park, and I will show you the area. This is the area that we were talking about being on the north boundary. It is about a 10-15 foot wide area along the north boundary of the park that would be transferred to the adjoining property owners. And then on the south side of the park, this is the drainage channel that extends down through the park. There are a number of areas in this area that slope from the back of the lot lines down into the drainage channel and that are nearly impossible to get in from a maintenance standpoint. And this photograph gives you an idea of what we are talking about. Here's the utility pedestals. That means that the property boundary is about here and the intent is to shift that property boundary here down here into the tree line and then the adjoining property owners would manage this piece of property, it wouldn't have to be managed therefore by the City or Parks and Recreation. So on the north side the intent is to clean up some pre-existing uses that was there before it was annexed and essentially on the south side it's to adjust the property boundary for long-term property management or to ease the property management issues there. I am certainly available for questions.

Jeff Fortenberry, Council Member: On the south side, what is the approximate number of feet that slope extend, or what you are proposing to declare as surplus down the side of the slope?

Mr. Johnson: Jeff, it varies from 10 to 15 feet and at the maximum I think it is about 40'. It actually follows kind of the contour as it extends along the drainage channel and it is kind of a wedge shaped piece that starts here on the west end, extends out to a wide point here and then it gets narrow and it touches again here on this end.

Mr. Fortenberry: Do you consider their opportunity, if this was declared surplus, and private owners were able to purchase it, is there reasonable opportunity for building outbuildings on that area? Are you suggesting the terrain is such that it is unlikely?

Mr. Johnson: I think that is true. I think it is going to be unlikely that they would build. It appears that several of these property areas in this area have established garden sheds, just inside their property boundary. The folks that we have talked to I think are interested in extending their lawns and they would essentially mow the area, down that slope to the tree line.

Mr. Fortenberry: The reason I ask, is that is a very nice asset for the community up there, very nice. I mean it is obviously multipurpose in terms of open space, preservation of the drainage area, with some wild areas left, as well as walk way and over time as you suggest, there will be some manicured area for more organized recreation opportunity. If you are in effect saying that the way it is now, will be preserved because the uses are already taking place on the property, that is one thing. But if it significantly alters the configuration by the cumulative effect of increased usage along the public way there and alters that desired effect that would be more problematic? I guess I am asking your opinion.

Mr. Johnson: No I understand. One of the commitments that we made during the master planning process, there were residents who were concerned about having native grasses right at their property boundary. We made a commitment to mow a 15' wide or so swath along the area. And the residents in this area pointed out to us that if you are trying to maintain a 15' wide swath, you probably can't even get in there with mowing equipment and that was really how this came up. The tree mess would be retained, the drainage way I don't think we are compromising the integrity of that drainage way or the native area by allowing the property owners to manage that slope essentially.

Mr. Fortenberry: And then on the north side or the west side, it's

already been encroached on so the impact is not going to be any different at what you are suggesting?

Mr. Johnson: That's true. I think for the most part the retaining walls already extend out into the area. A lot of those home owners have established lawns and landscaping out into that area already. As I said there is a play court that is in one location that is there; there are a couple of garden sheds. So again the impact already happened. In fact it happened before the city took ownership.

Cindy Johnson, Council Member: Lynn, this isn't the only people in the community that have encroached into public land. How are we justifying doing this here and then not doing it all across the community?

Mr. Johnson: That is an excellent question and I do understand the question. As we talked about this, I think the difference between this situation and other situations is that a lot of the encroachment occurred before annexation or before City took ownership. So the encroachment took place when it was private property and the City inherited those encroachments if you will, when the property was annexed, and so it is a little different than an existing park site where somebody has moved their fence out onto the property and started gardening out into the park site. Because we are pretty diligent about trying to make sure that we have strong property boundaries established. As part of this action, the neighbors have committed to setting corner posts at each one of the property boundaries where it moves, so that over the long term, we will be able to point to that spot and say, okay, we know where that property boundary is and we will be able to manage that over time.

Peter Cad, a resident of the Highlands: I have been working with this group, for as I look back in my file, three years, to get it to this point. I think Lynn has done an excellent job in laying out what the issues are. Why from the city's perspective it should be viewed as a "win". It improves what is there and follows through on the plans for the Highlands Park and speaking on behalf of all of the adjoining lot owners, I think it is a "win" for them as well. We do have one of the representatives that I have worked with over the last three years here, should there be any questions, should there be any concerns. We have worked very closely with the neighborhood, with all of the effected property owners and if you review your fact sheet, you will note that the Park and Rec Advisory Board have for a long time, deliberating this issue, between raising many of the issues that Councilwoman Johnson and others have raised, decided that this was in the best interest, that this was an exceptional set of circumstances and that this made sense. The planning commission also recommended approval of this and it has now come forward to you. Some of the specific concerns about particular uses are addressed in specific restrictive covenants that have been drafted and reviewed by the City Attorney's Office in terms of placing limitations and restrictions about what can be done in these areas to address the exact concerns that Councilman Fortenberry has raised. With that, just brief comments I would be happy to answer any questions that may be. Thank you.

This matter was taken under advisement.

- AMENDING THE CORPORATE LIMITS OF THE CITY BY ANNEXING APPROXIMATELY 135.27 ACRES OF PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET. (IN CONNECTION W/01-61, 01R-77, 01R-78, 01R-79, 01R-82);
- CHANGE OF ZONE 3248 - APPLICATION OF M & S CONSTRUCTION FOR A CHANGE OF ZONE FROM I-2 INDUSTRIAL TO H-4 GENERAL COMMERCIAL, B-2 PLANNED NEIGHBORHOOD BUSINESS AND R-3 RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET. (IN CONNECTION W/01-60, 01R-77, 01R-78, 01R-79, 01R-82);
- COMP. PLAN AMENDMENT 94-52 - AMENDING FIGURE 16, LINCOLN'S LAND USE PLAN, OF THE LINCOLN-LANCASTER COUNTY COMPREHENSIVE PLAN, TO CHANGE PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET FROM INDUSTRIAL TO COMMERCIAL AND RESIDENTIAL;
- SPECIAL PERMIT 1833 - APPLICATION OF M & S CONSTRUCTION TO DEVELOP ASHLEY HEIGHTS COMMUNITY FOR 295 DWELLING UNITS ON PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET;

- ACCEPTING AND APPROVING THE PRELIMINARY PLAT OF ASHLEY HEIGHTS WITH WAIVERS TO THE REQUIRED BLOCK LENGTH, PEDESTRIAN WAY EASEMENT, SUBMITTING A USE PERMIT AT THE TIME OF THE PRELIMINARY PLAT, LOT DEPTH TO WIDTH RATIO, ACCESS TO PUBLIC OR PRIVATE STREET, AND ROADWAY APPROACHES TO EXCEED 2%, ON PROPERTY GENERALLY LOCATED AT N.W. 48TH ST. AND W. ADAMS STREET;
- APPROVING THE ASHLEY HEIGHTS CONDITIONAL ANNEXATION AND ZONING AGREEMENT BETWEEN

THE CITY AND LINCOLN M & S CONSTRUCTION AND ALLA D. AND BETH A. SCHULZ OUTLINING CERTAIN CONDITIONS AND UNDERSTANDINGS WITH REGARD TO THE ANNEXATION OF PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET - Mark Hunzeker, appearing on behalf of M & S Construction, the developer of this property: We were here some while ago with a similar project and we had some objections from one of our neighbors, which we have since resolved through a series of negotiations. But this is a project that I think a lot of people are very happy to see. This project is about 135 acres that includes all property which is currently zoned industrial. The proposal is to re-zone portion of property to H-4, a portion of the property to B-2 and the balance of the property to R-3 for the community unit plan for 295 dwelling units. We have worked with the neighborhood association in Arnold Heights now for about a year on this project. We have been working on this project for more than that now with the planning staff. After we came to you with this project the first time, we've been back to the RE Meyer Company, the neighbors and the planning staff, the public works staff and so forth and we have made several changes which I think are probably noteworthy. The biggest change is that our previous plan made a connection to what is a platted street, called Northwest 45th Street. That connection is no longer shown in our plat and it will continue to be a dead-end right-of-way, which may or may not ultimately be paved depending on the city's pursuit of obligations that exist for the pavement of that street. We are bringing access from NW 48th Street on Huntington. We have provided for an emergency access both this direction back to Adams Street to serve as a construction access as well as emergency access and an emergency access that will come out on the alignment of west Thatcher. It is our hope that the west Thatcher access will be paved at such time as this project comes forward. We have also agreed to sell the parcel along the south boundary of the RE Meyer property to RE Meyer to facilitate additional expansion space as well as buffering for RE Meyer and a number of other minor adjustments along the way that have taken us quite a little discussion and negotiation. I don't want to belabor those. I think we are in very good shape with the conditions of approval. We agree with all of them. We have submitted our signed annexation agreements with the City. But I do want to take just a minute to individually recognize some people that have been very patient and put a lot of time into helping us with this project. From the neighborhood associations there were four individuals in particular that were involved, Karen Griffin, the President, Karen Kotschwar, Jeff Swebke, and Terry Swimmer, have all been involved in meeting for a very long time and put a lot of their volunteer time into this project and helping us get it to where it is today. Mark Wullschleger from the Urban Development Dept. on behalf of the Mayor's Office, kind of was the ramrod on this deal. He at times felt like he was trying to herd cats, but he got it done and really deserves a great deal of the credit for this thing ultimately coming together. We appreciate the patience and work also of Jennifer Dam in the Planning Dept., Rick Peo, in Law Dept. and Dennis Bartels, who have also spent a lot of time trying to work around the various pitfalls of design standards and city regulations that we needed to work around to get this all resolved. But we are here to say we are happy with the product. We are anxious to proceed. I brought you a letter asking you to act to waive your rules and take action on the ordinances, as well as the resolutions today. We have more than 40 lots sold in this subdivision, residential lots and we are very anxious to proceed so that we can actually see some houses come out of the ground yet this summer. So if there are any questions I will try to answer them. I think there are some other people that have a couple of things they would like to say.

Charlie Humble, representing RE Meyer: First we would like to thank the council for the opportunity to go back and address the concerns that we had in this process and the opportunity to work through the process in to a successful compromise, and in addition to the people that Mark thanked, we would also like to thank the developers, Phil Stetinger and Paul Muff for their attitude and cooperation in helping to get this thing done. As you know at the outset, RE Meyer had huge concerns due to the location of the residential development in such close proximity to its industrial use and the compromise and the ability for us to purchase a strip of land south of the existing plant, the reconfiguration of the development, residential and commercial, has been very helpful. And from our point of view, the elimination of the paving of NW 45th Street adjacent to RE Meyer with its potential to carry conflicting residential traffic has as you know, been a major concern of RE Meyer and the elimination of that paving as we see, is a big help. In connection with the annexation agreement, the proposal is for an 8" sewer to be run down

the right-of-way of NW 45th Street and we understand from conversations with Rick Peo, that there will be no connection fee or assessment fees proposed against RE Meyer, unless of course RE Meyer at some point in the future would want to use that sewer and then of course under the municipal code there is a provision for payment of fees in that eventuality. But as a result of this, there is not proposal for fees or assessment against RE Meyer. And finally I would conclude by indicating that we have absolutely no difficulty whatsoever with the developer's request to fast-track this. They have been through a long period of time and we would support that and of course if I didn't say it, I'm saying that we are in support then of the various applications that you have before you.

Karen Kotschwar, 5001 West Hughes and Vice President of the Arnold Heights Neighborhood Assoc.: And we are here in support of the Ashley Heights proposal and urge you all to vote in favor it. Many people have put in a lot of effort and time in the past few months to bring this proposal back to you for your consideration and we would also like to thank all the parties involved that have already been mentioned, including the attorneys, Joe Bachmann and Mark Hunzeker and Charlie Humble. We would also like to especially thank Mr. Muff and Mr. Stetinger of M & S Construction for hanging in there for the past two years with no return on their investment this entire time. And we believe that their foresight will prove to be a catalyst that will make our vision for this area a reality. Our vision for the greater Arnold Heights Neighborhoods over the next five to twenty years is this. We envision NW 48th Street as a beautiful 4-lane tree-lined boulevard, maybe similar to Touzalin Ave. Off to the left more new homes are being built south of Olympic Heights and Oak Hills. Residential development continues to the west and off to the right, Ashley Heights homes are complete, homeowners are planting trees, lawns and flowers. The section of land south of Ashley Heights has been nearly filled with new homes and the Ashley Heights shopping center is a thriving area with a grocery store, bank, restaurant, drugstore, hairdresser and other businesses. The small commercial area across NW 48th Street has also been remodeled and updated and more businesses are moving in there. And maybe best of all the residents in the older neighborhoods have seen their property values go up so that they can afford to remodel their homes and stay in the area instead of moving out in order to upgrade. And you can help this vision become a reality by approving this first step of the Ashley Heights Development. Thank you.

Terry Swimmer, 5142 W. Penn Street in Arnold Heights. I am the Treasurer of the Neighborhood Assoc.: Through the many months that have gone by since the Ashley Heights Development was first presented to our Neighborhood Association, I've come to truly appreciate how difficult it must be to sit in anyone of your seats. You are constantly barraged with situations that require tough decisions. Your votes affect the lives of our citizens on a daily basis and very often for the good of the City, you must vote in a way which affects some of our population, in a less than positive way. I am here again today to ask for your support in favor of the Ashley Heights Development proposed by M & S Construction. Since we last met, many things have changed. As you know many hours went into reworking the details of this project. Members of M & S Construction, the RE Meyer Company, the Mayor's Office, Urban Development, Planning Dept., neighborhood leaders and others got together and worked out a true compromise. I apologize to anyone that I may have left out. Unlike many of your tough decisions, I believe that you are now faced with an easy task. Although your vote in favor of this project moving forward is good for the neighborhoods, good for business and good for the city, I don't take your vote for granted. Once again, I ask for your support. Thank you.

Jerry Shoecraft, Council Chair: If we want to have 2nd and 3rd reading, we need to have a vote to do that.

Annette McRoy, Council Member: I move that we suspend the Council rules and have 2nd and 3rd reading.

Jonathan Cook, Council Chair: I just want to say I am opposed to going ahead with this today, not because I think that this isn't a great project in it's final form here. I think that a lot of people put in a lot of hard work and come up with a really good compromise, but I would prefer to be informed by attorneys for the applicant ahead of the day that we are being asked to vote, so that if there are any additional questions that need to be asked, I have time to do some checking and I know that if there are any members of the public, it helps if they know as well. The best thing is if it is on the agenda as a note when the agenda is printed Thursday, that says there is a request for third reading. So while this

does not reflect upon my opinion of this particular project, I will vote no, because I would prefer that we do things in a better order in the future.

Ms. McRoy: I know that I did request the Council earlier today to hold off on doing this, but I spoke with the neighborhood leadership that said they were in agreement and they are okay with it, so I actually concur with Jonathan that we should have more advance warning, but since the people that matter to me are the neighborhood people, that the project moves forward in their benefit and best interest and that's what I look out for and they were okay with it. So ordinarily I would concur, but because . . .

Coleen Seng, Council Member: Can I just talk about the project?

