

FACTSHEET

TITLE: SPECIAL PERMIT NO. 1665C, an amendment to the Van Dorn Meadows Community Unit Plan

BOARD/COMMITTEE: Planning Commission

APPLICANT: Chateau Development, LLC

RECOMMENDATION: Conditional Approval (6-2: Weber, Scheer, Sunderman, Harris, Cornelius and Lust voting 'yes'; Beecham and Corr voting 'no'; Hove absent).

STAFF RECOMMENDATION: Conditional Approval

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: Yes (See Exhibits A and B submitted under separate cover and Minutes, p.16-19).

REASON FOR LEGISLATION:

To amend the Van Dorn Meadows 1st Addition Community Unit Plan to revise the layout from 9 single-family lots to show 10 two-family dwelling units and a 20-unit multiple-family building, on property generally located at Sherman Street and Holmes Park Road. The applicant is no longer requesting a reduction of the front yard setback for parking.

DISCUSSION/FINDINGS OF FACT:

1. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.8-10, concluding that residential uses on the property are generally compatible with the surrounding properties and land uses. The apartment building will almost be fully surrounded by single- and two-family dwellings. An increased setback to the apartment building, limiting the apartment building height to two stories, retaining as many existing trees as possible, and planting street trees earlier than required, will all serve to help reduce the impact of the differential in scale as represented by the larger building. The staff presentation is found on p.13-14.
2. The applicant's testimony is found on p.14-16, and the applicant's response to the opposition is found on p.19-20, indicating that the traffic from this development will feed onto a collector street; the driveway that would put traffic on Sherman Street will be removed; multi-family housing is permitted in most zoning districts in CUP's; this is a request to amend the CUP to approve multi-family on this particular parcel where it has not been previously approved; Holmes Lake is not threatened; the developer has satisfied Public Works with respect to the grading and drainage study; the standards this development is required to meet today exceed any that were applied to Fox Hollow or Sherman Estates; and the proposal is in compliance with the Comprehensive Plan.
3. Testimony in opposition is found on p.16-19, and the record consists of a letter and petition in opposition bearing 320 signatures (Exhibit A submitted under separate cover) and 65 letters in opposition (Exhibit B submitted under separate cover). The main issues of the opposition include, but are not limited to, compatibility with the existing neighborhood; inappropriate development; substitution of a 20-unit apartment building and duplex for the luxury townhomes previously planned and publicized by the developer, resulting in a breach of trust; overcrowding of schools; drainage and runoff; traffic congestion and increase in on-street parking; traffic and pedestrian safety; and the proposal is contrary to the Comprehensive Plan in terms of promoting the health and general welfare of the community and promoting home ownership.
4. On May 28, 2014, the Planning Commission action was held over until June 11, 2014, when a motion for conditional approval was unable to garner enough votes to pass (See Minutes, p.21).
5. On June 11, 2014, the Planning Commission voted 6-2 to adopt Resolution No. PC-01400 (p.3-5), approving this special permit amendment, with conditions as set forth on p.4-5. The majority of the Planning Commission found that the proposal complies with the land use and zoning issues; this amendment could have been approved administratively but for the opposition; this proposal does comply with the Comprehensive Plan in terms of affordability of housing and infill development; and the developer has agreed to several conditions to mitigate some of the issues raised by the opposition. Commissioners Corr and Beecham dissented, finding that it is not compatible to locate an apartment building right across from the driveways of single-family, thus an incompatible transition (See Minutes, p.21-22).
6. On June 24, 2014, a letter of appeal was filed by Rebecca Z. McNeil, 3411 Fox Hollow Road (p.2).

APPEAL
of Planning Commission action
to City Council

Today's Date June 23, 2014 (this form must be received by the City Clerk within 14 days of the action by the Planning Commission)

To: City Clerk
Teresa Meier
555 S. 10th St., Ste. 103
Lincoln NE 68508
402-441-7436
tmeier@lincoln.ne.gov

Dear Clerk:

I am submitting this letter of appeal to Resolution No. PC 01400, adopted by the Lincoln-Lancaster County Planning Commission on (Date) June 11, 2014, approving Special Permit No. 1665C on property generally located at Van Dorn Meadows CUP (Outlot B)

Please advise me of the hearing date before the City Council.

Signature of person requesting appeal: Rebecca Z. McNeil

Printed Name Rebecca Z. McNeil

Address 3411 Fox Hollow Road Lincoln NE 68506
Street City State ZIP

Phone Number (402) 540-5615

Email beckyzmcneil@gmail.com

cc: Planning Department
Jean Preister
555 S. 10th St., Ste. 213
Lincoln NE 68508
402-441-6365
jpreister@lincoln.ne.gov

CITY OF LINCOLN
CITY CLERK'S OFFICE
JUN 24 11 00 AM '14
FILED

RESOLUTION NO. PC- 01400

SPECIAL PERMIT NO. 1665C

1 WHEREAS, Chateau Development LLC has submitted an application designated as
2 Special Permit No. 1665C to amend the Van Dorn Meadows 1st Addition Community Unit Plan
3 to revise the layout from nine single-family lots to show 10 two-family dwelling units and a 20 unit
4 multiple-family building, and a request to reduce the required front yard setback for parking, on
5 property generally located at Sherman Street and Holmes Park Road and legally described as:

6 Outlot B, Van Dorn Meadows 1st Addition, Lincoln, Lancaster
7 County, Nebraska;

8 WHEREAS, the Lincoln City-Lancaster County Planning Commission has held a public
9 hearing on said application; and

10 WHEREAS, the community as a whole, the surrounding neighborhood, and the real
11 property adjacent to the area included within the site plan for this amendment to the community
12 unit plan will not be adversely affected by granting said amendment; and

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

17 NOW, THEREFORE, BE IT RESOLVED by the Lincoln City-Lancaster County
18 Planning Commission of Lincoln, Nebraska:

1 That the application of the Chateau Development LLC, hereinafter referred to as
2 "Permittee", to amend the Van Dorn Meadows 1st Addition Community Unit Plan to revise the
3 layout from nine single-family lots to show 10 two-family dwelling units and a 20 unit multiple-
4 family building, on the property described above, be and the same is hereby granted under the
5 provisions of Section 27.63.320 and Chapter 27.65 of the Lincoln Municipal Code upon condition
6 that construction of said community unit plan be in substantial compliance with said application,
7 the site plan, and the following additional express terms, conditions, and requirements:

8 1. This permit approves a revised layout showing 10 two-family dwelling units and
9 one 20-unit multiple-family building for a total of 469 units within the CUP.

10 2. Before receiving building permits:

11 a. The Permittee shall cause to be prepared and submitted to the Planning
12 Department a revised and reproducible final plot plan including five copies
13 with the following revisions:

14 i. Revise the hammerhead turn-around so no paving is in the 20'
15 required front yard.

16 ii. Revise the building envelopes to show the increased setbacks being
17 proposed so the envelope for the apartment building is fully
18 dimensioned, with dimensions for the distance from the perimeter lot
19 setback to the building envelope. For the two-family dwellings the
20 building footprint inside the building envelope needs to be deleted and
21 the envelopes need to be fully dimensioned including setbacks to lot
22 lines and the separation between envelopes.

23 iii. Show the minimum required setback between the sidewalk and the
24 garage is 22'.

25 iv. Add a note which states that street trees will be planted within one
26 year of building permit approval.

27 v. Add a note which states that the four lots being removed from the
28 CUP will be recombined with the adjacent outlots prior to building
29 permits for the dwelling units shown as part of this amendment.

30 vi. Show the trees on the north end of the site to remain in place.

31 vii. Revise the grading and drainage plan revised to the satisfaction of
32 Public Works and Utilities.

33 b. The construction plans shall comply with the approved plans.

1 c. Final plats shall be approved by the City.

2 3. Before occupying the dwelling units all development and construction shall have
3 been completed in substantial compliance with the approved plans.

4 4. All privately owned improvements shall be permanently maintained by the
5 Permittee or an appropriately established owners association approved by the City Attorney.

6 5. The physical location of all setbacks and yards, buildings, parking and circulation
7 elements, and similar matters shall be in substantial compliance with the location of said items
8 as shown on the approved site plan.

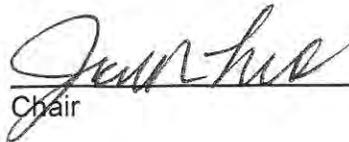
9 6. The terms, conditions, and requirements of this resolution shall run with the land
10 and be binding upon the Permittee, its successors and assigns.

11 7. The Permittee shall sign and return the letter of acceptance to the City Clerk. This
12 step should be completed within 60 days following the approval of the special permit. The City
13 Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance
14 with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee. Building
15 permits will not be issued until the letter of acceptance has been filed.

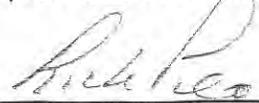
16 8. The site plan as approved with this resolution voids and supersedes all previously
17 approved site plans, however the terms and conditions of all prior resolutions approving this
18 permit shall remain in full force and effect except as specifically amended by this resolution.

19 The foregoing Resolution was approved by the Lincoln City-Lancaster County Planning
20 Commission on this 11 day of JUNE, 2014.

ATTEST:


Chair

Approved as to Form & Legality:


Chief Assistant City Attorney

005

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 28, 2014 PLANNING COMMISSION MEETING

PROJECT #: Special Permit #1665C - Van Dorn Meadows 1st Addition Community Unit Plan (CUP)

PROPOSAL: Revise the lot layout from nine single-family lots to show 10 two-family dwellings and a 20-unit multiple-family building

LOCATION: Sherman Street and Holmes Park Road

LAND AREA: Entire CUP - Approximately 52.2 acres
Area of amendment - Approximately 3.95 acres

WAIVER: 1. Adjust the front setback from 20' to 8' for parking which is otherwise not allowed per LMC 27.67.030(a)(2)

CONCLUSION: Residential uses on this property are generally compatible with the surrounding properties and land uses. In this case, it is a question of whether an apartment building, which is almost fully surrounded by single and two-family dwellings, is appropriate or not and so is largely a question of appropriate scale. An increased setback to the apartment building, limiting the apartment building height to two stories, retaining as many existing trees as possible, and planting street trees earlier than required all serve to help reduce the impact of the differential in scale as represented by the larger building.

RECOMMENDATION:

Special Permit #1665C:

Waiver: To adjust front setback for parking

Conditional Approval

Denial

LEGAL DESCRIPTION: Outlot B, Van Dorn Meadows 1st Addition.

EXISTING ZONING: R-3 Residential

EXISTING LAND USE: Vacant

SURROUNDING LAND USE AND ZONING:

North:	Two-family Dwelling Residential	R-3
South:	Single-family Residential	R-1
East:	Single-family Residential	R-1
West:	Vacant	R-3

COMPREHENSIVE PLAN SPECIFICATIONS:

Pg 1.9 - The Future Land Use Map designates this site for urban density residential land uses.

Pg. 1.10 - This site is shown in Tier I, Priority Area A on the Growth Tier Map.

Pg 7.2 - Guiding Principles

-Distribute and preserve affordable housing throughout the community to be near job opportunities and to provide housing choices within existing and developing neighborhoods.

- Make available a safe residential dwelling for all citizens. Provide a wide variety of housing types and choices for an increasingly diverse and aging population.

-Provide flexibility to the marketplace in siting future residential development locations.

- Strive for predictability for neighborhoods and developers for residential development and redevelopment.