Mr. Shoecraft: Or we can do that at Executive Session.

Ms. Seng: No, I want to do it before they all leave.

Mr. Shoecraft: If they weren't going to stay for the vote, but sure go ahead.

Ms. Seng: It is not often that I call a Director on a Sunday night to ask for help. I sort of don't think that's very good for Council members to be calling Directors on Sunday night. But as I recall on this particular item, I did call and ask Marc Wullschleger to help get this resolved because we had a couple different positions here and they were all good. They need to be brought together. I want to really say thank you to all of you that were involved in this, the neighborhood, Charlie for your representation and Marc and Mark. You really did a good job, Marc Wullschleger, to pull all this together. And I just want to say that I appreciate that. It is not in my district but I just thought we needed to figure out some way to facilitate all of this. I just wanted to say thank you.

Mr. Shoecraft: Call for the vote on the suspending rules so we can have 3rd reading today also, Madam Clerk.

Seconded by Seng & carried by the following vote: AYES: Camp, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: Cook.

This matter was taken under advisement.

AMENDING THE CORPORATE LIMITS OF THE CITY BY ANNEXING APPROXIMATELY 110 ACRES OF PROPERTY GENERALLY LOCATED AT FLETCHER AVENUE AND TELLURIDE DRIVE. (IN CONNECTION W/01-63, 01R-80, 01R-81);

CHANGE OF ZONE 3260 - APPLICATION OF NORTH CREEK L.L.C. FOR A CHANGE OF ZONE FROM AG AGRICULTURAL TO 5-3 RESIDENTIAL, H-3 HIGHWAY COMMERCIAL, AND H-4 GENERAL COMMERCIAL, AND FROM R-3 RESIDENTIAL TO H-4 GENERAL COMMERCIAL AND H-3 HIGHWAY COMMERCIAL ON PROPERTY GENERALLY LOCATED AT FLETCHER AVENUE AND TELLURIDE DRIVE. (IN CONNECTION W/01-62, 01R-80, 01R-81);

ACCEPTING AND APPROVING THE PRELIMINARY PLAT OF NORTH CREEK TRADE CENTER WITH WAIVERS TO THE REQUIRED BLOCK LENGTHS, SIDEWALKS, STREET NAMES, AND WIDTH OF PRIVATE ROADWAYS, ON PROPERTY GENERALLY LOCATED AT FLETCHER AVENUE AND TELLURIDE DRIVE. (IN CONNECTION W./01R-81, 01-62, AND 01-63);

APPROVING THE NORTH CREEK TRADE CENTER CONDITIONAL ANNEXATION AND ZONING AGREEMENT BETWEEN THE CITY AND LINCOLN NORTH CREEK, L.L.C. OUTLINING CERTAIN CONDITIONS AND UNDERSTANDINGS WITH REGARD TO THE ANNEXATION OF PROPERTY GENERALLY LOCATED AT FLETCHER AVENUE AND TELLURIDE DRIVE. (IN CONNECTION W/01R-80, 01-62 AND 01-63) - Mark Hunzeker, appearing on behalf of Hampton Development Services, the developer of this property: This is an extension of the commercial project which is currently abutting N. 27th Street and Interstate 80. This project was designated in the comprehensive plan as commercial some two or three years ago, I believe. We have been working with the staff on this now for about a year in bringing forward this project. It is a somewhat difficult parcel in that it lies parallel to Interstate 80 and the proposed future alignment of Fletcher Ave. curves around in such a way as to make some fairly narrow parcels and if I can get this up so you can see where we are here. This is N. 27th Street, Interstate 80. This is the area where the new automobile dealership area will be with retail abutting N. 27th Street. This area is currently under development and the project that is before you is in this area including the green that is abutting the residential to the South and the drainage ways as you can see have been maintained and held out as green space and abutting the residential project to the south, the parcels that I am referring to as being rather narrow, abut Fletcher and I-80. So we had some interesting design issues that arose there. We have had a lot of discussion about the layout of this plat, about how we would get access, how we limit access to Fletcher. We are providing frontage roads on both sides of Fletcher to serve the properties there. We have had a good deal of discussion about the landscape plan and berming along I-80. We have a set of covenants that is attached to our annexation agreement that deal with signage, landscaping, and design of the

structures and we've as I say, we have worked very hard with the staff to reach agreement on those things. We are here before you to ask your approval of an ordinance and conditions of approval that were approved by the Planning Commission, with which I believe there is no disagreement among the staff. It has been an interesting process. We think this is going to be a very nice compliment to the entrance to the city in this area. The same developer is working on the north side on the Centurion project, which we intend to be a very complimentary look, in terms of the landscaping, berming and so forth on the north side. So we think that we are going to have a very very attractive stretch from N. 27th Street, going west to approximately 14th Street as this area develops and we think it is going to be very attractive and beneficial to the north Lincoln. I will try to answer any questions you have about this.

Jonathan Cook, Council Member: I have a question about the sidewalk from Fletcher to your frontage road. So I guess that would mean that there would be no sidewalks along Fletcher and the location where the frontage road is and the area between Fletcher and the frontage road would just be landscaping?

Mr. Hunzeker: I think it is probably easiest if we look at the plat. A little different scale. As you proceed west from N. 27th Street, the Public Works Dept. said they didn't want to really have all these access points off of Fletcher, for each of these lots. So we determined that we would have a frontage road access at this location, one at this location and the standard requirement in the subdivision ordinance. . . Can you hear me alright? The standard requirement in the subdivision ordinance is that you have sidewalks on both sides of any public or private roadways. Well that would have resulted in a sidewalk between Fletcher and the frontage road on both sides, as well as a sidewalk on the inside of the frontage road on both sides. Effectively requiring double sidewalks on both sides for a distance of about 1,000 feet. It is a pretty substantial distance. And we want to use the area between the curb of Fletcher and the outside of those frontage roads to berm and landscape on both sides of Fletcher. And it is very difficult to accomplish that if you have to put the sidewalks in and these lots begin to get pretty narrow in some places anyway and when you have to put the frontage road in as well as the sidewalk, it makes for a very difficult landscaping solution. So we asked, and as I recall, there was no objection from the staff to amending that condition in front of the planning commission.

Mr. Cook: Right, but the original plan was to put only the sidewalk along Fletcher, not put the one on the business side of the frontage roads, was it not and that was reversed to be put the sidewalk along the business side of the frontage road and eliminated along Fletcher. It seemed to me that the discussion was where does the sidewalk make most sense. Is the sidewalk going to be used by customers of the business or is the sidewalk going to be used by through traffic, people walking or biking along Fletcher, and I guess I don't know the answer? If it is along the frontage road inside the business side, then you will have driveways crossing it at many points from businesses. If it is along Fletcher, it will cross the entrances to the frontage road at two points, but otherwise be unobstructed? Maybe what the Planning Commission decided it was okay but the preference I guess is to have it inside on the business side so you can have more room for landscaping though.

Mr. Hunzeker: That's correct and it is my recollection that that is not the condition that was in the report. My recollection is that the condition would have required sidewalks in both places, and that what was eliminated was just the one along Fletcher.

Jennifer Dam, Planning Dept.: That's my recollection. I would point out that through traffic there is a trail at the south end through the green way, so individuals through biking traffic would be using that trail and not the sidewalks and crossing driveways.

Mr. Cook: That's good to know.

Ms. Dam: Staff was agreeable to that condition because it would provide internal circulation between the businesses but the through traffic would be using the trails.

Mr. Cook: So your request is for the waiver, that wasn't in the staff report originally? Your request was to waive the sidewalks either along Fletcher or along the frontage road. The staff report was asking for both initially.

Mr. Hunzeker: That's correct. The design standards read literally, would require both and we requested a waiver of one or the other. Frankly, we didn't even say, we would have done either one. Our preference was to do what the Planning Commission agreed to do because it gives us that space between the sidewalk and the curb or between the frontage road and the curb to put in some nice landscaping.

Mr. Cook: And given the new information here it makes sense to me that it would be on the business side now, not be necessarily as much the through traffic. So the sidewalk would at no point cross the frontage or even where it enters, where you enter the frontage road, the sidewalk would go out and around and kind of curve back in and follow the frontage road, is that correct?

Mr. Hunzeker: On both sides.

Mr. Cook: Thank you.

Jeff Fortenberry, Council Member: The premise of all these questions is of course the city's interest in seeing this as an attractive entryway into the community because of the nature of the public way corridor and the fact that this development would participate greatly in the potential enhancement or appropriate use of that corridor. So it would be helpful to me if you talk more specifically about the design covenants that you put in place regarding signage, landscaping and then speak specifically to the berming issue along the interstate, where I believe there is some confusion between what the staff recommended and your suggestion the grading plan actually did not remove those berms along the interstate.

Mr. Hunzeker: That's correct. There was a condition originally in the staff report that indicated that we should revise the grading plan to retain the berms that exist there and I think that was simply a misreading of the grading plan. Because what we were showing was a cut on the outside of the right-of-way that would have preserved and matched the grade of the existing hill, so that our parking areas and so forth would be below the grade as it exists today at the property line with the interstate right-of-way. And that was explained, and I think that condition was changed with the acquiescence of the staff. With respect to the design covenants, I'm not exactly sure which one of those you would like me to address. They were attached to your fact sheet related to the annexation agreement. We do have provisions in the covenants, which require a number of things that relate to whether you want to talk about the building standards or you want to talk about landscaping, I'm not sure which, but from the standpoint of the . . .

Mr. Fortenberry: There are really three elements, building standards, building design elements, as well as orientations, signage and then the additional setbacks and landscaping elements that you've proposed.

Mr. Hunzeker: The building standards for example, all exterior finish materials have to meet the standards that are in the covenants. And the street or the street facing elevation has to be brick or colored concrete masonry, could be used, we could use EIFS surfacing or concrete tilt up with colored stain or painted surface. It has to be a minimum of 30% of all those materials. Other elevations shall the architectural quality has to be of such that of top quality and low maintenance material. I-80 facades are encouraged to have openings with glass. Overhead doors are not permitted facing I-80 elevations unless they are screened with landscape material or behind berms, as indicated with these covenants. Ribbed metal siding is permitted, but it can only cover a maximum of 70% of the building elevation. There is a range of colors that is set out in the covenants that is suggested and all of these things are subject to the developers approval prior to issuance of building permits. The roof pitch has to be a minimum of 3/12, with a 12" overhang or greater required on 50% of the building. The hip style roofs are recommended. Standing seam or metal roofs are permitted. Galvanized metal is specifically excluded from both roofing and wall materials. Air conditioning condensers have to be screened from the parking and street view. We have standards for fencing, accessory structures, lighting, lighting on buildings, lighting on dock areas. We have restrictions on signage that encompass an entire exhibit to the covenants. We have landscaping standards which were drafted by Kim Todd, who drafted the I-80 corridor study. Not sure whether you want me to go on. They are fairly extensive. The covenants themselves are about 10 pages long and several pages of attachments that amplify the sign restrictions and the landscaping requirements.

Mr. Cook: I'll just follow up with Planning.

Mr. Hunzeker: It's a pretty extensive set of restrictions, that will I think, result in a very attractive, first class development.

Mr. Cook: Actually I have a question for Dana regarding the covenants issue. Okay. So they have all of these restrictions in place. But who is the enforcing body, what would be the procedure? What department, what's the process?

Dana Roper, City Attorney's office: I believe that the association or any member of the association could bring an action to enforce the



covenants. Let me see if I can find the specific language.

Mr. Hunzeker: Mr. Chairman, if I could help shed a little bit of light on this.

Mr. Shoecraft: Sure, go ahead.

Mr. Hunzeker: I think that Dana is correct, that the primary enforcer of these covenants as it is in almost every other case, will be either the developer or the association that is formed in accordance with the covenants. But these covenants are an attachment to the annexation agreement. We have agreed with the city that we would impose these covenants and so my view, what I have understood, all the way along is, that our obligation to put these covenants in place and to enforce these covenants runs back to the city. So I believe that the city would have the opportunity to enforce those covenants if necessary but I think as a practical matter, the primary enforcer will be the developer and the association, as it always is. And this is similar to the situation in Williamsburg, where we have design covenants which require a certain type of design which you have seen develop out there, which are part of, in that case, the use permit or the PUD, as the case may be, by agreement with the City. But I don't think there is anything in the particular covenants that says the city shall have the right to enforce because as a general proposition, the city has said they don't want that.

Mr. Fortenberry: When you say Association, what is the association made up of?

Mr. Hunzeker: Members of the association would be people who own lots within this development.

Mr. Fortenberry: So that would be business owners primarily. I guess my concern there would be that unlike perhaps an environment that is more mixed or a residential homeowners association that there might be some reluctance on the part of businesses to try and enforce restrictive covenant against a neighboring business even if they think there is a clear violation. I don't know that it would make me comfortable to have that be the primary enforcing body, but that is why I am asking what the procedure would be?

Mr. Hunzeker: I don't know why you would think that a business owner would have any less interest enforcing covenants which they have acquired property subject to, than a homeowner would. They would have ever bit to the extent that these covenants require things that are expensive and create a perception of additional value. Business owners will have just as much incentive, if not more to enforce these covenants as homeowners do.

Mr. Fortenberry: Well I guess the issue would be, I think to some extent this would operate in a home owners association as well, where there might be reluctance, certainly on the part of one neighbor to enforce against another complain, because that doesn't make for neighborliness. And I guess that it would, I'm curious about what the procedure would be if someone believed there was a violation of these covenants and the association did not take some steps. This may be a case that won't happen. I don't know. It's just that I'm curious as to how the city would follow up on such a thing if it were necessary to follow up on such a thing. Since you say we do have some say so because it is an attachment to the annexation agreement, what's the procedure? If I'm driving by on the interstate and I see a sign that looks like it is 50' tall, I come talk to you Dana and say . . .

Mr. Roper: I assume it is like many things that instigate . . . with the city you complain to the nearest elected official or department and it eventually filters down to the correct person that is going to do

the work. I assume that Building and Safety, Planning, Law, would all be effected and involved, perhaps Public Works, but it's probably going to be a multi-headed monster.

Mr. Fortenberry: And maybe I'm overly concerned about this. It may not be a problem. Do we have other circumstances in town where we basically have this kind of set up but we have never had an enforcement problem that you know of?

Mr. Hunzeker: Williamsburg is the best example I can think of. . . of having very, very stringent design covenants which have been enforced, as far as I know without exception for quite a few years now. And believe me, the people who have paid the price of having to comply with those restrictions are very very interested, if someone looks as if they are not going to comply. It becomes a perception of not only an expense that represents or could represent a competitive disadvantage to the extent that someone complies with it and somebody else doesn't have to. But also a perception of value which everybody wants to maintain. I really don't think there is any less incentive on the part of commercial owners to

enforce these things, than there is on the part of a residential home owner.

Mr. Fortenberry: Okay.