Pg 7.4 - Strategies for Neighborhoods and Housing

- Discourage residential development in areas of environmental resources such as endangered species, saline wetlands, native prairies, and in floodplain corridors.

- Encourage preservation or restoration of natural resources within or adjacent to development.

Pg 7.8 - Vacant Land - Currently, there are roughly 350 acres of vacant residentially-zoned land in the existing built-out portion of the City. Some of the land is in the floodplain and lots scattered throughout the City. The Plan envisions some of this land will be used by 2040 since it has access to urban services now.

HISTORY:

May 1979 - The zoning update converted the zoning on this property from A-1 to R-3.

Jan 1989 - Special Permit #1301 for Van Dorn Meadows CUP and the associated preliminary plat were approved. This permit allowed a mix of elderly, two-family and multi-family housing for a total of 171 dwelling units.

Jun 1992 - Preliminary PUD #91401 was approved for 11 single-family dwellings, 42 two-family dwellings, 112 multi-family dwellings, a 329 unit retirement building, and 40,000 square feet of commercial use, replacing Special Permit #1301.

Nov 1992 - Van Dorn Meadows PUD Change of Zone #2708 was approved. This PUD approved 11 single-family dwellings, 42 two-family dwellings, 112 multi-family dwellings, a 329 unit retirement building, 15,000 square feet of office and 25,000 square feet of retail.

Mar 1997-Approved Change of Zone #3041 from R-3 PUD to R-4 and R-3 PUD to R-3.

Mar 1997 - Special Permit #1665 and Preliminary Plat #96024 for Van Dorn Meadows 1st Addition CUP were approved. The special permit and preliminary plat superceded all previous special permits, PUD's and associated preliminary plats to allow for 448 dwelling units over the area covered by the special permit.

May 2001 - Special Permit #1665A was approved to allow an additional 17 dwelling units, bringing the total to 465 dwelling units.

Dec 2013 - Special Permit #1665B was approved waiving a pedestrian sidewalk connection to Otoe Street, and requiring a fence and landscaped berm instead.

ANALYSIS:

1. This is a request to modify the lot layout for Outlot B, Van Dorn Meadows 1st Addition. It is an area included in the original Van Dorn Meadows CUP, and was shown laid out as nine single-family residential lots.
2. The proposed site plan shows the nine lots replaced by 10 two-family dwellings, and a 20-unit multiple-family building.
3. The maximum density allowed per the Design Standards for the overall CUP is 482 dwelling units. It is currently approved for 465 dwelling units. The most recent version of the approved site plan for the CUP approved by SP#1665B shows 448 dwelling units. This proposal increases the number of allowed dwelling units from 465 to 469, which is still 13 dwelling units below the maximum number allowable within the overall CUP.

The Planning Director is allowed by the Zoning Ordinance to approve the changes being proposed administratively. However, the Planning Department has been made aware that there is opposition from some neighboring property owners, and that an appeal of an administrative decision to the Planning Commission appeared likely. For this reason, it was recommended that the owner submit an application directly to the Planning Commission instead.

4. Outlot B is 3.95 acres in area, and the original 9-lot layout was designed to accommodate nine single-family dwellings. Potentially, the nine lots could be revised to a lot layout to accommodate up to 9 duplexes (two-family dwellings on a single lot) for a total of 18 units, provided the lot area requirements of the R-3 district could be achieved. The proposed layout with 30 dwelling units represents an increase of 12 units on this property. This is a density of 7.65 dwelling units per acre which is a typical density for a two-family dwelling subdivision. A project containing only apartments typically would have a density of around 20 dwelling units per acre.
5. The multiple-family building is a two story structure, and does not exceed the maximum allowed height of the R-3 zoning district, which is 35', so no additional setback beyond those of the R-3 are required. The setbacks for the subject property are as follows:
Required - Front: 20'; Side: 5'; Rear: 30' or 20% of lot depth.
Shown - Front: 25'; Side: 30'; Rear: 30'

The 'shown' setbacks noted above define the area where no structure can be placed. The buildings are actually all set back further than required. For example, the multiple-family building is set back approximately 47' from the west lot line adjacent to Holmes Park Road, in excess of 100' from the south lot line, in excess of 180' from the east lot line, and approximately 47' from the north lot line adjacent to Sherman Street.

The area where buildings will be located are shown by a combination of building envelopes and building footprints but is confusing. The site plan should be revised to show only building envelopes, with dimensions from lot lines to the building envelopes for all dwellings. As setbacks greater than those required by the zoning district are being shown for the apartment building, the increased setbacks from lot lines to the building envelopes need to be shown and made a part of site plan.

6. A waiver to the front yard setback was required to allow for parking. A hammerhead turnaround is shown extending into the required 20' front yard by 12', so a request to adjust the front yard to 8' has been requested. However, it appears the entire hammerhead is not required for vehicles to maneuver in this area, so the paving in the front yard is not necessary. As of the writing of this report, staff and applicant were discussing this issue to ensure staff and applicant were in agreement.
7. A Lincoln Electric System (LES) power transmission line easement extends across the property from northeast to southwest along the north edge of the site. So while open space and surface parking may be located within this easement, structures are not, thereby reducing the usual lot yield. So while those portions of the lot located within the easement may be used as part of the density calculation for the overall development which is based on land area, no structures can actually be built inside the easement.
8. The site plan shows existing trees on the site being removed, but it is not clear that this is necessary. The trees on the north end of the site where little grading is shown should be retained, unless the applicant can demonstrate why they must be removed.
9. The site plan shows a building setback for the entire site, then attempts to delineate building envelopes for the apartment building and two-family homes beyond that. To be clear, the building envelope for the apartment building must be dimensioned, and then dimensions for the distance from the perimeter lot setback to the building envelope must also be shown. For the two-family dwellings, the building footprint inside the building envelope needs to be deleted, and the envelopes need to be fully dimensioned including the separation between envelopes.
10. To allow parking in the two-family dwelling driveways but which does not overhang driveways, a dimension needs to be added to the site showing that the minimum setback between the sidewalk and the garage is 22'.
11. Currently platted as an outlot, it must be replatted as a lot in order to be developed. Public and private improvements are required to be either guaranteed or installed at the time of final plat. This site is lacking a sidewalk along Sherman Street, and street trees along both Sherman Street and Holmes Park Road. Typically, six years are allowed for the planting of street trees, but requiring the trees to be planted within one year of building permit approval. The sooner the trees are planted the sooner they can help screen and mitigate the impact of a two-story apartment building.
12. The developer shows two lots on Sherman Court being removed from the CUP. Staff has also been told that the two undeveloped lots east of the apartment building across Holmes Park Road are also being removed. If this is the intent, a condition of approval needs to be added which states that the four lots in question lots will be recombined with