Jon Camp, Council Member: I would like to make a comment that I respect what my colleague is asking about on enforcement and so forth. But I think too, to the credit of businesses, neighborhoods, and so forth, that we are in an era now where people do take exceptional pride in their competitive spirit and their appearance and so I guess from our standpoint, I want to see us set the policy and the tone that we encourage well developed areas, well policed areas, maintained areas and so forth. But at the same time we allow those businesses or those ventures, those neighborhoods to proceed so that they can get it done. We can't just bog them down with bureaucratic nightmares and so the challenge is out there. I think Lincoln wants to continue to be a very respectable city, good appearance, but we want to also draw others in, as well as our own citizens?

Mr. Hunzeker: I think it is also necessary to point out here that these covenants go miles beyond what the city could impose as a requirement under any other mechanism. I mean the city does not have the right to impose color restrictions for example, or roofing material restrictions. I mean those things you simply don't have the ability to do. And these covenants go far beyond what the city can do as a practical matter under any existing regulations and frankly I think quite a ways beyond what you would realistically would want to do.

Mr. Roper: We really don't want to be involved in neighborhood squabbles either and so the covenants that we would be seeking, if we ever sought to enforce them would be very critical core of the development type restrictions. If somebody painted a beige instead of a light brown, I don't think we are going to get involved.

Mr. Cook: I agree I wouldn't want to get involved color choice, but the signage issues obviously is important and I don't want to send the message here that . . .

Mr. Hunzeker: I think the signs are very well covered in this agreement.

Mr. Cook: I agree and I just want to say I appreciate the effort you have gone to on that score because obviously we have the entryway standards under discussion, but we don't have anything right now that is enforceable, or acting under the existing regulations and so I do appreciate the effort you have made to at least try to work in the spirit of those proposed regulations. So thank you.

Mr. Hunzeker: It is my understanding we have agreed this document, we have agreed to substantially more restrictive signage than other property that abuts I-80, let's put it that way.

Annette McRoy, Council Member: Going back to Jonathan's questions, I guess after five years if they decide to terminate this association and the covenants would no longer be in effect, then is that something you was talking about when I presume there would be no enforcement after five years if they terminate, the covenants were terminated, cause in Section 25 or 26, the amendments can be amended, modified, or terminated, so then I guess the whole question is mute, whether the city can enforce this after five years from the date we pass this, they can be terminated.

(Inaudible)

Mr. Hunzeker: Which section are you referring to?

Ms. McRoy: Section 25, it says . . . third sentence.

Mr. Hunzeker: Well there is a short window during which this owner may modify these covenants. Now that does not modify the owners agreement with the city. So to the extent that we have an obligation to the city to record these covenants, in Paragraph 4 of Page 3 of the annexation agreement, it says restrictive covenants relative to building materials and design, shall not be amended without approval of the planning director or the city council of the City of Lincoln.

Ms. McRoy: Look at the back part, because then if we terminate it in five years then, up until then, but they can amend it with the planning department and City Council's approval. But I guess I was talking about what happens after the five years. If they choose to terminate the whole covenant.

Mr. Hunzeker: I believe what you are reading there says that it can be done within five years of the date of the recordation of these covenants by the owner. It says you can modify or terminate these covenants by the title holders of two-thirds of the lots within the properties, at any time, so beyond five years it's two-thirds of the owners of these lots that have to be involved. Before you get to the five year period, the owner, that meaning the developer, can modify those

covenants without the remainder of the property owners consent. Okay. But, none of the covenants relating to building materials and design may be amended without approval of the planning director or City Council of the City of Lincoln anytime. Okay.

Mr. Cook: To clarify then building materials and design. The two-thirds of the property owners could decide to amend say the color scheme and do that on their own?

Mr. Hunzeker: That is in the paragraphs that relate to building design if I remember correctly.

Mr. Cook: And design also covers signage?

Mr. Hunzeker: I believe that signage is under a separate section. Right, well that's what I am looking at. Building standards would include the colors.

Mr. Shoecraft: Is that it you guys?

Mr. Cook: Just getting clarification, what is it then that the two-thirds of the property owners can modify without City approval? Anything or is the section that covers . . . or that requires city approval covering all of this? It is just a clarification issue here because it has been . . .

Mr. Hunzeker: The intent of this as I recall, was that the signage covenants would remain in place and could not be modified as the rest of the covenants are. The restrictive covenants relating to building materials and design were not to be amended without approval. So you have two different in that very paragraph that deals with landscaping, signage and covenants, it says we have to install landscaping pursuant to the landscape plans submitted with the preliminary plat and it requires permanent maintenance of that landscaping. It also says signs shall be restricted as indicated in attachment "A", which is part of the agreement and then it says that covenants relating to building materials and design shall not be amended without the approval of the planning director or City Council of the City of Lincoln. So the implication, my way of thinking, my interpretation and I had a little to do with the drafting of these documents is that we can amend building material and design covenants. We cannot recommend or cannot amend sign covenants. Now can that be amended eventually if you all approve, if the city approves? I mean if the City could agree to tear this whole thing up and throw it away, but it can't be done unilaterally.

Mr. Cook: Thank you. I think that covers it.

Bob Hampton, the developer of North Creek, and I would like to share with you at least a concept of a building that we have in mind that we would like to get started in July. We are looking at precast on the front and a nice architectural standing seam metal roof. This building has a 3 to 412 pitch so it is much steeper than most buildings you see at least out with metal roofs. It is designed where there are garage doors and store fronts, but they are colored so that they are compatible. Because we have people, I'll give you an example, we have a pharmaceutical company that wants to locate in this building and they need to be able to pull their vans in to load up pharmaceutical supplies and they distribute them all over in about a four state region. So some high tech quality businesses do need some garage doors. We have tried to make them look so they do look nice. This building is going to face away from the interstate. All the berms along the interstate are going to stay. Many of these buildings will basically, you won't be able to see because of the berms along the interstate. Mark kind of went over our design guidelines. We really worked hard to try to meet the intent of the 1-80 Corridor Design Guidelines. And as Jennifer has point out several times, we went beyond the recommendations of some of these. The building architectural look, the signage we went above and beyond and the landscaping. There is one thing though that in a lot of situations, you can't have a larger set back. Right now we have 20 feet and the design corridor standards have suggested 100 to 150' and that is not going to work for most people. That is almost an illegal taking of property. So I think our design covenants are really going to help you assure a nice looking entryway into the city. I think this building that we will start and hopefully we will start a couple more later in the year, we certainly have a lot of interest in them, being along the interstate. People like the visibility and accessibility. But I believe we will build a building here that everybody can point to and say, yeah that's my vision along the interstate. And on the north side of the interstate, Stonebridge Creek, where Centurion is going, we are starting to initially design 40 - 50,000 square foot flex space building and it will be built out of all very, the whole building will be built out of pre-cast concrete. When you get into those larger buildings, you can afford to build them out of the concrete. These smaller buildings, pretty costly to build an all concrete or all brick

building. But I think you will be real proud of what's going to get built along the interstate. We as developers and certainly all the people that are looking to purchase these buildings, are really looking for the same thing that you are all looking for. The intent that the I-80 corridor design guidelines propose, but I think we have come up with a good "win win" that hopefully everybody will be happy with. I would remind you that the setbacks are probably the biggest issue. There is no issue to have a huge setback if you are behind a big berm, or if you have a lot of landscaping. So there is maybe some instances for a little bit, but I think generally the setbacks from the interstate are already a lot. They give the State room to expand the interstate to six lanes and we still have lots of right-of-way and lots of set backs. So I would be happy to answer any questions.

Mr. Fortenberry: Bob I appreciate your assessment that you have tried to embrace the spirit of the entryway guidelines and that is what you want to achieve as well, as well as what your customers are potentially demanding. Just that we've got some bad examples where it has not happened and so a coordinated planning effort that is a partnership, hopefully as it evolves between the city, the development community, as well as the businesses that are demanding that their structures be attractive, which is in their best interest, your best interest and all of our best interests, hopefully comes about as we are dealing with multiple property owners along the way. So I do have a question for planning and you will see what I am getting at afterward along the same line.

Mr. Fortenberry: I'm going to back to my original question as you are aware the city has tried to move in the direction of more aggressively planning for these corridors because they are of such prominence and I believe that we can do that in a way that is responsible and balances obviously business cost and helps business by keeping their property values high and their demands for their properties very high, because of the desirability of the area that was promoted initially from good planning. And here we have a case, where we don't have the regulations in place, we do have a set of covenants have been attached to the annexation agreement. Help us understand how if you are overlaying the basic concepts that have been talked about to this point, which are not law, and the design covenants that have been put in place here, there is some give and take, do they match up real well, or are there certain areas where they are just not compatible, are the design covenants more restrictive in certain cases, than has been suggested than the City could even possibly want to hope for? Comment on that. I think that would help clarify some things for me. It is hard in the abstract to read a set of covenants and then make the mental jump as to what an entire business park . . .

**(INAUDIBLE PORTION OF TAPE)**

Jennifer Dam, Planning Staff: Businesses that would be locating in this area would want the advertisement on Fletcher Street where the traffic will be coming from to find their business instead of along the interstate. However, there might be some signs along the interstate, they are only limited to one sign per lot and the signs would be a maximum of 30' in height. You couldn't see a 30' high sign from a very long distance on the interstate, so it's not going to be the 80' tall pole signs you see in some of those areas, advertising fast food restaurants or hotels.

Mr. Fortenberry: I guess I am just trying to find out the realistic impact of that sign agreement would be, because again given the topography of the land there, they way the site slopes down the large natural berms that you have along the interstate, I don't know if it goes 30' down or 10' down, you would still have 20' sticking up along the interstate in effect or whether or not it effectively forces a business to put it in front along Fletcher instead of the back along the interstate.

Ms. Dam: I think it is a possibility that you could see some signage along the interstate. My guess is that practically you would see more of it along Fletcher. But I don't want to mislead you and say that you wouldn't see any signage along the interstate because the way the agreements and the plats have been written there is the possibility to have some signage in that area.

Mr. Fortenberry: And then one other specific thing regarding the exception for commercial or retail stores with 20,000 sq. feet or more, then you could go back to what you are allowed in the regular highway zoning district?

Ms. Dam: At the time this was originally being proposed, there was a large outlot on the other side of the drainage way there. At that point in time the developer was uncertain whether or not he would be asking for a B-2 district which would include a use permit or H-3 zoning in the future. There are a couple of potential users in that area. I think one of them would have been a large retail outlet. Since that time they have

submitted a preliminary plat with H-3 zoning, which restricts the size of retail space, so you wouldn't see that situation.

Mr. Fortenberry: So that is just superfluous to the attachment?

Ms. Dam: Recent submittals make that superfluous.

Mr. Fortenberry: Thank you.

This matter was taken under advisement.

ACCEPTING THE REPORT OF NEW AND PENDING CLAIMS AGAINST THE CITY AND APPROVING DISPOSITION OF CLAIMS SET FORTH THEREIN FOR THE PERIOD OF MARCH 16 - 31, 2001 - Don Bowman, Attorney for Alan Schroeder, who has filed a claim against the city: Mr. Schroeder owns property at 8101 So. 14th Street, where they recently put in a sanitary sewer. There was a temporary easement that granted and when the heavy construction equipment went over his property, it crushed his lateral system and he now has the inability to use the septic system properly. They also did some damage to his roadway, when they got out of the easement area and partially on the easement area. I won't belabor the facts, I have some estimates here with me that I would like to just leave with the Clerk. I would answer any questions that you might have. Total damages are about \$3,575.00 and about \$2,700.00 to the other damage to his concrete and driveway. He currently has pools of sewage in his back yard because of the wet weather and it won't let his sewage out. So we need to get it fixed as soon as we can. So I would answer any questions that you have.

Jon Camp, Council Member: Don was the city aware that the system was in existence there and it was all properly installed?

Mr. Bowman: Yes. It was just one of those things where the equipment was so heavy that it compacted the land and just did so much damage that now it won't work, but yeah, they were aware of it.

Cindy Johnson, Council Member: I would like to take this off of Item 18, for review for another week.

Mr. Shoecraft, Council Chair: Motion and second to take it off for one week and Dana will just get us some additional information.

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

This matter was taken under advisement.

AMENDING CHAPTER 6.04 OF THE LINCOLN MUNICIPAL CODE RELATING TO ANIMAL CONTROL REGULATIONS GENERALLY TO AMEND DEFINITIONS; TO INCREASE IMPOUNDMENT FEES; TO MAKE IT UNLAWFUL TO OWN ANIMAL HYBRIDS; TO PROVIDE RESTRICTIONS RELATING TO ACTIVITIES OF PET SHOPS; AMENDING CRUELTY TO ANIMALS TO PROVIDE A SEPARATE SECTION RELATING TO ANIMAL NEGLECT; TO PROVIDE EXCEPTIONS TO VIOLATIONS; AMENDING PROVISIONS REGARDING SELLING OR GIVING AWAY ANIMALS; AND TO PROVIDE ADDITIONAL PENALTIES FOR VIOLATIONS;

AMENDING CHAPTER 6.04 OF THE LINCOLN MUNICIPAL CODE RELATING TO ANIMAL CONTROL REGULATIONS GENERALLY TO ALLOW THE DIRECTOR OF THE HEALTH DEPARTMENT TO IMPOUND UNUSUAL ANIMALS; TO PROVIDE PERMIT PROVISIONS FOR ANIMAL EXHIBITS OR RIDES; TO MAKE IT UNLAWFUL TO PROVIDE FOR UNUSUAL CARNIVOROUS MAMMALS TO BE RESTRAINED BY THE PUBLIC FOR ENTERTAINMENT PURPOSES; AND TO PROVIDE AN APPEAL PROCESS FOR DENIED, NON-RENEWED AND REVOKED ANIMAL EXHIBIT OR RIDE PERMITS;

AMENDING CHAPTER 6.12 OF THE LINCOLN MUNICIPAL CODE RELATING TO CATS TO ADD A DEFINITION FOR "CAT HOBBY KENNEL" AND AMENDING THE DEFINITION OF "KENNEL"; TO PROVIDE THE WORD "LINCOLN" BE ENGRAVED ON ALL CAT TAGS; TO PROVIDE THAT ALL MONEY RECEIVED BY THE DIRECTOR UNDER CHAPTER 6.12 SHALL BE CREDITED TO THE ANIMAL CONTROL FUND; TO MAKE IT UNLAWFUL FOR CATS THAT ARE NOT SPAYED OR NEUTERED TO RUN AT LARGE; TO REPEAL THE CURRENT PROVISIONS RELATING TO CATS RUNNING AT LARGE WHILE IN HEAT; TO DELETE REFERENCES TO SECTIONS BEING REPEALED; TO MAKE IT UNLAWFUL TO MAINTAIN A CAT KENNEL; TO PROVIDE EXCEPTIONS TO HAVING A CAT KENNEL; TO CREATE A PERMIT PROCESS TO OBTAIN A CAT HOBBY KENNEL; TO PROVIDE RESTRICTIONS RELATING TO A CAT HOBBY KENNEL; TO REPEAL THE CURRENT PROVISIONS RELATING TO HOBBY KENNEL OR CATTERY PERMITS; AND TO INCREASE THE MINIMUM FINE FOR FIRST OFFENSE VIOLATIONS OF CHAPTER 6.12 FROM \$25 TO \$35;

AMENDING CHAPTER 6.08 OF THE LINCOLN MUNICIPAL CODE RELATING TO DOGS TO ADD A DEFINITION FOR "DOG HOBBY KENNEL" AND TO AMEND THE DEFINITION OF "KENNEL"; TO PROVIDE THE WORD "LINCOLN" BE DIE-STAMPED ON DOG TAGS; TO PROVIDE THAT OWNERS OF DOGS SHALL DISPOSE OF WASTE MATERIAL ACCUMULATING FROM THEIR DOGS AT LEAST ONCE EVERY FIVE DAYS; TO INCLUDE DOG HOBBY KENNEL PERMIT HOLDERS AS EXCEPTIONS TO DOG KENNEL PROHIBITION; TO CREATE AN EXCEPTION TO HAVING A DOG KENNEL FOR PERSONS ON LAND THAT IS ANNEXED BY THE CITY; TO REQUIRE PERMITS FOR DOG HOBBY KENNELS; TO PROVIDE RESTRICTIONS RELATING TO DOG HOBBY KENNELS; TO PROVIDE THAT MONEY RECEIVED PURSUANT TO CHAPTER 6.08 SHALL BE CREDITED TO THE ANIMAL CONTROL FUND; AND TO INCREASE THE MINIMUM FINE FOR FIRST OFFENSE VIOLATIONS OF CHAPTER 6.08 FROM \$25.00 TO \$35.00 -

Jerry Shoecraft, Chair: Madam Clerk, we have already had public hearing on this. If the City Attorney or someone wants to clarify what is going on today and if someone wants to testify, as long as it is not redundant, that would be very much appreciated. Whoever is doing it, please?

Jim Weverka: I just wanted to address the Council regarding Ordinance 6.12.0070, Cats running at large. We made the recommendation of the Animal Co-Advisory Committee that in addition to being licensed and carrying a current license tag, cats also have to be spayed and neutered. And the reasoning for it was that unaltered cats are 20 times more likely to bite than a spayed/neutered cat. Additionally altered cats have a claim rate of 57% vs. unaltered cats of 6%. Of course if cats are running loose that unaltered, they create a petable population, if you want to call it, and we get involved in picking those up again, so there is a reason for it from a public health standpoint. Any other questions?

Marc Welch, 7040 Starr St.: Good afternoon Ladies and Gentlemen of the Council. Last time I was here I spent my time complaining, now I would like to try to put some things before you that maybe will make things right. You are going with hobby kennels and making special permits for hobby kennels, but the hobby breeder, the person that is creating the overpopulation is still not controlled. There are no checks and balances. I would like to propose that in order to take care of the hobby breeder, that anybody with an unaltered dog charged 300% of the current price. If they want the dog and they want to take the chance of having an overpopulation, let them pay for that privilege. It will help clean up the mess that they leave. There is no other way that anybody has been able to come up with to control that situation. But you are allowing hobby-kennels, both for cats and dogs, you have a very big hobby breeder and anytime anybody has a litter, they can just say I'm a hobby-breeder, that automatically excludes them from a lot of ordinances that they need to comply to, sanitary standards, etc. and so forth. So if they are going to carry unaltered animals, let them pay for that privilege please. The idea of no grandfather clause, except for one year, is still there on the substitute coming before you. What I would like to propose is again, a fourth dog permit, fourth animal permit, however you want to classify it. And that would be 200% of the current unaltered price. But they could pay that for the year and they can decide what dog tag is going to be put on. And that the dog that is to stay with. At such time that dog dies, then they should be in compliance with the ordinances. But they should be able to pay for the right to keep that dog. That's what everybody is arguing about, they don't want to get rid of their dogs. Go ahead and let them buy the more expensive license and let them pay for that privilege to have that dog. If at sometime three years down the road, they decide to give the dog to somebody else, then the situation is over and done with. But it isn't this definite end in one year. Leave the decision to them and how they spend their money and if they can afford it and they want to keep the dog and they have the time for that dog's lifetime, whether it be fifteen years or ten years, they are going to have to buy that extra dog permit. Also it has come to my attention that there is other applicable laws in the city of Lincoln that come to bear on these ordinances for dogs and cats. If there is such ordinances in 1.02 or other areas, I believe it is only fair to the citizens to be able to look at a dog ordinance to see a reference number to another law that pertains to that situation, not assume that they are going to read all of the city ordinances and be informed. They are going to look where a dog or a cat is addressed in the ordinances and everything there. And if the reference number is there and they do not go to the reference, and they misunderstand everything, that's going to be their fault. But if they are lead to believe that everything for a dog or for a cat is in a given section, they read it and it doesn't match up, it doesn't make sense, or they challenge the ordinance; it is the idea that stupidity is not a good reason for not knowing the law. I would say that the other side was true. You should notify the person in some language just reference number and let them have the opportunity to know that there is another law bearing on that situation or bearing on that ordinance. Any questions?

Linda Lyman, 2331 N. Main St.: I want to congratulate everyone who worked on redoing these very much. There is only one thing that I would like to see added to it. We have cat hobby kennels, but what about people like me who don't actually have a kennel or a cattery. We rescue the cats, keep them for a time. Some of them end up staying with us for their life. I would like a special designation in there for people in the rescue group who aren't the animal control or the Humane Society, but who use our own money to neuter and spay the animals that we get, we feed them, we care for them, we vet them and this all comes out of our sometimes very meager, income. And to I have at home the list that I was

sent. It was \$50.00 for the kennel license and then \$12.00 per cat. Well as of last Saturday, I have twenty-one cats that I am taking care of. That prohibits it, because that is almost more than I have coming in in a month. I would like see, I would be willing to pay up to a \$100.00 for a license, if I didn't have to pay additional for each cat in my home. This I could manage, but if we could have a special designation for rescue groups, I would certainly appreciate it. And I want to thank again for what has come out. I just don't think we are being hard enough on the people who abuse animals and cause them to end up at my place, and other places like it. Thank you.

Paul Markeson, 5705 Waverly Road: Good Afternoon Council. I hope you all read my letters that you got by e-mail earlier last week. Our industry is very concerned that Lincoln isn't doing enough to recognize that commercial bordering kennels exist in the County. Five of them are within the three mile limit. Two of them are in real danger of becoming annexed soon. It is a totally new category of business that is not being addressed at all. The State recognizes us as a totally different category of business under their new licensing plan as adverse to pet breeders and everyone else. I understand that there is a new intent to address dog kennels that may be annexed down the road. We are more than that. We offer grooming, training, boarding. We offer a whole spectrum of pet care. I host Cornhusker Kennel Club every Tuesday night and what we are afraid of is that we are going to get lumped into just this little dog kennel category when we are so much more. We are also seeking that we gain equal protection under the law and in that vet kennels people, veterinarians who board healthy dogs just like we do, have protections under your current ordinances and under your new ordinances. I understand there is commerce problems with this, there are equal protection problems with that. We do the same thing they do, yet we are not being addressed in the same and equal and fair fashion. We also would like to gain a representative to the Pet Advisory Council. No boarding facility operator has that privilege. Pretty much that is everything I have. Everything else was covered in my letter. Please keep us on your mind. We are not dog kennels. Are there any question?

Jon Camp, Council Member: You mentioned that the State recognizes. Are there so magic phrases that they consider a corporation?

Mr. Markeson: Yes, they call us boarding facilities, as adverse to breeding facilities, puppy mills, whatever you have there. I gave you an address of Mark McFarland's office and number who is the director of that program with the State and he would gladly send you all the new state licensing regulations.

Mr. Camp: How many of the boarding facilities would there be at the Lancaster County area or the greater Lincoln area?

Mr. Markeson: There are five within you three mile limit. One is right on your border, Kennel-Inn, Wilderness Kennels is right down by the new Wilderness Ridge Addition. They are in direct line to be annexed. I am three miles out, so it will be a few years for me. Country Lane Estates, they are on West "O" Street and Paradise Pet Resort, who was over by Kennel Inn. And they are right down by where the new shopping center is going to go and what not. So we think we should be equably treated just like the vet kennels. Specifically Section 6.08.160, 6.08.310, and .311.

Mr. Shoecraft: Thank you

Mr. Markeson: Thank you very much for your time.

Tim Thomas, from Paradise Pet Resort, 6501 So. 176th Street, Walton, NE: I just want to say I support what he said too. I just came down here for his support.

Florafae Shane, 815 W. Stockwell: Good Afternoon, I appeared two weeks ago. I would like to say that there are lot of responsible breeders of dogs and cats. I would like to particularly address the dog issue in that there are breeders that do showing and that can prove that they go to shows and we need a hobby kennel license that would allow the breeder to have more than three dogs. Four would be better than three, because you don't breed the dog and not keep one for showing, most people. So that means you have to give away or sell others and that would encourage also the puppy buyer to come to a reputable breeder and not be buying from puppy mills. So I would like to hope that you would entertain the thought of having hobby breeder as part of the ordinance. I would also like to ask that people who live outside city limits have their animals and they are annexed into the city, to have their animals until that particular animal or animals pass away. They are members of our family. It is pretty hard to do away with them or give them away, when we have had them so long. Any questions?

Nancy Beck, 10100 Holdrege Street: My husband was here a couple weeks ago and brought forth a couple of issues related to Search Dogs. We have a cadaver dog that lives with us and he does searching off a leash and one of the ordinances changed the definition of running at large, and he cannot actively search for missing people if he has to be on a leash that is six feet long or shorter. I was wondering if anything had been changed or if the ordinances still stand as printed. I know he wrote to Mr. Shoecraft and voiced some concerns and also Mr. Vinci, and hasn't heard back. I just got out of school. Are these still the same, or have any changes been made for search dogs.

Mr. Shoecraft: Well first of all in regards to his letter, I brought it up at directors and requested to the Mayor that that representation be included on the advisory board. I think that it is what it is called or committee. And he was receptive to that, and to direct that towards the Health Director also. So I responded to his letter first of all.

Mrs. Beck: Oh, okay.

Mr. Shoecraft: He wanted me to convey that to the council and to advise me that representation needs to be on there and I did that and I agree with that. Okay

Mrs. Beck: But within the ordinance?

Mr. Shoecraft: But within specific ordinance, Conner, I don't think

Mrs. Beck: I mean could search dogs in addition to police dogs be exempt for those two specific areas?

Conner Reuter, City Attorney's Office: I don't recall that the original ordinances changed the definition of running at large for a dog. Only for a cat. And so I don't think that that ever changed from what we just have always had or at least for many years have had. And if that doesn't suite your purposes, that is certainly something I guess if the Council wants somebody to look at, they can do. But I don't think that was ever encompassed in those original ordinances that came forward.

Mr. Shoecraft: I don't think that effects that.

Ms. Reuter: The one I recall him talking about was the exception under cruelty, that I think spoke specifically about treatment of police dogs. Is that one of the concerns?

Mrs. Beck: Right.

Ms. Reuter: That has not, we have not added any language for this draft, as to search dogs having at least to my knowledge, never considered it prior to his bringing it forward at the second reading. So I don't think that this (**inaudible**) if council wanted to take that up later, but to date the answer is no. There has not been any sort of new language added or removed to accommodate specifically search dogs.

Mrs. Beck: So if this passes, I mean you are going to vote on this today?

Mr. Shoecraft: We don't know yet, probably.

Mrs. Beck: But if this were to pass today and then Jacob and John are out searching and he is not on a leash and somebody gets in his way. He is a herding dog, he may like nip at their ankle to say "you are in my way", that's his herding instinct. And they would feel that that was imminent harm, immediate threat. I don't know what the definition of immediate threat is, I couldn't get that from anybody. That person could then turn around and shoot our dog or somehow injure that because they would feel like they were threatened.

Ms. Reuter: What I can tell you that what's currently before the council, does not change it one bit from what it has been.

Mrs. Beck: Which says, specifically only police dogs are exempt from those.

Ms. Reuter: The State Statute referred only to police dogs. The City Ordinance was silent on it, which meant although not specifically spelled out, we live with the State Statute, which by State Statute, we are bound to do. I don't think this changes in any respect what you all can do with your dogs in terms with on a leash, off a leash, or with respect to what a person can do, who feels confronted or a victim of your dog.

Mrs. Beck: And a search dog doesn't have any special treatment over a "pet dog" who might be out and about.

Ms. Reuter: Well, I would say no, except that I am not exactly sure that I understand the relationship in all areas. If you are assisting the police, maybe it gets to be police dog for a day, I don't know. The relationship that you have with the police when you help them search, but assuming as you seem to be that it is not a police dog.

Mrs. Beck: No because he is owned by a private citizen, therefore he is not a police dog.



Mr. Shoecraft: So they call you for services in search of whatever?  
And so . . .

Mrs. Beck: A private citizen. Right.

Mr. Shoecraft: A private citizen, a private business, go out and train. The dog is trained to search and rescue.

Mrs. Beck: The North American Search Dog Network. He is certified.

Mr. Shoecraft: And so they would go out and they would be off the leash. Would this ordinance specifically effect him from doing that Conner?

Ms. Reuter: This ordinance does not. What the ordinance that was on the books and was never touched by any of the packets that have been recently brought forward to the council, might well do that. Jim, do you have a copy of the book with animal codes.

Mr. Shoecraft: So what we are passing today, will not effect them, the rescue dogs?

Ms. Reuter: I don't think that the original ordinance in any way changed the status of these search dogs as to whether or not they are at large as to whether or not they are within the exception for cruelty to animals or subject to any sort of somebody finding them fearful and taking action on them. I think that all the same rules apply as have applied prior to us bringing forth any of these ordinances. So if you want me to, I can take a look at what the dog at large says. I know that there is something about being in voice control and assuming these dogs are trained as I understand them to be, that might be enough. I just need to double check if it's voice control only within one's own yard or voice control always.

Annette McRoy, Council Member: Conner, I was just going to point that out on page 5, 7th sentence, where it says under direct effective voice control. So I assume that would mean that what situation she is talking about, unless your and is speaking in the person's yard property, otherwise the and could be read as and the last phrase of sentence, and in direct effective voice control, so I would assume if your search dog was working a scenario, that you would have it under your voice control.

Mrs. Beck: So the voice control would counter-act that he is not on a leash, that is . . .?

Ms. McRoy: You call your dog and if he is six blocks down the street and you are over here, that would not be effective voice control. But I would assume if he is right in front of you, taking directions, then a reasonable person, I think that is the standard, a reasonable person would assume that you are under control. But I guess we can't write every single scenario that would ever happen for people would have into our ordinance, otherwise the book would be bigger than what it is.

Ms. Reuter: The thing is that running at large.

Ms. McRoy: I would say that you are covered.

Mr. Shoecraft: It doesn't appear that this is going to effect you.

Mrs. Beck: Okay.

Ms. Reuter: This is not a new definition. It is just simply included because another section within 010 is being amended. This is the same as it has always been and the law would be applied to you as it always has been. Again if you want to try and seek specific language regarding search dogs, I don't think anybody foreclosed us.

Mrs. Beck: And that request has gone on to the Mayor and to the Animal Control Advisory Board?

Mr. Shoecraft: As far as representation on the board? Yes it has this morning.

Mrs. Beck: Oh, just this morning.