the adjacent outlots prior to occupancy permits for the dwelling units shown as part of this amendment.

The loss of four lots offsets a portion of the increase in dwelling units proposed with this request. Also, the two lots on Sherman Court which are being eliminated creates the potential for increased open space in the area of the adjacent two-family dwellings, and for the larger neighborhood overall.

13. Public Works and Utilities has reviewed the grading and drainage plan, but revisions are still required. The applicant will need to revise the grading and drainage plan to the satisfaction of the department, and this requirement is a recommended condition of approval.
14. A right-of-way stub off Sherman Street is shown to be vacated. A street vacation requires a separate action by the City Council, and so the applicant will need to prepare and submit a properly executed petition for vacation to initiate the process.
15. Without access onto Sherman Street, a single access point is shown onto Holmes Park Road, which functions as a collector street in this area. Built wider than a typical local street (36' versus 27'), the increase in traffic as a result of the increase in dwelling units (30 versus 18) should not be significant. Wider streets encourage higher speeds, and jogs and disruptions on a street tend to help reduce speeds. On-street parking and driveways also serve to help reduce the speed of cars, and project's driveway being located just past a curve in Holmes Park Road should as well.
16. Residential uses on this property are compatible with the surrounding properties and land uses. The main question is whether an apartment building which is almost fully surrounded by single and two-family dwellings as proposed is appropriate or not, and so is largely a question of appropriate scale. Increased setbacks to the apartment building, limiting the apartment building height to two stories, retaining as many existing trees as possible, and planting street trees earlier than required all serve to help reduce the impact of the differential in scale as represented by the larger building.
17. Residential uses on this property are compatible with the surrounding properties and land uses. Given the site is almost fully surrounded by properties developed with single-family dwellings, the measures proposed to mitigate the impact of this development should be considered the minimum necessary to do so. Subject to the conditions of approval, this request complies with the Zoning Ordinance and is consistent with the Comprehensive plan.
18. Other minor items were noted during the review, and they are included as recommended conditions of approval.

CONDITIONS OF APPROVAL:

This approves a revised layout showing 10, two-family dwellings and one, 20-unit multiple-family building for a total of 469 units within the CUP.

Site Specific:

1. The developer shall submit five full-sized copies of the site plan to the Planning Department including the following:
 - 1.1 Revise the hammerhead turn-around so no paving is in the 20' required front yard.
 - 1.2 Revise the building envelopes to show the increased setbacks being proposed so the envelope for the apartment building is fully dimensioned, with dimensions for the distance from the perimeter lot setback to the building envelope. For the two-family dwellings the building footprint inside the building envelope needs to be deleted and the envelopes need to be fully dimensioned including setbacks to lot lines and the separation between envelopes.
 - 1.3 Showing the minimum required setback between the sidewalk and the garage is 22'.
 - 1.4 Add a note which states that street trees will be planted within one year of building permit approval.
 - 1.5 Add a note which states that the four lots being removed from the CUP will be recombined with the adjacent outlots prior to building permits for the dwelling units shown as part of this amendment.
 - 1.6 Show the trees on the north end of the site to remain in place.
 - 1.7 The grading and drainage plan revised to the satisfaction of Public Works and Utilities.

General:

2. Before receiving building permits:
 - 2.1 The construction plans shall comply with the approved plans.
 - 2.2 Final plats shall be approved by the City.

Standard:

3. The following conditions are applicable to all requests:
 - 3.1 Before occupying the dwelling units all development and construction shall have been completed in compliance with the approved plans.

- 3.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established owners association approved by the City Attorney.
- 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
- 3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
- 3.5 The applicant shall sign and return the letter of acceptance to the City Clerk. This step should be completed within 60 days following the approval of the special permit. 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 therefore to be paid in advance by the applicant. Building permits will not be issued unless the letter of acceptance has been filed.
- 3.6 The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all prior resolutions approving this permit remain in full force and effect as specifically amended by this resolution.

Prepared by:

Brian Will, 441-6362, bwill@lincoln.ne.gov

May 14, 2014

APPLICANT/

OWNER: Chateau Development, LLC
3100 South 72nd Street
Lincoln, NE 68506
402-464-6186

CONTACT: Mike Eckert
Civil Design Group
8535 Executive Woods Drive
Lincoln, NE 68512
402-434-8494

SPECIAL PERMIT NO. 1665C, AN AMENDMENT TO THE VAN DORN MEADOWS COMMUNITY UNIT PLAN (CUP)

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 28, 2014

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

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed.

Staff presentation: **Bran Will of Planning staff** stated that this is the third amendment to the Van Dorn Meadows CUP, located southeast of the intersection of South 70th Street and Van Dorn. It is behind the grocery store and commercial. We are talking about the area at the very southeast corner of the CUP (Outlot B, 3.95 acres). Will displayed the original plan for Outlot B of Van Dorn Meadows demonstrating the original layout showing 9 lots (assumed to be 9 single-family dwellings), although potentially by right or by administrative amendment, the number of duplexes could be doubled in the R-3 zoning district. Will was not sure there is enough area to get 18 dwelling units, but somewhere between 9 and 18.