Mr. Shoecraft: I brought it up to the Council and Mayor this morning that that representation needs to be on any future or current advisory boards. He thought that was a good idea, so . . .

Mrs. Beck: Alright, so do you think?

Mr. Shoecraft: No I don't think that effects you.

Mrs. Beck: Alright. Thanks.

Henry Sader, representing Wilderness & Saltillo Kennels: I just want to let you know that I wholly support Mr. Markeson with Prairie Winds Kennels on what he stated. I also saw in your agenda on Item 22 about the middle of the paragraph that you state to create an exception to having a dog kennel for persons on land that is annexed by the city. And I would like you to publicly declare your intent there. That we will not be part of the city ordinance, a commercial dog kennel. State that so that everybody is clear that regardless of the fact that we are a kennel and now we are within the three-mile limit or annexed as part of the city, we do not fall under your ordinances here. And the second question I have is during the course of time, somebody is going to become annexed, one of these kennels. Now can the kennel be passed down or sold or grandfather

claused in so that it remains a kennel? I don't know, I'm asking you. Does it? At this point Wilderness Kennels . . .

Mr. Shoecraft: Dana where did Conner go? - Oh, she is hiding.

Mr. Sader: . . . which sits on Saltillo Road.

Mr. Shoecraft: Can you answer those two questions please, from a legal standpoint? Can a commercial kennel, if they lie within the three-mile limit, or annexed into the city, will these ordinances apply to them.

Ms. Reuter: Until they actually in the city limits, these don't apply. The animal control themselves do not go outside the city limits, even into the three-mile area.

Mr. Shoecraft: After that?

Ms. Reuter: If they are annexed in, we have a lot of options there. I can tell you that what was earlier said was that the State has some kenneling and boarding language, we could try to mirror that. We additionally speak to kenneling animals in some zoning ordinances. We don't right not specifically zone around this. We simply provide in the animal control ordinances pretty much all the regulations that is had. But the mention of kenneling in the zoning ordinances maybe gives another avenue to address this, if you wanted to differentiate between different property owners but by way of zoning, that would seem possible. But essentially it brings us back to the same problem, which is, if having x number of dogs presents a health concern, it is hard to understand how that isn't true for each and every person. And if you want to start getting very very specific in regards to if you are going to have more than the normal maximum x, y and z in terms of housing and things of that nature have to occur, and if you can show rational health concerns being addressed by virtue of those regulations, all of those things can be done. But I think that's essentially why we took out those sorts of differentiations that came forward from animal control task force, because there didn't seem to be that rational basis, at least in the model that was originally given. I don't think they would be out there, but I don't think we had hit on them just yet.

Cindy Johnson, Council Member: How does this effect your business? How many dogs do you have now or the maximum you have had? Is it just the number of dogs that the ordinance effects?

Mr. Sader: Well, we will run over Christmas maybe 150, 160 dogs so if we become part of the city limits, she is saying here, there is no wording for it. We have to deal with it again.

Ms. Johnson: So it takes you down to three dogs, possibly four?

Mr. Sader: Yeah, it takes me down to no business.

Ms. Johnson: But that is the only part of that particular ordinance that effects you?

Jeff Fortenberry: I think the city attorney is also alluding to the fact that this could be dealt with through underlying zoning ordinances. In other words if you annexed into the city and say left as an agricultural district, or whatever you currently are, exceptions would then be potentially provided in that. Because presumably you'd have enough space to take care of the sanitary concerns that are built that an urban environment has.

Mr. Sader: We are just concerned that you could potentially take it away.

Mr. Fortenberry: We probably ought to recommend that this issue be brought up as well, as a part of that ongoing task force that is going to take a look at some of the other issues regarding limitations.

Jon Camp, Council Member: I would like to echo what Jeff just said. We have had some very good points raised here today that weren't addressed fully in this reconsideration and perhaps the procedure to take is to give more emphasis to the ACAC committee and that assuming there is general consensus here, we could proceed with the body that we have and then have those of you with input and all, work through that group. In my estimation that might be a good way to proceed. So far, I don't believe I've heard anyone addressing that has been modified from a negative standpoint. I think it is just further suggestions, that we always welcome.

Mr. Shoecraft: That is something that we can look at in the future also, ongoing work of the task force.

Mr. Fortenberry: We will make sure your names are submitted to the Mayor's office. If the council is in agreement, we can just ask that there be a representative from one of your organizations perhaps, or someone else that is in this business in the nearby vicinity.

Mr. Sader: We would appreciate that. I know this last time we were passed up.

Mr. Shoecraft: Thank you for coming.

David Cygan, 2830 South 44th Street: I am the Vice-Chair of the Animal Control Advisory Committee. First of all I want to reiterate my support for the compromised package that is being placed before you. I think as Councilman Camp has indicated, there has been no adverse comments with regards to the provisions that we are seeking to advance. The number of phone calls I have taken the last two weeks since we have last had a chance to speak, have primarily focused around the support for the ordinance package as it exists, but also some concern with regards to the annexing of kennels and the surrounding areas and I was just going to come up here and say, that ACAC recognizes it is an upcoming issue and that we've been in communication with some of the commercial kennels in the outlying areas and we are looking forward on going forward with working out some sort of solution, hopefully that would be agreeable to everyone and working with the City Attorney on that.

Mr. Camp: David, then you are in full support of what we have before us?

Mr. Cygan: Full support.

Mr. Fortenberry: If I could, the first gentleman who testified had a suggestion and perhaps Jim, if you could make a note of that regarding the summary of the new law that it could reference various. I assume you put a pamphlet together and you will cross reference the various sections that would apply. Thank you.

This matter was taken under advisement.

#### ORDINANCES - 3RD READING

AMENDING THE CORPORATE LIMITS OF THE CITY BY ANNEXING APPROXIMATELY 135.27 ACRES OF PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET. (IN CONNECTION W/01-61, 01R-77, 01R-78, 01R-79, 01R-82) - CLERK read an ordinance, introduced by Cindy Johnson, amending Section 2 of Ordinance No. 8730 passed May 17, 1965, as last amended by Section 1 of Ordinance No. 17566 passed November 1, 1999, prescribing and defining the corporate limits of the City of Lincoln and repealing said Section 2 of Ordinance No. 8730 passed May 17, 1965, as last amended by Section 1 of Ordinance No. 17566 passed November 1, 1999, as hitherto existing the third time.

JOHNSON Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17820**, is recorded in Ordinance Book 24, Page

CHANGE OF ZONE 3258 - APPLICATION OF ASPEN BUILDERS, INC. FOR A CHANGE OF ZONE FROM AGR AGRICULTURAL RESIDENTIAL TO R-3 RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT S.W. 27TH STREET AND WEST A STREETS - CLERK read an ordinance, introduced by Jeff Fortenberry, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of th Lincoln Muncipal Code, as provided in Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established, for the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17821**, is recorded in Ordinance Book 24, Page

CHANGE OF ZONE 3303 - APPLICATION OF ASPEN BUILDERS, INC. FOR A CHANGE OF ZONE FROM AGR AGRICULTURAL RESIDENTIAL TO R-3 RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT S.W. 27TH STREET AND WEST "A" STREET - CLERK read an ordinance, introduced by Jeff Fortenberry, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing Boundaries of the districts established, for the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17822**, is recorded in Ordinance Book 24, Page

DECLARING APPROX. 2.04 ACRES OF PROPERTY GENERALLY LOCATED ON THE NORTH SIDE OF PIONEERS BLVD., WEST OF RIDGEVIEW DRIVE, AS SURPLUS & AUTHORIZING THE SALE THEREOF. (2/26/01 - PLACED ON PENDING) (IN CONNECTION W/01-55) (4/2/01 - REMOVE FROM PENDING W/PUBLIC HEARING ON 4/9/01) - CLERK read an ordinance, introduced by Cindy Johnson, declaring a tract of City-owned property generally located on the north side of Pioneers Blvd., west of Ridgeview Drive, as surplus and authorizing the sale thereof to Talent +, the third time.

**\*\*VERBATIM TRANSCRIPT OF COUNCIL MEMBER JON CAMP'S COMMENTS\*\***

Jon Camp, Council Member: Can I have the City Attorney come up, because of questions raised on legalities of this and I think it might help to confirm that it has been investigated? Dana, as I mentioned to you this morning, there have been an number of inquiries by constituents in my district that have raised the question, and I believe there was a gentleman who testified a week ago about some court cases and so forth. Just to make sure we are on the right wave length, would you review where this particular parcel of land is and whether or not these court cases are applicable?

Dana Roper, City Attorney: The general proposition is that if a city acquires property either by purchase or by gift that is restricted exclusively for park purposes, a trust has been created in which the city must abide by the terms of that trust, and if it has been dedicated exclusively for park purposes there is great difficulty, if not impossibility, in trying to convey that. A trust may be created by deed, by statutory dedication, by purchase, by gift. In this instance, as we would understand the facts, the city entered into an agreement with the Army Corp. of Engineers to acquire the property for flood purposes. And this flood purpose was to acquire drainage easements and also to provide incidentally some pools of water for fish and the project was undertaken by the Corp. of Engineers, who acquired the property, who then conveyed the property to the city and we have purchased it then from our understanding with monies from the general fund and advanced real estate acquisition and the trust theory, the dedication would not arise under those circumstances.

Mr. Camp: When you started your statement, you said the trust could be created by purchase or gift? Or did I misunderstand . . .?

Mr. Roper: No excuse me. If we purchased park land with money that was raised for a bond issue for a specific exclusive park purpose, we would have to live with that and the trust would be created. But if we simply purchased it with advance real estate money or from the general fund, that would not be the case.

Mr. Camp: So based upon everything you have investigated, your understanding is this wouldn't apply.

Mr. Roper: From everything we have found, we would be proper in conveying this land under the terms that were investigating. You know we are looking at something that occurred 40 or 50 years ago. We hope that we have found all the documents there are to find. State Title has written a letter saying they are willing to write a Title Policy on this property. So, as far as anything that anyone has found, this would be legally possible.

Mr. Camp: The reason I ask a lot of that is that this area is my district, but more importantly to, is I think all of us on the council are very much inclined to protect the interest of park land, just because of the nature of it. At the same time, where there is an opportunity for the community to have economic growth, we need to look at that too. So it is a delicate balancing here and I think #1 we want to make sure that the legal pathway has been cleared. So I appreciate your comments on that. If I may Mr. Chair, I would like to make a couple of comments. I have had a lot of input on this. We have had a lot of testimony from citizens who live in the vicinity. This is kind of a tough one being a representative of the district, because I understand the homeowners concerns. I think that initially there was some concerns about whether the right process was followed as well and notification. And it looks like there may be some different representatives from the homeowners that had been involved previously or have moved away, but I guess looking at this and then looking at the proposals by the Talent Plus people and the economic development that they can bring into Lincoln, I've decided to go ahead and support this measure. That is not in any way to say we are not trying to uphold our importance of neighbors, and in fact as has been brought out, this is going to enable us to purchase a substantial amount of park land, which because we are now taking park funds, I assume that that would be, whatever we do with this, would be a very much in the lines of a permanent park with these proceeds.

Mr. Roper: As I would understand it these proceeds would go into advanced real estate acquisition and that would be the same thing as putting it in the general fund and so there would not be necessarily the trust issue would not necessarily follow that. And I would suggest that it would not follow that, unless you take some other steps if that's your desire.

Lynn Johnson, Parks & Rec: Secondarily related to that, there is land and water conservation funding that was used in development of Holmes

Lake Park. Because of the requirements of conversion on that land, any land that is acquired with that money, is also then subject to land and water conversation fund conversion. So it means that if we purchase land now and in the future there is a decision made to surplus that land, it has to go through the same process and that that land would have to be replaced with additional land of equal fair market value. So there is that restriction on it based on the agreement that the city has with the federal government if that makes sense.

Mr. Camp: So essentially we are looking at a price tag of how much now for this 2.3 acres?

Mr. Johnson: About \$665,000.00

Mr. Camp: Plus the maintenance buildings would be moved and I think that is another factor, as I have driven by the property, is that there are some enhancements here that we can achieve on that vista on Pioneer Blvd. and so I too have seen the plans of what the Talent Plus people are going to be constructing, it is a definite improvement in the area. Unfortunately I guess, improvements may entertain a few detriments, but I think in this case it's a balancing and it is going to help the community both from economic and in the future park land that we can purchase. So I hope that whether or not the trust element flows with this \$665,000. that regardless we have an intent here to make sure we continue to provide that adequate parkland.

**\*\*END OF VERBATIM TRANSCRIPT\*\***

JOHNSON Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17823**, is recorded in Ordinance Book 24, Page

CHANGE OF ZONE 3311 - APPLICATION OF THE DIRECTOR OF THE PARKS & RECREATION DEPARTMENT FOR A CHANGE FROM P PUBLIC USE DISTRICT TO O-3 OFFICE PARK DISTRICT ON PROPERTY GENERALLY LOCATED 450 FEET WEST OF RIDGEVIEW DRIVE, ON THE NORTH SIDE OF PIONEERS BLVD. (IN CONNECTION W/01-14) - CLERK read an ordinance, introduced by Jeff Fortenberry, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17824**, is recorded in Ordinance Book 24, Page

APPROVING A CONTRACT BETWEEN THE CITY AND THE LINCOLN HAYMARKET DEVELOPMENT CORP. TO OPERATE AND REGULATE A SATURDAY PUBLIC MARKET IN THE HAYMARKET AREA FROM MAY 5, 2001, THROUGH OCTOBER 27, 2001 - CLERK read an ordinance, introduced by Jeff Fortenberry, accepting and approving the Contract between the City of Lincoln, Nebraska, a municipal corporation, and the Lincoln Haymarket Development Corporation for establishment and regulation of a Saturday public market in the Haymarket area from May 5, 2001 through October 27, 2001, the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17825**, is recorded in Ordinance Book 24, Page

APPROVING A CONTRACT BETWEEN THE CITY AND THE DOWNTOWN LINCOLN ASSOCIATION TO OPERATE A MID-WEEK PUBLIC MARKET IN THE MARKETPLACE AREA AT 12TH STREET FROM Q TO R STREET AND FROM 12TH TO 13TH STREETS FROM MAY 15, 2001, THROUGH JULY 31, 2001 - CLERK read an ordinance introduced by Jeff Fortenberry, accepting and approving the Contract between the City of Lincoln, Nebraska and Downtown Lincoln Association for establishment and regulation of a Tuesday public market in the Marketplace area from May 15, 2001 through July 31, 2001, for the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17826**, is recorded in Ordinance Book 24, Page

AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$1,600,000 OF THE CITY'S Q, O, P, R/NORTH HAYMARKET REDEVELOPMENT PROJECT TAX ALLOCATION AND REFUNDING BONDS - CLERK read an ordinance, introduced by Jeff Fortenberry, authorizing and providing for the issuance of not to exceed \$1,600,000 City of Lincoln, Nebraska, Q, O, P, R/North Haymarket redevelopment project tax allocation and refunding bonds, series 2001, for the purpose of (1) paying all or

part of the costs of acquiring, purchasing, constructing, reconstructing, improving, extending, rehabilitating, installing, equipping, furnishing and completing certain public improvements within the city's Q, O, P, R/North Haymarket Redevelopment project inclusive of any acquisition of real estate and/or interests in real estate in connection therewith, (2) providing for the payment and redemption of all of the city's presenting outstanding Q, O, P, R/North Haymarket Redevelopment project tax allocation bonds, series 1995; prescribing the form and certain of the details of the bonds; pledging certain tax allocation and other tax revenues to payment of the principal of an interest on the bonds as the same become due and to carry out all other covenants of this ordinance; limiting payment of the bonds to said tax allocation and other tax revenues; creating; establishing funds and accounts; authorizing the public or private sale and delivery of the bonds; delegating, authorizing and directing the finance director to exercise his own independent discretion and judgment in determining and finalizing the terms and provisions with respect to the bonds not specified herein; providing for application of the proceeds of the bonds; providing for payment of the principal of and interest on the bonds; taking other action and making other covenants and agreements in connection with the foregoing; and related matters, for the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.  
The ordinance, being numbered **17827**, is recorded in Ordinance Book 24, Page

AMENDING SECTION 9.44.040 OF THE LINCOLN MUNICIPAL CODE RELATING TO FIREWORKS TO PROVIDE FOR THE ASSESSMENT OF A LATE FEE ON ALL APPLICATIONS FOR A LICENSE AS A FIREWORKS RETAILER POSTMARKED OR RECEIVED BY THE CHIEF OF THE BUREAU OF FIRE PREVENTION AFTER JUNE 23, TO INCREASE THE LICENSE FEE TO \$75.00, TO AMEND THE PROVISION REGARDING ISSUANCE OF A LICENSE, AND REPEALING SECTION 9.44.085 RELATING TO THE SALE AND USE OF FIREWORKS FROM DECEMBER 30, 1999 TO JANUARY 1, 2000 - CLERK read an ordinance, introduced by Jeff Fortenberry, amending Chapter 9.44 of the Lincoln Municipal Code relating to fireworks by amending Section 9.44.040 to provide for the assessment of a late fee on all applications for a license as a fireworks retailer postmarked or received by the Chief of the Bureau of Fire Prevention after June 23, to increase the license fee to \$75.00, and to amend the provision regarding issuance of a license; repealing Section 9.44.085 relating to sale and use of fireworks from December 30, 1999 to January 1, 2000; and repealing Section 9.44.040 of the Lincoln Municipal Code, for the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.  
The ordinance, being numbered **17828**, is recorded in Ordinance Book 24, Page

CHANGE OF ZONE 3134B - APPLICATION OF CHRISTIAN RETIREMENT HOMES, INC. D/B/A EASTMONT TOWERS, TO ADD AND OPERATE A SIX BED HEALTH CARE FACILITY IN THE WILLOW SPRINGS FINAL PLANNED UNIT DEVELOPMENT ON PROPERTY GENERALLY LOCATED AT SOUTH 78TH STREET AND PIONEERS BLVD - CLERK read an ordinance, introduced by Jeff Fortenberry, approving Amendment No. 2 to the Development Plan and Agreement for the Willow Springs Planned Unit Development to add a six bed health care facility on Lots, 7, 8, and 9, Block 4, Willow Springs Addition, for the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.  
The ordinance, being numbered **17829**, is recorded in Ordinance Book 24, Page

CHANGE OF ZONE 3307 - AMENDING SECTION 27.69.044 OF THE LINCOLN MUNICIPAL CODE RELATING TO PERMITTED SIGNS IN THE 0-1, 0-2, AND 0-3 ZONING DISTRICTS TO ADJUST THE PERMITTED SIGN REGULATIONS IN THE 0-3 OFFICE PARK DISTRICT TO BETTER REFLECT A TRANSITIONAL DISTRICT - CLERK read an ordinance, introduced by Jeff Fortenberry, amending Section 27.69.044 of the Lincoln Municipal Code relating to permitted signs in the 0-1, 0-2, and 0-3 zoning districts to adjust the permitted sign regulations in the 0-3 Office Park District to better reflect a transitional district; and repealing Section 27.69.044 of the Lincoln Municipal Code, for the third time.

COOK Moved to delay action for one week to 4/23/01.

Seconded by Fortenberry & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CHANGE OF ZONE 3310 - DESIGNATING THE HAYMARKET PARK SIGN DISTRICT AS A OVERLAY SPECIAL SIGN DISTRICT FOR THE LINCOLN BASEBALL STADIUM ON PROPERTY

GENERALLY LOCATED AT NORTH 6TH STREET AND CHARLESTON STREET, BETWEEN I-180 AND SUN VALLEY BOULEVARD - CLERK read an ordinance, introduced by Jeff Fortenberry, designating the Haymarket Park Sign District as an overlay special sign district for the Lincoln Baseball Stadium on property generally located at North 6th Street and Charleston Street, between I-180 and Sun Valley Blvd., in accordance with the provisions of 27.69.300 of the Lincoln Municipal Code and adopting special criteria for signs in said district, for the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17830**, is recorded in Ordinance Book 24, Page

VACATING A PORTION OF THE SOUTH 16TH STREET RIGHT-OF-WAY, A PORTION OF THE SOUTH 19TH STREET RIGHT-OF-WAY AND SOUTHPARK ROAD - CLERK read the ordinance, introduced by Jeff Fortenberry, whereas Southpark Road, 16th Street and 19th Street were dedicated to the City of Lincoln in the final plat of Lincoln Industrial Park, for the third time.

FORTENBERRY Moved to pass the ordinance as read.

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17831**, is recorded in Ordinance Book 24, Page

VACATING THE SOUTH 40' OF X ST. ADJACENT TO LOT 1, BLOCK 6, NORTH LINCOLN ADD., GENERALLY LOCATED AT N. 9TH & X STS. - CLERK read an ordinance, introduced by Jon Camp vacating the south 40' of X Street adjacent to Lot 1, Block 6, North Lincoln Addition, generally located at N. 9th & X Streets, and retaining title thereto in the City of Lincoln, Lancaster County, Nebraska, for the third time.

JOHNSON Moved to Amend Bill No. 01-39 in the following manner:

- 1) On line 1, delete the number 40 and insert in lieu thereof the number 34.
- 2) One line 5, delve the number 40 and insert in lieu thereof the number 34.

Seconded by Cook & **LOST** by the following vote: AYES: Cook, Fortenberry, Johnson; NAYS: Camp, McRoy, Seng, Shoecraft.

SENG Moved to delay Bill 01-39 for no longer than 3 months (7/16/01).

Seconded by Cook & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, Seng; NAYS: McRoy, Shoecraft.

AMENDING CHAPTER 6.04 OF THE LINCOLN MUNICIPAL CODE RELATING TO ANIMAL CONTROL REGULATIONS GENERALLY TO AMEND DEFINITIONS; TO INCREASE IMPOUNDMENT FEES; TO MAKE IT UNLAWFUL TO OWN ANIMAL HYBRIDS; TO PROVIDE RESTRICTIONS RELATING TO ACTIVITIES OF PET SHOPS; AMENDING CRUELTY TO ANIMALS TO PROVIDE A SEPARATE SECTION RELATING TO ANIMAL NEGLECT; TO PROVIDE EXCEPTIONS TO VIOLATIONS; AMENDING PROVISIONS REGARDING SELLING OR GIVING AWAY ANIMALS; AND TO PROVIDE ADDITIONAL PENALTIES FOR VIOLATIONS - PRIOR to reading:

CAMP Moved to accept substitute ordinance.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read an Ordinance, introduced by Jon Camp, amending Chapter 6.04 of the Lincoln Municipal Code relating to Animal Control Regulations Generally by amending Section 6.04.010 to add definitions for "adequate shelter," "animal exhibit," "boarding," "exotic animal," "hybrid," "shade" and "wild animal" and to amend the definitions of "large animal" and "unusual animal"; amending Section 6.04.150 to increase impoundment fees; adding a new Section 6.04.155 to make it unlawful to own animal hybrids; adding a new Section 6.04.165 to provide restrictions relating to activities of pet shops; amending Section 6.04.310 relating to cruelty to animals; adding a new section numbered 6.04.313 to provide exceptions to the violations set forth in Section 6.04.310; adding a new Section 6.04.315 to provide a separate section relating to animal neglect by amending provisions previously contained 6.04.310, Cruelty to Animals; amending Section 6.04.350 regarding selling or giving away animals; amending Section 6.04.440 to provide additional penalties for violations of Chapter 6.04 of the Lincoln Municipal Code; and repealing Sections 6.04.010, 6.04.150, 6.04.310, 6.04.350, and 6.04.440 of the Lincoln Municipal Code as hitherto existing, the third time.

CAMP Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17832**, is recorded in Ordinance Book 24, Page

AMENDING CHAPTER 6.04 OF THE LINCOLN MUNICIPAL CODE RELATING TO ANIMAL CONTROL REGULATIONS GENERALLY TO ALLOW THE DIRECTOR OF THE HEALTH DEPARTMENT TO IMPOUND UNUSUAL ANIMALS; TO PROVIDE PERMIT PROVISIONS FOR ANIMAL EXHIBITS OR RIDES; TO MAKE IT UNLAWFUL TO PROVIDE FOR UNUSUAL CARNIVOROUS MAMMALS TO BE RESTRAINED BY THE PUBLIC FOR ENTERTAINMENT PURPOSES; AND TO PROVIDE AN APPEAL PROCESS FOR DENIED, NON-RENEWED AND REVOKED ANIMAL EXHIBIT OR RIDE PERMITS - PRIOR to reading:

CAMP Moved to blend 01-42 in with the Substitute Ordinance for Bill 01-47, Ordinance #17832.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read an ordinance, introduced by Jonathan Cook, amending Chapter 6.04 of the Lincoln Municipal Code relating to Animal Control Regulations - Generally by amending Section 6.04.020 to allow the Director of the Health Department to impound unusual animals; amending Section 6.04.210 to provide permit provisions for animal exhibits or rides; adding a new section numbered 6.04.215 to make it unlawful to provide for young unusual carnivorous mammals to be held by the public for entertainment purposes; adding a new section numbered 6.04.225 to provide an appeal process for denied, non-renewed and revoked animal exhibit or ride permits; and repealing Sections 6.04.020 and 6.04.210 of the Lincoln Municipal Code as hitherto existing, the third time.

AMENDING CHAPTER 6.12 OF THE LINCOLN MUNICIPAL CODE RELATING TO CATS TO ADD A DEFINITION FOR "CAT HOBBY KENNEL" AND AMENDING THE DEFINITION OF "KENNEL"; TO PROVIDE THE WORD "LINCOLN" BE ENGRAVED ON ALL CAT TAGS; TO PROVIDE THAT ALL MONEY RECEIVED BY THE DIRECTOR UNDER CHAPTER 6.12 SHALL BE CREDITED TO THE ANIMAL CONTROL FUND; TO MAKE IT UNLAWFUL FOR CATS THAT ARE NOT SPAYED OR NEUTERED TO RUN AT LARGE; TO REPEAL THE CURRENT PROVISIONS RELATING TO CATS RUNNING AT LARGE WHILE IN HEAT; TO DELETE REFERENCES TO SECTIONS BEING REPEALED; TO MAKE IT UNLAWFUL TO MAINTAIN A CAT KENNEL; TO PROVIDE EXCEPTIONS TO HAVING A CAT KENNEL; TO CREATE A PERMIT PROCESS TO OBTAIN A CAT HOBBY KENNEL; TO PROVIDE RESTRICTIONS RELATING TO A CAT HOBBY KENNEL; TO REPEAL THE CURRENT PROVISIONS RELATING TO HOBBY KENNEL OR CATTERY PERMITS; AND TO INCREASE THE MINIMUM FINE FOR FIRST OFFENSE VIOLATIONS OF CHAPTER 6.12 FROM \$25 TO \$35 - PRIOR to reading:

CAMP Moved to accept substitute ordinance.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read an ordinance, introduced by Jon Camp, an Ordinance amending Chapter 6.12 of the Lincoln Municipal Code relating to Cats by amending Section 6.12.050 to provide the word "Lincoln" be engraved on all cat tags; adding a new section 6.12.055 to provide that all money received by the Director under Chapter 6.12 shall be credited to the Animal Control Fund; amending Section 6.12.070 to make it unlawful for cats that are not spayed or neutered to run at large; repealing Section 6.12.080 relating to cats running at large while in heat; amending Section 6.12.100 to delete a reference to Section 6.12.080 which is being repealed; and amending Section 6.12.290 to increase the minimum fine for first offense violations of Chapter 6.12 from \$25.00 to \$35.00; and repealing Sections 6.12.050, 6.12.070, 6.12.100, and 6.12.290 of the Lincoln Municipal Code as hitherto existing, the third time.

CAMP Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17833**, is recorded in Ordinance Book 24, Page

AMENDING CHAPTER 6.08 OF THE LINCOLN MUNICIPAL CODE RELATING TO DOGS TO ADD A DEFINITION FOR "DOG HOBBY KENNEL" AND TO AMEND THE DEFINITION OF "KENNEL"; TO PROVIDE THE WORD "LINCOLN" BE DIE-STAMPED ON DOG TAGS; TO PROVIDE THAT OWNERS OF DOGS SHALL DISPOSE OF WASTE MATERIAL ACCUMULATING FROM THEIR DOGS AT LEAST ONCE EVERY FIVE DAYS; TO INCLUDE DOG HOBBY KENNEL PERMIT HOLDERS AS EXCEPTIONS TO DOG KENNEL PROHIBITION; TO CREATE AN EXCEPTION TO HAVING A DOG KENNEL FOR PERSONS ON LAND THAT IS ANNEXED BY THE CITY; TO REQUIRE PERMITS FOR DOG HOBBY KENNELS; TO PROVIDE RESTRICTIONS RELATING TO DOG HOBBY KENNELS; TO PROVIDE THAT MONEY RECEIVED PURSUANT TO CHAPTER 6.08 SHALL BE CREDITED TO THE ANIMAL CONTROL FUND; AND TO INCREASE THE MINIMUM FINE FOR FIRST OFFENSE VIOLATIONS OF CHAPTER 6.08 FROM \$25.00 TO \$35.00 - PRIOR to reading:

CAMP Moved to accept substitute ordinance.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read an ordinance, introduced by Jon Camp, amending Chapter 6.08 of the Lincoln Municipal Code relating to Dogs by amending Section 6.08.010 to amend the definition of "kennel"; amending Section 6.08.040 to



provide the word "Lincoln" be die-stamped on dog tags; amending Section 6.08.150 to provide that owners of dogs shall dispose of waste material accumulating from their dogs at least once every five days; amending Section 6.08.310 to provide that costs of impoundment be borne by the person convicted of an offense; adding a new Section 6.08.317 to provide that money received pursuant to Chapter 6.08 shall be credited to the Animal Control Fund; amending Section 6.08.350 to increase the minimum fine for first offense violations of Chapter 6.08 from \$25.00 to \$35.00; and repealing Sections 6.08.010, 6.08.040, 6.08.150, 6.08.310, and 6.08.350 of the Lincoln Municipal Code as hitherto existing, the third time.