Will stated that the question he had several times during the review period relates to density. Sort of uniquely, this CUP has split zoning with R-3 to the north, the middle portion zoned R-4 and then the south is R-3. Staff discussed the number of units being proposed with a revised layout from 9 units to 10 two-family dwellings and a 20-unit multi-family apartment building. The density calculation for a CUP relates to the underlying zoning district. The design standards talk about specific density allowances based upon the zoning district. The result is that either the original 9 lots or the 30 requested by this proposal are within the original number allowed by the design standards.

Under the original CUP, up to 482 dwelling units would be allowed under the design standards. There were 448 dwelling units shown as approved under the CUP. Will pointed out that by administrative amendment, the Planning Director could have approved this plan because he is authorized to approve a minor increase in the number of dwelling units within the CUP as well as minor revisions to the site plan; however, in this case, after the applicant had shown the proposed plan to the neighbors, Planning staff knew there was opposition and the Planning Director would not approve administratively. And that is why we are here today.

Relative to the apartment building, which has generated the most opposition, Will advised that the staff is recommending conditions of approval to help mitigate the impact of that building, i.e. street trees; a revised grading and drainage plan; limit the height of the building to two stories as opposed to three; and revising the building envelopes to show the increased setbacks being proposed. All factors taken together, the Planning Department is recommending conditional approval.

Will then addressed the waiver request to allow some parking in the front yard. Staff is recommending denial of that waiver.

Beecham wondered whether there has been discussion in general – not just on this CUP – about a nice prototype of mixed use. She drove by this site today and is curious what the thinking was as to why an apartment is an appropriate use in this particular location. Will indicated that the staff did debate that issue. Van Dorn Meadows is sort of classic in its layout, with higher density to the north, four-plexes on the east boundary adjacent to single-family, moving down to the open space/detention facility with two-family dwelling units adjacent to the single-family. With what is being proposed today, the question becomes: Is there some real good sound basis for denying this application, with all apartments and moving them close to the lot lines? But, as the applicant revised this plan showing the two-family dwellings to the east; they reduced the height of the building; and they increased the setbacks more than in other cases, staff believes that there was an attempt to mitigate the impact of that apartment at that location. We are talking about residential uses. They are proposing all residential dwellings and given that, there was not really a hard basis to recommend denial.

Proponents

1. **Mark Hunzeker** appeared on behalf of the developer, **Chateau Development**. This is an application to amend a CUP that was originally approved in 1989, 25 years ago. The applicant is not proposing a change of zone; they are not proposing an increase in the overall permissible density in the CUP. The bottom line is that, even with the proposed increase before the Commission, this proposal is 13 units less than what is authorized to be built within this CUP.

Hunzeker pointed out that Chateau is in the apartment business. They have owned apartments in Lincoln and have been good developers of multi-family housing in this community for a very long time.

Hunzeker submitted that this property is challenging for single-family development because of its irregular shape. In addition, about 11% of the total site lies inside the power line easement that runs across the northern side of the site. There have been efforts to market this site but the power line has not been helpful. There are a lot of costs associated with this site. Back when this was originally developed, Chateau had to build Holmes Park Road from the point at the edge of Fox Hollow all the way to 70th Street; and had to build Sherman all the way from the western edge of Fox Hollow down to Holmes Park Road, so there is a lot of cost that really affects what is already invested in this project.

Hunzeker also advised that originally, the developer took a plan to the Planning Department to develop some apartments which involved 66 units, and the Planning Department said they needed to work on getting the heights down and go for less units. The developer took a plan to the neighborhood association that showed 60 units. There was quite a bit of push-back so they went back to the drawing board and came back to the neighborhood association with a plan that had two apartment buildings for a total of 40 dwelling units. The neighborhood association didn't like that either – they said, “no, that's still too much, we don't like the apartments”. The developer again revised the plan and came back with this final proposal, which is 30 units total, involving 10 townhouse units on the east side (finished floor elevation is 8' below the finished

floor elevation of the houses to the east); setbacks on the apartment building are 47 feet from Sherman; 47 feet from Holmes Park Road; over 100 feet from the south property line, and it's a two-story unit. This proposal stays within the allowable height in the R-3 district.

In summary, Hunzeker submitted that this is a project below the allowable density in the CUP; its density on the site alone is about what you would expect for a duplex development; it eliminates access to residential streets; it will vacate the Sherman right-of-way stub and Sherman will not be used for access; all access comes out to Holmes Park Road, which is a collector street. This proposal is 25% below the number of allowable units for a single access point; this project is in accordance with the Comprehensive Plan; and the applicant has absolutely no objections to any of the conditions of approval.

With regard to compatibility of the multi-family with the single-family, it seems that a mistake was made a long time ago when it was first suggested that multi-family dwellings ought to be physically separated from single-family dwellings. It has caused more conflict over the course of time than any single other issue. The apartments are residential in character and these units will be compatible and well managed.

Hunzeker observed that on the previously approved CUP at the north end, there is a progression of commercial to higher density residential to single-family, but there is multi-family immediately adjacent to single-family in other areas of the CUP. No one has ever suggested that the value of those single-family homes has been adversely affected. You will not find an appraiser anywhere who has looked at the sale data that would say that the values decrease. This is a project that is in accordance with the Comprehensive Plan and the CUP design standards, and Hunzeker requested approval.

Harris inquired as to the location of the street trees that would be planted in advance. Hunzeker stated that they are along Sherman and along Holmes Park Road, but there would also be screening along the property line. If you've been there, you know that there are a lot of mature trees along the east property line, and those will be saved. To the extent that it is a benefit, we are able to keep those trees because no one really likes to take them down and it is expensive.

Beecham asked Hunzeker to address the landscaping along the Sherman Street edge. Hunzeker indicated that there would be landscaping that would occur in the area of the turn-around in addition to the existing trees. There may be some berming that would go with that.

Scheer clarified that the trees shown to be removed on the east side will not be removed. Hunzeker agreed. Staff is recommending that removal not occur by the conditions of approval and the applicant will not object.

Hunzeker confirmed that there is going to be a sidewalk along Sherman on the south side. Corr wondered whether the apartments or the single-family homes were developed first. Hunzeker believes that the single-family in Fox Hollow preceded virtually all of the multi-family development.

Corr asked for the elevation of the apartment building. Hunzeker stated that the site continues to drop from east to west, so generally speaking, there is a little bit of the site that is not being developed that drains to the north, but the rest of it drains "this way" so the finished floor

elevation of the building will be below the finished floor elevation of the townhouses. The first floor elevation will be below the single-family dwellings to the east.

Scheer inquired about the view to the north facade of the apartment building. In other words, is this a double-loaded apartment building? **Mike Eckert of Civil Design Group** approached to explain that Chateau plans on emulating similar buildings done within the last four years. There is brick, there is break in elevations, lower level patio and upper level deck; center corridor. It can load from both sides.

Opposition

1. Rev. Dr. Rebecca Z. McNeil, 3411 Fox Hollow Road, serving as the Chair of the Fox Hollow and Sherman Townhomes Coalition that formed in opposition to this proposal, testified in opposition. She stated that she is speaking on behalf of many of the neighbors who have taken off work to attend this hearing and then asked those in the audience to stand. She stated that she is also speaking on behalf of the 320 concerned citizens who have submitted signatures in opposition.

First, on behalf of all these neighbors, McNeil requested some clarification regarding the submitted plan. In some of the communications it stated 5 duplexes, which will total 10 dwellings, but in other communications it says there will be 10 duplexes. The neighbors have deep concern that there may be an additional 20 dwelling units being added to this plan. We want to know exactly how many front doors and entrances there will be along the eastern edge of Outlot B.

These neighbors are opposed to the granting of this variance because it does not meet the standards of good planning practice. The stated purpose of the zoning code includes promoting the health and general welfare of the community; lessening congestion in the streets; preventing overcrowding of land; and to encourage the most appropriate use of land throughout the city. The Comprehensive Plan also specifies that new construction should be built consistent with existing neighborhoods and promoting home ownership should remain the focus in established neighborhoods.

McNeil submitted that this proposal is not sensitive to the existing neighborhood. It does not honor well-established best practices in city planning for appropriate transition from commercial to apartment to duplex to single-family homes, allowing for ample green space and compatibility of use. It leapfrogs or allows a slip-in of apartments into a lot abutting single-family homes in a way that has not been allowed previously anywhere, at least in our quadrant of the city. Currently, along Holmes Park Road, there are businesses (Russ's IGA and Park One Development) and then coming down, there are apartments, and then the retaining pond, and then we have the Sherman townhomes, and then we have single-family homes. To put an apartment building "here" is to leapfrog the already well designed transitioned neighborhood. Currently, those transitions are lovely.

McNeil also pointed out that Mr. Gaspar himself, when he appeared before this commission in 1997 regarding the plans to build the Park One office building, spoke about the transition plan for the neighborhood. Reciting from the minutes, "Mr. Gaspar also contends that this project gives a textbook transition from commercial to office to high density multi-family to four-plex to single-family," and that's at the northern end of the Chateau development.

McNeil suggested that a good plan has been in place for over 20 years, and this request is contrary to Mr. Gaspar's admitted best practice, substituting a 20-unit apartment building and duplex for the townhomes previously planned and publicized for Outlot B.

McNeil also observed that there has been no attempt to show that the buildings will be consistent with the existing homes. Unlike Sherman Townhomes bordering this property, this plan does not include lovely green spaces. The development would put apartments in the front yards of the Sherman Townhome neighbors.

McNeil pointed out that the recommendation of the Planning Department recognizes that the scale is not appropriate, however, suggesting it is mitigated by planting of street trees earlier than would otherwise be required. Item #16 suggests a way in which the impact might be reduced. In other words, "making it so it won't be as bad."

McNeil reminded the Commission that it is the Commission's calling to strive for the highest and best use of the land, not to attempt to minimize an unnecessary eyesore.

McNeil then discussed the school situation. This is a neighborhood where the schools are already stressed and over-capacity, where concerns for drainage and mitigation of runoff is well documented, and where on any given school morning traffic, Holmes Park Road is already backed up from 70th Street all the way to Sherman, and sometimes further back into the neighborhood.

Referring to the Comprehensive Plan, McNeil does not believe that granting this variance will promote the health and general welfare of the community; it will not promote home ownership; it will not facilitate the adequate provision of schools. She requested that the developer be required to keep the CUP which has been in place for over 20 years. The existing Sherman Townhomes are each owner-occupied. Building additional luxury townhomes on Outlot B won't increase the density and overtax congested streets and schools. If this change is allowed, this development will be attractive, especially to families of school age children and to young adults, which are precisely the most likely to further and unnecessarily burden the already overflowing traffic and schools.

McNeil also stated that drainage is a problem. Heavy rains already result in high water behind their homes and on occasion the catch basin to the northwest spills over onto Holmes Park Road. Citizens have made an investment of millions of dollars to clean and protect Holmes Lake. This variance unduly threatens that good civic work.