CAMP Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17834**, is recorded in Ordinance Book 24, Page

CHANGE OF ZONE 3248 - APPLICATION OF M & S CONSTRUCTION FOR A CHANGE OF ZONE FROM I-2 INDUSTRIAL TO H-4 GENERAL COMMERCIAL, B-2 PLANNED NEIGHBORHOOD BUSINESS AND R-3 RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET. (IN CONNECTION W/01-60, 01R-77, 01R-78, 01R-79, 01R-82) - CLERK read an ordinance, introduced by Cindy Johnson, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the third time.

JOHNSON Moved to pass the ordinance as read.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

The ordinance, being numbered **17835**, is recorded in Ordinance Book 24, Page

#### SPECIAL PERMITS, USE PERMITS, PRELIMINARY PLATS

SPECIAL PERMIT 1833 - APPLICATION OF M & S CONSTRUCTION TO DEVELOP ASHLEY HEIGHTS COMMUNITY FOR 295 DWELLING UNITS ON PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80786 WHEREAS, M & S Construction has submitted an application designated as Special Permit No. 1833 for authority to develop Ashley Heights Community Unit Plan for 295 dwelling units on property located at N.W. 48th Street and West Adams Street, and legally described to wit:

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 26 I.T., AND A PORTION OF LOT 27 I.T., ALL LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6<sup>TH</sup> P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 27 I.T., SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ON AN ASSUMED BEARING OF NORTH 00 DEGREES 46 MINUTES 42 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 27 I.T., A DISTANCE OF 596.50 FEET TO A POINT OF DEFLECTION, THENCE NORTH 89 DEGREES 13 MINUTES 18 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 27 I.T., A DISTANCE OF 11.00 FEET TO A POINT OF DEFLECTION, THENCE NORTH 00 DEGREES 28 MINUTES 16 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 27 I.T., A DISTANCE OF 426.76 FEET TO A POINT, THENCE NORTH 89 DEGREES 13 MINUTES 18 SECONDS EAST, A DISTANCE OF 150.16 FEET TO A POINT OF CURVATURE, THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A RADIUS OF 450.00 FEET, ARC LENGTH OF 248.90 FEET, DELTA ANGLE OF 31 DEGREES 41 MINUTES 28 SECONDS, A CHORD BEARING OF NORTH 73 DEGREES 22 MINUTES 34 SECONDS EAST, AND A CHORD LENGTH OF 245.74 FEET TO A POINT OF REVERSE CURVATURE, THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION HAVING A RADIUS OF 500.00 FEET, ARC LENGTH OF 275.92 FEET, DELTA ANGLE OF 31 DEGREES 37 MINUTES 05 SECONDS, A CHORD BEARING OF NORTH 73 DEGREES 20 MINUTES 23 SECONDS EAST, AND A CHORD LENGTH OF 272.43 FEET TO A POINT OF TANGENCY, THENCE NORTH 89 DEGREES 08 MINUTES 55 SECONDS EAST, A DISTANCE OF 249.86 FEET TO A POINT, THENCE NORTH 00 DEGREES 51 MINUTES 05 SECONDS WEST, A DISTANCE OF 240.42 FEET TO A POINT, THENCE NORTH 45 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 78.18 FEET TO A POINT, THENCE NORTH 88 DEGREES 51 MINUTES 10

SECONDS EAST, A DISTANCE OF 120.00 FEET TO A POINT, THENCE SOUTH 01 DEGREES 08 MINUTES 50 SECONDS EAST, A DISTANCE OF 61.63 FEET TO A POINT, THENCE SOUTH 52 DEGREES 20 MINUTES 26 SECONDS EAST, A DISTANCE OF 38.32 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID LOT 27 I.T., THENCE NORTH 89 DEGREES 08 MINUTES 55 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 27 I.T., A DISTANCE OF 1486.44 FEET TO THE NORTHEAST CORNER OF SAID LOT 27 I.T., THENCE SOUTH 00 DEGREES 51 MINUTES 05 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 27 I.T., A DISTANCE OF 1359.50 FEET TO THE SOUTHEAST CORNER OF SAID LOT 27 I.T., THENCE SOUTH 88 DEGREES 49 MINUTES 42 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 27 I.T., A DISTANCE OF 2606.12 FEET TO THE TRUE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 76.22 ACRES, OR 3,320,377.37 SQUARE FEET MORE OR LESS;

WHEREAS, the real property adjacent to the area included within the site plan for this community unit plan will not be adversely affected; and

WHEREAS, said site plan together with the terms and conditions hereinafter set forth are consistent with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the application of M & S Construction, hereinafter referred to as "Permittee", to develop Ashley Heights Community Unit Plan for 295 dwelling units, on the property legally described above, be and the same is hereby granted under the provisions of Section 27.63.320 and Chapter 27.65 of the Lincoln Municipal Code upon condition that construction and operation of said community unit plan be in strict compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

1. This permit approves a community unit plan consisting of 295 dwelling units.
2. The City Council must approve Comprehensive Plan Amendment #94-52, Annexation No. 00001, Change of Zone 3248, and Preliminary Plat 00005.
3. Before receiving building permits:
  - a. The Permittee must submit a revised and reproducible plan.
  - b. The construction plans must conform to the approved plans.
  - c. Final plats within the area of this special permit must be approved by the City.
4. Before occupying the dwelling units, all development and construction must be completed in conformance with the approved plans.
5. All privately-owned improvements must be permanently maintained by the Permittee or an appropriately established homeowners association approved by the City Attorney.
6. The site plan approved by this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
7. The terms, conditions, and requirements of this resolution shall be binding and obligatory upon the Permittee, its successors, and assigns. The building official shall report violations to the City Council which may revoke the special permit or take such other action as may be necessary to gain compliance.
8. The Permittee shall sign and return the City's letter of acceptance to the City Clerk within 30 days following approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

Introduced by Annette McRoy

Seconded by Cook & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

ACCEPTING AND APPROVING THE PRELIMINARY PLAT OF ASHLEY HEIGHTS WITH WAIVERS TO THE REQUIRED BLOCK LENGTH, PEDESTRIAN WAY EASEMENT, SUBMITTING A USE PERMIT AT THE TIME OF THE PRELIMINARY PLAT, LOT DEPTH TO WIDTH RATIO, ACCESS TO PUBLIC OR PRIVATE STREET, AND ROADWAY APPROACHES TO EXCEED 2%, ON PROPERTY GENERALLY LOCATED AT N.W. 48TH ST. AND W. ADAMS STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80787 WHEREAS, M & S Construction has submitted the preliminary plat of ASHLEY HEIGHTS for acceptance and approval; and

WHEREAS, the Lincoln City - Lancaster County Planning Commission has reviewed said preliminary plat and made recommendations as contained in the letter dated February 23, 2001, which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the preliminary plat of ASHLEY HEIGHTS, located as submitted by M & S Construction is hereby accepted and approved, subject to the terms and conditions set forth in Exhibit "A", which is attached hereto and made a part of this resolution as though fully set forth verbatim.

BE IT FURTHER RESOLVED that the City Council finds that the tract to be subdivided is surrounded by such development or unusual conditions that strict application of the subdivision requirements would result in actual difficulties or substantial hardship and the following modifications to the subdivision requirements are therefore approved:

1. The requirement of the Design Standards for roadway platform approaches to not exceed a 2% slope is hereby waived.

2. The requirement of Section 26.23.130 of the Lincoln Municipal Code that block lengths shall not exceed 1,320 feet between cross streets is waived in Block 8 to the east and north.

3. The requirement of Section 26.23.125 of the Lincoln Municipal Code that a pedestrian way shall be provided when a block exceeds 1,000 feet is waived for Block 1 and Block 8.

4. The requirement of Section 26.15.030(b) of the Lincoln Municipal Code requiring a use permit to be submitted at the time of the preliminary plat is hereby waived.

5. The requirement of Section 26.15.140(a) prohibiting a lot to have a depth that exceeds five times its width is hereby waived.

6. The requirement of Section 26.15.140(g) requiring lots to front upon and take access to a public or private street is hereby waived for Lot 54, Block 7, provided that it is shown as an outlot.

Introduced by Annette McRoy

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

ACCEPTING AND APPROVING THE PRELIMINARY PLAT OF NORTH CREEK TRADE CENTER WITH WAIVERS TO THE REQUIRED BLOCK LENGTHS, SIDEWALKS, STREET NAMES, AND WIDTH OF PRIVATE ROADWAYS, ON PROPERTY GENERALLY LOCATED AT FLETCHER AVENUE AND TELLURIDE DRIVE - PRIOR to reading:

FORTENBERRY Moved to delay action on Bill 01R-80 for one week to 4/23/01.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

ACCEPTING AN APPROVING THE PRELIMINARY PLAT OF ASPEN RIDGE AND WAIVING BLOCK LENGTH, MINIMUM LOT DEPTH, AND PEDESTRIAN WAY EASEMENT, ON PROPERTY GENERALLY LOCATED AT S.W. 27TH STREET AND WEST A STREET - CLERK read the following resolution, introduced by Cynthia Johnson, who moved its adoption:

A-80790 WHEREAS, Aspen Builders, Inc. has submitted the preliminary plat of ASPEN RIDGE for acceptance and approval; and

WHEREAS, the Lincoln City - Lancaster County Planning Commission has reviewed said preliminary plat and made recommendations as contained in the letter dated February 8, 2001, which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the preliminary plat of ASPEN RIDGE, located generally at S.W. 27th Street and West A Street as submitted by Aspen Builders, Inc. is hereby accepted and approved, subject to the terms and conditions set forth in Exhibit "A", which is attached hereto and made a part of this resolution as though fully set forth verbatim.

BE IT FURTHER RESOLVED that the City Council finds that the tract to be subdivided is surrounded by such development or unusual conditions that strict application of the subdivision requirements would result in actual difficulties or substantial hardship and the following modifications to the subdivision requirements are therefore approved:

1. The requirement of Section 26.23.130(a) of the Lincoln Municipal Code that block length not exceed 1,320 feet between cross streets is waived for the north side of W. Washington Street.

2. The requirement of Section 26.23.140(a) of the Lincoln Municipal Code that residential lots have a minimum depth of ninety feet is waived to allow a minimum lot depth of less than 90 feet for Lots 1 and 2, Block 4.

3. The requirement of Section 26.23.125 of the Lincoln Municipal

Code requiring pedestrian ways in blocks that exceed 1,000 feet is waived for Block 4.

Introduced by Cynthia Johnson

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

#### PETITIONS & COMMUNICATIONS

FORMAL PAVING PETITION FOR ALLEY PAVING DISTRICT 359, SUBMITTED BY BYRON AND JANE YURTH - CLERK presented said petition which was referred to the Law Dept.

PETITION TO VACATE PUBLIC WAY ALL THAT PORTION OF COTNER BLVD. LYING SOUTH OF ANTELOPE CREEK ROAD BY DARRELL & CHARLOTTE MCCAIVE - CLERK presented said petition which was referred to the Law Dept.

PETITION TO VACATE PUBLIC WAY ALL THAT PORTION OF COTNER BLVD. LYING SOUTH OF ANTELOPE CREEK BY ROBERT WATTON - CLERK presented said petition which was referred to the Law Dept.

REPORT OF UNL MICROBIOLOGIST FOR WATER TESTING FOR THE MONTH OF MARCH, 2001.  
(35-01)

#### REPORTS OF CITY OFFICERS

CLERK'S LETTER & MAYOR'S APPROVAL OF ORDINANCES & RESOLUTIONS PASSED ON April 9, 2001 - CLERK presented said report which was placed on file in the Office of the City Clerk.

INVESTMENT OF FUNDS - CLERK read the following resolution, introduced by Cindy Johnson, who moved its adoption:

A-80789 BE IT HEREBY RESOLVED BY THE CITY COUNCIL of the City of Lincoln, Nebraska:

That the attached list of investments be confirmed and approved, and the City Treasurer is hereby directed to hold said investments until maturity unless otherwise directed by the City Council. (Investments from March 24 to 31, 2001.)

Introduced by Annette McRoy

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

2000 ANNUAL REPORT OF LINCOLN FIRE & RESCUE - CLERK presented said report which was placed on file in the Office of the City Clerk. (3)

ACCEPTING THE REPORT OF NEW AND PENDING CLAIMS AGAINST THE CITY AND APPROVING DISPOSITION OF CLAIMS SET FORTH THEREIN FOR THE PERIOD OF MARCH 16 -31, 2001 - PRIOR to reading:

JOHNSON Moved to remove the claim of Alan Schroeder for further consideration for one week.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read the following resolution, introduced by Jon Camp, who moved its adoption:

A-80794 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska: That the claims listed in the attached report, marked as Exhibit "A", dated April 2, 2001, of various new and pending tort claims filed against the City of Lincoln with the Office of the City Attorney or the Office of the City Clerk, as well as claims which have been disposed of, are hereby received as required by Neb. Rev. Stat. § 13-905 (Reissue 1997). The dispositions of claims by the Office of the City Attorney, as shown by the attached report, are hereby approved:

<u>DENIED</u>		<u>ALLOWED</u>	
George Jackson Jr.	NAS*	Dixie Munson & Alonzo Wiggs	
Jonathan D. Cannon	NAS*	(on their behalf and on behalf	
Phillip Mark Mitchell	\$ 62.00	of their minor daughter,	
<del>Alan Schroeder</del>	<del>\$50,000.00</del>	Ashley Munson)	2,000.00
Kristin Grosskopf	300.00	Margaret A. Warner	9,900.00
Tex Richters & Judy Garlock	500.00	Joseph Rinke, Jr.	2,825.00
Ada Tuttle	NAS*	Country Club Apts.	500.00
		Shawna McGinn	76.00
		Kelly L. Vanek	1,706.50
		Adam Herron	45.00

\* No Amount Specified

The City Attorney is hereby directed to mail to the various

claimants listed herein a copy of this resolution which shows the final disposition of their claim.

Introduced by Annette McRoy

Seconded by Cook & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

#### OTHER RESOLUTIONS

APPLICATION OF TWISTED STEELE, INC. DBA "LAZZARIS" FOR A CLASS "C" LIQUOR LICENSE AT 1434 "O" STREET AND 1430 "O" STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80780 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska: That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, and the pertinent City ordinances, the City Council recommends that the application of Twisted Steele, Inc. dba "Lazzaris" for a Class "C" liquor license at 1434 and 1430 "O" Street, Lincoln, Nebraska, for the license period ending October 31, 2001, be approved with the condition that the premise complies in every respect with all city and state regulations. The City Clerk is directed to transmit a copy of this resolution to the Nebraska Liquor Control Commission.

Introduced by Annette McRoy

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

MANAGER APPLICATION OF MATTHEW VRZAL FOR TWISTED STEELE, INC. DBA "LAZZARIS" at 1434 "O" STREET AND 1430 "O" STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80781 WHEREAS, Twisted Steele, Inc. dba "Lazzaris" located at 1434 and 1430 "O" Street, Lincoln, Nebraska has been approved for a Retail Class "C" liquor license, and now requests that Matthew Vrzal be named manager; WHEREAS, Matthew Vrzal appears to be a fit and proper person to manage said business.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, and the pertinent City ordinances, the City Council recommends that Matthew Vrzal be approved as manager of this business for said licensee. The City Clerk is directed to transmit a copy of this resolution to the Nebraska Liquor Control Commission.