McNeil also suggested that approval of this proposal will put future tenants and other neighbors at risk for their personal safety with the entrance just north of a blind curve on Holmes Park Road. While Planning has told us that an increase in parked cars along Holmes Park Road will slow traffic, she can foresee that increase in parked cars and increase in young families is a recipe for disaster. Pedestrians cross Holmes Park Road to get to the dog run; pedestrians cross Holmes Park Road to get to the underpass to go to Holmes Park. If there is more density and more children and an increase in cars parked on the street, it will be very dangerous. That is an increased risk which the Planning Commission has the opportunity to prevent.

These neighbors are opposed to this variance because it represents a breach of trust; a failure on the part of the developer to act in good faith by maintaining the CUP which has been

published for over 20 years. For the past 20 years, all of the present owners of Sherman Townhomes, and those on Fox Hollow Road, Fox Hollow Circle, Raven Court, and Holmes Park Road were told that Outlot B would be developed into more luxury townhomes. Outlot B has always been represented and advertised to be “Luxury Townhomes by Chateau Development”. The Commission has received a letter from Nelda Hunt who sold many of the original townhomes attesting to this. The developer now simply states that he has changed his mind because he is a business man and is seeking the greatest return on his investment. McNeil suggested that such a change in plan is duplicitous. This is changing the rules of play in the middle of the game. It gives an unfair advantage to one business man over 320 neighbors. Gaspar’s plan will adversely affect the quality of life of these neighbors; it will unnecessarily invade their privacy and the end result will cause an involuntary transfer of wealth from the area homeowners to Chateau Development.

Those supporting McNeil’s testimony again stood in the audience. For all of the reasons she has recited, McNeil urged the Planning Commission to please deny this request for a variance for Van Dorn Meadows, Outlot B.

With regard to the people signing the petition, Corr asked if the 320 signatures represent 320 property owners, neighbors, husband and wives, etc. McNeil acknowledged that some are from the same residence.

2. Rene Mayo-Rejai, 7515 Sherman Street, testified in opposition. Sherman Street is the only access way out of her neighborhood to get onto 70th Street. Every day in the morning, she meets a minimum of five to ten cars of parents taking their school children, turning on 70th Street, coming up to Sherman to cut through to get to Lux Middle School. She does not believe there has been a proper traffic count. She submitted that the traffic will exceed 100 cars per day if they were to do a proper traffic study. They often get backed up for three traffic light changes. 70th Street is the feeder for Lincoln East, Pius, Morley, the Catholic grade school and Lux Middle School. It is a very blind intersection. Sherman curves and dips down and you cannot see around the next curve. That will now be blocked by the garages. People are going to park on Sherman. Our only access point to 70th Street is Sherman. It cannot handle the traffic flow. There needs to be a proper traffic count during the school year.

3. Jim Klein, 3511 S. 75th Street, testified in opposition. He suggested that this is dealing with a “bait and switch” because when the existing CUP was filed, it showed the luxury townhouses and it showed single-family lots across the street from Sherman. Now, we are at the point where the use for that lot is being changed to apartments. If the reverse had happened – if that CUP had been constructed with an apartment complex in that area and the apartments had gone in first, do you think those luxury townhouses could have been sold and developed the way they were? The answer is “no”.

Klein referred to the representation that this developer is in the business of building apartments. That was not what the developer said when he filed the original CUP. Now the townhouse development is there, and only now is he coming forth and saying he builds apartments. Klein believes the developer is trying to maneuver himself through the planning and approval process in a way that is unfair.

Klein submitted that what is being proposed is not consistent with the Comprehensive Plan because it does not promote private home ownership, and that is not what happens in this case. This plot is bordered on three sides by private owners.

Responding to the applicant's presentation about the apartments to the north that are adjacent to single-family homes, McNeil pointed out that what is next to those apartments that are adjacent to the single-family homes up north is commercial. But with this apartment complex, you have single-family on three sides. The residents of this proposed development are actually going to be between apartments. That demonstrates that this proposal does not comport with the Comprehensive Plan because it does not promote private home ownership.

4. Steve Salisbury, 2941 Fox Hollow Road, testified in opposition. His concern is whether this development is in compliance with the requirements of the power lines. He is curious whether 47 feet from that power line meets the code. The power lines hang low and he wants to make sure they have enough clearance to meet code.

5. Sara Payne, 3308 Fox Hollow Road, testified in opposition. The trees that are currently in place are rather old. She believes the construction of this development will change the root structure of the trees and it will be difficult for them to survive. She does not believe they will be able to keep any of the current trees. The other trees on Outlot B are not in good condition, so if they are going to cut the land down then there is no way those trees will survive. There will be no trees left after construction. There will be nothing between the construction and the property owners on Fox Hollow Road. There will also be no barrier between Raven Circle and the building because all of those trees will have to be taken out.

Staff questions

Harris asked staff to address the power lines. Will stated that LES would tell us that you cannot place any building structure within the easement, but you can have plantings. Street trees adjacent to the street frontage would not be prohibited, but they would have to be a particular variety approved by LES. As far as he knows, there is no additional setback from that easement beyond what is shown. They just cannot have any buildings inside of it. Will also confirmed that there is sufficient clearance from power lines.

Cornelius asked staff to discuss the level of traffic on Holmes Park Road. Will stated that it is wider than a typical street - 36' versus 27'.

Response by the Applicant

Hunzeker noted that it has been suggested that the developer should be bound by the CUP that was approved 25 years ago. Almost everyone on this Commission has been here long enough to have seen more than one change in any particular CUP, and it is literally inevitable. It would be a mistake to discourage a developer from including all of his property within a CUP in order to master plan and give some level of predictability. There are always changes, particularly in large CUP's developed over long periods of time.

As far as the easement issue, Hunzeker clarified that the 47' measurement he was alluding to is the setback from the right-of-way line of Holmes Park Road to the building and from the right-of-way line of Sherman Street to the building. The building sits outside the power line easement and is in compliance.