Introduced by Annette McRoy

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

MANAGER APPLICATION OF MATTHEW J. KEMPSTON FOR B & R STORES, INC., DBA "SUPER SAVER #17" AT 2525 PINE LAKE ROAD - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80782 WHEREAS, B&R Stores, Inc. dba "Super Saver #17" located at 2525 Pine Lake Road, Lincoln, Nebraska has been approved for a Retail Class "D" liquor license, and now requests that Matthew J. Kempston be named manager;

WHEREAS, Matthew J. Kempston appears to be a fit and proper person to manage said business.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, and the pertinent City ordinances, the City Council recommends that Matthew J. Kempston be approved as manager of this business for said licensee. The City Clerk is directed to transmit a copy of this resolution to the Nebraska Liquor Control Commission.

Introduced by Annette McRoy

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

MANAGER APPLICATION OF RONALD SOMMERS FOR B&R STORES, INC. DBA "SUPER SAVER III" AT 5440 S. 56TH STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80783 WHEREAS, B & R Stores Inc. dba "Super Saver III" located at 5440 S. 56th Street, Lincoln, Nebraska has been approved for a Retail Class "D/K" liquor license, and now requests that Ronald Sommers be named manager;

WHEREAS, Ronald Sommers appears to be a fit and proper person to manage said business.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, and the pertinent City ordinances, the City Council recommends that Ronald Sommers be approved as manager of this business for said licensee. The City Clerk is directed to transmit a copy of this resolution to the Nebraska Liquor Control Commission.

Introduced by Annette McRoy

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPLICATION OF LINCOLN P STREET CATERING CO. DBA 'EMBASSY SUITES HOTEL" FOR A SPECIAL DESIGNATED LICENSE FOR AN AREA IN THE BACK DECK AREA OF EMBASSY SUITES HOTEL AT 1040 P STREET ON MAY 4, 11, AND 18, 2001, FROM 3:00 P.M. TO 8:00 P.M. - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption for approval:

A-80784 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That after hearing duly had as required by law, consideration of the facts of this application, the Nebraska Liquor Control Act, and the pertinent City ordinances, the City Council recommends that the application of Lincoln P Street Catering Co. d/b/a Embassy Suites Hotel for a Special Designated License to cover an outdoor area in the back deck area at 1040 P Street, Lincoln, Nebraska, on May 4, 11, and 18, 2001, between the hours of 3:00 p.m. and 8:00 p.m., be approved with the condition that the premise complies in every respect with all City and State regulations and with the following requirements:

1. Identification to be checked, wristbands required on all parties wishing to consume alcohol.
2. Adequate security shall be provided for the event.
3. The area requested for the permit shall be separated from the public by a fence or other means.
4. Responsible alcohol service practices shall be followed.

BE IT FURTHER RESOLVED the City Clerk is directed to transmit a copy of this resolution to the Nebraska Liquor Control Commission.

Introduced by Annette McRoy

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING A WAIVER OF DESIGN STANDARDS FOR CONSTRUCTION OF TWO DRIVEWAYS ALONG FRONTAGE OF COMMERCIAL BUSINESS LOCATED AT 2001 SOUTH 1ST STREET - PRIOR to reading:

JOHNSON Moved to delay action on Bill 01R-76 for one week to 04/23/01.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

COMP. PLAN AMENDMENT 94-52 - AMENDING FIGURE 16, LINCOLN'S LAND USE PLAN, OF THE LINCOLN-LANCASTER COUNTY COMPREHENSIVE PLAN, TO CHANGE PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET FROM INDUSTRIAL TO COMMERCIAL AND RESIDENTIAL - CLERK read the following resolution, introduced by McRoy, who moved its adoption:

A-80785 WHEREAS, the Planning Director has made application to amend the 1994 Lincoln City-Lancaster County Comprehensive Plan to change property generally located at N.W. 48th and West Adams Streets from Industrial to Commercial and from Industrial to Residential; and

WHEREAS, the Lincoln City-Lancaster County Planning Commission has made recommendations on said proposed change and has recommended approval of said proposed change.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That Figure 16 (Lincoln's Land Use Plan) of the 1994 Lincoln City-Lancaster County Comprehensive Plan be and the same is hereby revised to change property located at approximately N.W. 48th Street and West Adams Street from Industrial to Commercial and from Industrial to Residential as shown on Attachment "A" which is attached hereto and made a part hereof by reference.

BE IT FURTHER RESOLVED that any other references in said plan which may be affected by the above-specified amendments be, and they hereby are amended to conform to such specific amendments.

Introduced by Annette McRoy

Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING THE ASHLEY HEIGHTS CONDITIONAL ANNEXATION AND ZONING AGREEMENT BETWEEN THE CITY AND LINCOLN M & S CONSTRUCTION AND ALLA D. AND BETH A. SCHULZ OUTLINING CERTAIN CONDITIONS AND UNDERSTANDINGS WITH REGARD TO THE ANNEXATION OF PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80788 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska: That the agreement titled Ashley Heights Conditional Annexation and Zoning Agreement ("Annexation Agreement"), which is attached hereto, marked as Attachment "A" and made a part hereof by reference, between the City of Lincoln and M & S Construction and Allan D. and Beth A. Schulz (Owner) outlining certain conditions and understandings between the City and said Owners relating to the annexation of land generally located at N.W. 48th Street and West Adams Street is approved.

BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Annexation Agreement on behalf of the City.

BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully executed copy of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owner.

BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation Agreement with the Register of Deeds, filing fees to be paid by the Owner.

Introduced by Annette McRoy

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

APPROVING THE NORTH CREEK TRADE CENTER CONDITIONAL ANNEXATION AND ZONING AGREEMENT BETWEEN THE CITY AND LINCOLN NORTH CREEK, L.L.C. OUTLINING CERTAIN CONDITIONS AND UNDERSTANDINGS WITH REGARD TO THE ANNEXATION OF PROPERTY GENERALLY LOCATED AT FLETCHER AVENUE AND TELLURIDE DRIVE - PRIOR to reading:

FORTENBERRY Moved to delay action on Bill 01R-82 for one week to 04/23/01.

Seconded by Seng & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

SETTING HEARING DATE OF MAY 7, 2001 AT 1:30 P.M. ON THE APPLICATION OF TWISTED STEELE, DBA THE BAR FOR AND OUTDOOR ADDITION TO THEIR CURRENT PREMISE AT 1644 "P" STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80791 BE IT RESOLVED by the City Council, of the City of Lincoln, that a hearing date is hereby fixed for Mon., May 7, 2001 at 1:30 p.m. or as soon thereafter as possible in the City Council Chambers, County-City Building, 555 S. 10th St., Lincoln, NE, for the purpose of considering the App. of Twisted Steele, Inc., dba The Bar at 1644 "P" Street requesting an outdoor addition to their current premise.

Introduced by Annette McRoy

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

SETTING HEARING DATE OF MAY 7, 2001 AT 1:30 P.M. ON THE APPLICATION OF BDLS, INC., DBA J. FINNEGAN'S AT 201 N. 7TH ST. FOR A CLASS "C" LIQUOR LICENSE CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80792 BE IT RESOLVED by the City Council, of the City of Lincoln, that a hearing date is hereby fixed for Mon., May 7, 2001 at 1:30 p.m. or as soon thereafter as possible in the City Council Chambers, County-City Building, 555 S. 10th St., Lincoln, NE, for the purpose of considering the App. of BDLS, Inc., dba J. Finnegan's at 201 N. 7th St. for a Class "C" Liquor License.

Introduced by Annette McRoy

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

SETTING HEARING DATE OF MONDAY, MAY 7, 2001 AT 1:30 P.M. ON THE MAN. APP. OF GENE R. BIRKETT FOR LA SOCIETE DES 40 HOMMES, DBA AMERICAN LEGION 3 CLUB, AT 5630 "P" STREET - CLERK read the following resolution, introduced by Annette McRoy, who moved its adoption:

A-80793 BE IT RESOLVED by the City Council, of the City of Lincoln, that a hearing date is hereby fixed for Mon., May 7, 2001 at 1:30 p.m. or as soon thereafter as possible in the City Council Chambers, County-City Building,

555 S. 10th St., Lincoln, NE, for the purpose of considering the Man. App. of Gene R. Birkett for a La Societe Des 40 Hommes, dba American Legion 3 Club, 5630 "P" St.

Introduced by Annette McRoy

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

**ORDINANCES - 1ST & 2ND READING**

AMENDING SECTION 8.32.150 OF THE LINCOLN MUNICIPAL CODE TO INCREASE THE ANNUAL OCCUPATION TAX FOR REFUSE VEHICLES WITH OR WITHOUT PACK UNITS USED TO HAUL AND COLLECT REFUSE FROM \$50. TO \$100., - CLERK read an ordinance, introduced by Annette McRoy, amending Chapter 8.32 of the Lincoln Municipal Code (Solid Wastes) by amending Section 8.32.150, Occupation Tax, to increase the annual occupation tax for refuse vehicles with or without pack units used to collect and haul refuse from \$50.00 to \$100.00, thereby establishing one fee for all refuse vehicles; and repealing Section 8.32.150 of the Lincoln Municipal Code, the first time.

AMENDING COUNTRY MEADOWS FINAL PLAT TO REDUCE THE BUILDING SETBACK FROM 50 FEET TO 20 FEET ON LOTS ABUTTING OUTLOT F ON PROPERTY GENERALLY LOCATED AT SOUTH 66TH STREET AND PINE LIKE ROAD -CLERK read an ordinance, introduced by Annette McRoy, amending the paragraph designated as Section 2.h. of Ordinance No. 14784 passed by the City Council on November 2, 1987 which accepted and approved the final plat of Country Meadows Addition, on property generally located at South 66th Street and Pine Lake Road, the first time.

CHANGE OF ZONE 3315 - APPLICATION OF PHIL AND MARY DURST FOR A CHANGE OF ZONE FROM R-4 RESIDENTIAL TO I-1 INDUSTRIAL ON PROPERTY GENERALLY LOCATED AT SOUTH 1ST AND L STREET - CLERK read an ordinance, introduced by Annette McRoy, amending the Lincoln Zoning District Maps attached to an made a part of Title 27 of the Lincoln Municipal Code, as provided in Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the first time.

CHANGE OF ZONE 3316 - APPLICATION OF LANCASTER COUNTY BOARD OF COMMISSIONERS FOR A CHANGE OF ZONE FROM O-3 OFFICE PARK TO P PUBLIC USE ON PROPERTY GENERALLY LOCATED AT 601 NORTH 46TH STREET NORTH OF R STREET - CLERK read an ordinance, introduced by Annette McRoy, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided in Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the first time.

DECLARING PORTIONS OF THE HIGHLANDS SOUTH PARK AS SURPLUS PROPERTY, GENERALLY LOCATED AT N.W. FAIRWAY DRIVE AND W. HARVEST DRIVE - CLERK read an ordinance, introduced by Jeff Fortenberry, authorizing the sale of a surplus tract of land generally located at N.W. Fairway Drive and W. Harvest Drive and legally described in Attachment "A", for the second time.

AMENDING THE CORPORATE LIMITS OF THE CITY BY ANNEXING APPROXIMATELY 135.27 ACRES OF PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET. (IN CONNECTION W/01-61, 01R-77, 01R-78, 01R-79, 01R-82) - PRIOR to reading:

JOHNSON Moved to suspend Council rules for Bill 01-60 to have third reading and action on this date.

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read an ordinance, introduced by Cindy Johnson, amending Section 2 of Ordinance No. 8730 passed May 17, 1965, as last amended by Section 1 of Ordinance No. 17566 passed November 1, 1999, prescribing and defining the corporate limits of the City of Lincoln and repealing said Section 2 of Ordinance No. 8730 passed May 17, 1965, as last amended by Section 1 of Ordinance No. 17566 passed November 1, 1999, as hitherto existing the third time. (**See Further Council Action under "ORDINANCES- 3RD READING".**)

CHANGE OF ZONE 3248 - APPLICATION OF M & S CONSTRUCTION FOR A CHANGE OF ZONE FROM I-2 INDUSTRIAL TO H-4 GENERAL COMMERCIAL, B-2 PLANNED NEIGHBORHOOD BUSINESS AND R-3 RESIDENTIAL ON PROPERTY GENERALLY LOCATED AT N.W. 48TH STREET AND WEST ADAMS STREET. (IN CONNECTION W/01-60, 01R-77, 01R-78, 01R-



79, 01R-82) - - PRIOR to reading:

JOHNSON Moved to suspend Council rules for Bill 01-60 to have third reading and action on this date.

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

CLERK Read an ordinance, introduced by Cindy Johnson, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the third time. (**See Further Council Action under "ORDINANCES- 3RD READING".**)

AMENDING THE CORPORATE LIMITS OF THE CITY BY ANNEXING APPROXIMATELY 110 ACRES OF PROPERTY GENERALLY LOCATED AT FLETCHER AVENUE AND TELLURIDE DRIVE. (IN CONNECTION W/01-63, 01R-80, 01R-81) -

CLERK Read an ordinance, introduced by Cindy Johnson, amending Section 18 of Ordinance no. 8730, passed May 17, 1965, as last amended by Section 1 of Ordinance No. 17623, passed February 28, 2000; amending Section 20 of Ordinance No. 8730, passed May 17, 1965, as last amended by Section 1 of Ordinance No. 17683, passed June 5, 2000, prescribing and defining the corporate limits of the City of Lincoln, Nebraska; repealing Section 18 of Ordinance No. 8730, passed May 17, 1965, as last amended by Section 1 of Ordinance No. 17623, passed February 28, 2000, as hitherto existing; and repealing Section 20 of Ordinance No. 8730 passed May 17, 1965, as last amended by Section 1 of Ordinance No. 17683, passed June 5, 2000, as hitherto existing, the second time.

CHANGE OF ZONE 3260 - APPLICATION OF NORTH CREEK L.L.C. FOR A CHANGE OF ZONE FROM AG AGRICULTURAL TO R-3 RESIDENTIAL, H-3 HIGHWAY COMMERCIAL, AND H-4 GENERAL COMMERCIAL, AND FROM R-3 RESIDENTIAL TO H-4 GENERAL COMMERCIAL AND H-3 HIGHWAY COMMERCIAL ON PROPERTY GENERALLY LOCATED AT FLETCHER AVENUE AND TELLURIDE DRIVE. (IN CONNECTION W/01-62, 01R-80, 01R-81) - CLERK read an ordinance, introduced by Cindy Johnson amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the second time.

#### MISCELLANEOUS BUSINESS

##### PENDING LIST -

CAMP Moved to extend the Pending List for 1 week.  
Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

##### UPCOMING RESOLUTIONS -

CAMP Moved to approve the resolutions to have Public Hearing on April 23, 2001.  
Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

#### ADJOURNMENT

4:40 p.m.

CAMP Moved to adjourn the City Council Meeting of April 16, 2001.  
Seconded by Johnson & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

So ordered.

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Joan E. Ross, City Clerk

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Glenna Graupmann, Office Assistant III