With regard to the suggestion that the trees won't survive the grading plan, Hunzeker believes that may be exaggerated. The slope anticipated from each property line down to finished floor elevation is less than a 3:1 slope, so he is pretty sure the trees will survive.

Addressing the traffic, Hunzeker pointed out that Public Works agreed that there is no need to do a traffic study. The traffic from this development will feed onto a collector street. The driveway that would put traffic on Sherman will be removed.

Hunzeker stated that he does not understand garages blocking views on Sherman Street because there is nothing in that front yard anywhere near that would block a view, and the corner is 47' off the right-of-way in both directions. It exceeds any sort of view triangle that is suggested almost anywhere.

Hunzeker then clarified that this application is not a variance. This is a change to a CUP, and multi-family housing is permitted in most zoning districts in CUP's. This is a request to amend the CUP to approve multi-family on this particular parcel where it has not previously been approved. Holmes Lake is not threatened. The developer has satisfied Public Works with respect to the grading and drainage study; the standards this development is meeting today exceed any that were applied to Fox Hollow or Sherman Estates.

Hunzeker then referred to a letter purported to be written on behalf of the homeowners association suggesting a compromise of 18 to 20 townhome units on this property. Putting that into context, Hunzeker pointed out that part of this application would abandon two units which are approved but unbuilt on the north side of Sherman and two units approved but unbuilt on the west side of Holmes Park Road, reducing the total number of units by four. Thus we're really talking about a net six units over and above what was proposed as a compromise. This does not inject that much change, and certainly not one catastrophic for the neighborhood.

As far as transfer of wealth, Hunzeker believes that any appraiser who has examined the actual sales data, will tell you that there is not an impact on property values.

This proposal is in compliance with the Comprehensive Plan; we are putting the traffic where it belongs; we are putting the number of units to a single driveway well within the parameters of the design standards; and we think this should be approved.

Corr inquired about the number of duplex units along the east side. Hunzeker stated that there will be 10 dwelling units (5 duplexes), 10 front doors and five structures. There will be 20 dwelling units in the multi-family, for a total of 30 dwelling units.

ACTION BY PLANNING COMMISSION:

May 28, 2014

Scheer moved to approve the staff recommendation of conditional approval, seconded by Harris.

Scheer stated that from a land use and zoning issue, he cannot find a reason not approve this. There is an issue referred to as “bait and switch”, but he cannot deal with that as a Planning Commissioner. From a land use planning perspective, it would be really difficult to deny this.

Beecham disagreed. Apartments coming into a neighborhood like this can have an impact when built right across the street from single-family. That doesn’t mean it can’t work, but we need to be careful and thoughtful. In this case, driving through this neighborhood, Beecham felt like the area overall has a really nice layering effect that we try to accomplish with mixed-use development. She is not comfortable putting an apartment in the middle and she does not believe it is compatible with the area round it.

Harris agreed with Scheer. This seems to largely be a problem of timing. If this proposed project had come earlier, everyone would have understood the rules of engagement and some of the controversy could have been avoided. Since nothing is being requested out of the ordinary, and the fact that this could have been approved administratively had it not been for the opposition, she fears the consequences of the Planning Commission getting involved in the predictability of the market, which is a guiding principle of the Comprehensive Plan.

Cornelius agreed with Harris and Scheer, and to some extent with Beecham. It can be an issue when a higher density development goes in the middle of low density development. The Comprehensive Plan does not have a unitary goal. It has several goals, sometimes competing. Among those goals are, e.g., diversity of housing; affordability of housing; infill development. He believes that what is at the center of this issue is a predictability issue and that is not something in which the Planning Commission can get involved. If we had a firm set of strong design standards in place (which we are working towards with the reFORM initiative), this would be a lot less scary to talk about. He believes the new design standards would make a development like this less of a concern for the neighbors.

Motion for conditional approval failed 3-2: Cornelius, Harris and Scheer voting ‘yes’; Beecham and Corr voting ‘no’; Lust, Weber, Sunderman and Hove absent. Due to failure of the motion to carry by 5 votes, this application is automatically held over until June 11, 2014, for administrative action only. The public hearing has been closed.

ACTION BY PLANNING COMMISSION:

June 11, 2014

Members present: Beecham, Weber, Scheer, Sunderman, Harris, Corr, Cornelius and Lust (Hove absent).

Staff recommendation: Conditional Approval.

There were no ex parte communications disclosed.

It was stated that the public hearing was closed on May 28, 2014, and that the Commissioners have received no additional information since the close of the public hearing.

Cornelius moved to approve the staff recommendation of conditional approval, seconded by Scheer.

Cornelius indicated that his comments today are the same as they were at the hearing on May 28, 2014. The argument made in opposition was that this amendment does not conform with the Comprehensive Plan and he does not believe that is true. There may be elements that are in conformance and some that are not in conformance. Based on the arguments he made two weeks ago, Cornelius stated that he is still inclined to support this application.

Beecham stated that she will still oppose. She believes that this particular location is not compatible with the Comprehensive Plan. We have the layering in place – the layout where we are trying to do single-family, then single-family townhomes, then apartments, then commercial. She does not believe it is compatible to put an apartment building right across from the driveways of the layer of single-family.

Lust stated that she did review all of the testimony at the public hearing and she will support the application. Every time we want to put an apartment development in an existing neighborhood, the neighbors do have concerns and that is understandable. But looking at the overall application, it is actually less than the allowed density would be otherwise. The applicant has agreed to several conditions that are mitigating several issues that many of the neighbors raised. She believes the applicant did a good job in repeatedly attempting to lower the density and make the development more neighborhood-friendly, so she believes the way it has been presented deserves the Planning Commission's support.

Motion for conditional approval carried 6-2: Weber, Scheer, Sunderman, Harris, Cornelius and Lust voting 'yes'; Beecham and Corr voting 'no'; Hove absent. This is final action, unless appealed to the City Council within 14 days.