MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, February 28, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Jon Carlson, Gene Carroll, Michael Cornelius, Dick Esseks, Gerry Krieser, Lynn Sunderman and Tommy Taylor (Mary Strand and Roger Larson absent); Marvin Krout, Ray Hill, Mike DeKalb, Tom Cajka, Christy Eichorn, Brandon Garrett, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held February 14, 2007. Motion for approval made by Carroll, seconded by Cornelius and carried 7-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Sunderman and Taylor voting 'yes' (Larson and Strand absent).

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: February 28, 2007

Members present: Carlson, Carroll, Cornelius, Esseks, Krieser, Sunderman and Taylor; Larson and Strand absent.

The Consent Agenda consisted of the following items: **COUNTY CHANGE OF ZONE NO. 07005, CHANGE OF ZONE NO. 07007, SPECIAL PERMIT NO. 07003, STREET AND ALLEY VACATION NO. 07001 and WAIVER NO. 07001.**

Ex Parte Communications: None.

Carroll moved to approve the Consent Agenda, seconded by Cornelius and carried 7-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Sunderman and Taylor voting 'yes'; Larson and Strand absent.

Note: This is final action on Special Permit No. 07003 and Waiver No. 07001, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

WAIVER NO. 07002
TO WAIVE THE SIDEWALK REQUIREMENTS
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14ST STREET AND G STREET
(4025 AND 4045 G STREET).
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 28, 2007

Members present: Sunderman, Esseks, Krieser, Taylor, Cornelius, Carroll and Carlson; Strand and Larson absent.

Ex Parte Communications: None.

Staff recommendation: Denial.

Staff presentation: **Ray Hill of Planning staff** explained that the sidewalk requirements are contained in the subdivision ordinance. Planning staff still believes that the Comprehensive Plan and the subdivision ordinance are correct in requiring the installation of sidewalks. The staff has reviewed this application to waive the installation of sidewalks at 4025 and 4045 G Street and does not find any unusual circumstances that would warrant modification to the subdivision regulations relating to the installation of the sidewalks.

Esseks inquired whether there is any recent precedent for this type of request. Hill indicated that these waiver requests come up frequently and unless there are unusual circumstances (such as physical conditions, i.e. retaining walls, difference in grade) that would create a problem, the staff has required that the sidewalks should be installed. The existence of grading problems, retaining walls, etc., would be considered a hardship. Hill pointed out that this location is in the public right-of-way. He acknowledged that there are no sidewalks immediately adjacent, but suggested that we will never get sidewalks if this is used as the reason for granting the waiver.

Esseks inquired whether such a waiver has been allowed with similar circumstances as this. Hill did not believe there had been in the past year.

Proponents:

1. Rebecca Cast, 4831 Mandarin Circle, testified as the applicant for the waiver. She stated that she appeared before the Planning Commission during the hearing on the 40th and A downzone. The subject property was excluded form that downzone and the properties have remained zoned R-4. They were required to post a bond for the sidewalks and they had planned to remove an old house that had fire damage and develop a duplex. At that time, due to health issues, she and her husband decided not to put the duplex in but to put the property up for sale. It has been for sale since 2002. The owners are seeking this waiver of sidewalk at this time because of the location with respect to the grade and

the city trees that are in the way if a sidewalk is installed. When a new structure is put on the property, there will be some grading done and a sidewalk would have to be removed and re-installed. The trees will have to be removed if the sidewalk is constructed.

Cast indicated that she is not opposed to sidewalks. She believes that the Comprehensive Plan does a good job on new subdivisions where there are new properties being built and there is continuity with the sidewalks. Cast then showed a map depicting the location of current sidewalks in the area surrounding the subject property. They are sporadic, with bits and pieces here and there. No sidewalks have been added to any of the existing sidewalks to provide any continuity. The property is unchanged. She believes it would be beneficial to the owner or future buyers to waive the requirement for the sidewalk at this time and to deal with the sidewalk at the time of a new structure. In addition, Cast does not believe the sidewalks are meeting the ADA requirements. A sidewalk that goes nowhere does no good for anyone.

There was no testimony in opposition.

Staff questions:

Carroll inquired as to the background on the bonding for the sidewalk, time limit, etc. Hill explained that the owner has four years to complete the sidewalk and the bond is 25% of the actual estimated cost. At the end of the bond time, the installation is to take place. The bond is not to be renewed. If the bond does not cover the total cost, the owners would be responsible for the rest of the cost. Hill suggested that if the Planning Commission is willing to make an adjustment to the application, it may a situation where the completion date could be extended another four years as opposed to waiving the sidewalk. Staff does not believe it is appropriate in this situation to waive the sidewalk because once waived all of the burden is on the city to create an assessment district, which becomes difficult politically.

Carroll confirmed that if there is new construction, the sidewalk must be installed at that time. Hill concurred.

Taylor inquired about removing the sidewalk due to additional grading, etc. Hill suggested looking at the big picture. If construction occurs, there will be heavy equipment going across the sidewalk and there may have to be some trenching for services to the property as it is built, but there are ways to get around that. The sidewalk could be replaced at the same time. Staff does not believe there is any reason to waive the sidewalk at this time. An additional four years from the date of the final plat approval could be considered.

But on the positive side, Esseks pointed out that the owners did get the city's permission to make the reconfiguration of the property for two lots suitable for duplexes. Hill agreed, especially since they were left out of the downzoning. They had marketable lots but they could not have been duplexes. They now have two lots.

Response by the Applicant

With regard to existing sidewalks in the area, Cast pointed out that the city has not followed through in making this a workable plan. This is an older neighborhood and unless the city forces the sidewalks to be constructed, they are not going to be installed. She reiterated that she is not opposed to sidewalks and had they constructed the duplex, they would have constructed the sidewalks. The unit on the corner had a fire and is not occupied. The other is a single family home with a tenant.

Carroll asked the applicant whether she would consider an extension versus denying the waiver. That would allow the owners to sell the property in the next three years without constructing the sidewalk. Case agreed that an extension would be better than putting the sidewalk in now. They are still attempting to sell the property.

ACTION BY PLANNING COMMISSION: February 28, 2007

Carroll moved to extend the requirement for installation of sidewalks an additional four years from the date of the final plat approval to February, 2010, seconded by Taylor and carried 7-0: Sunderman, Esseks, Krieser, Taylor, Cornelius, Carroll and Carlson voting 'yes'; Strand and Larson absent. This is a recommendation to the City Council.

ANNEXATION NO. 06022,
CHANGE OF ZONE NO. 06082
FROM AG TO AGR
and
PRELIMINARY PLAT NO. 06011,
WOODLAND VIEW 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT S.W. 40TH STREET AND WEST A STREET.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 28, 2007

Members present: Sunderman, Esseks, Krieser, Taylor, Cornelius, Carroll and Carlson; Strand and Larson absent.

Ex Parte Communications: None.

Staff recommendation: Approval of the annexation and change of zone, and conditional approval of the preliminary plat, as revised.

Staff presentation: **Christy Eichorn of Planning staff** explained that this proposal is in conformance with the Comprehensive Plan and the future land use map shows this area as urban residential to the north and east and low density residential to the south and west. The 2030 Comprehensive Plan also shows the property in Tier I, Priority A, which means it is designated for near term development, is generally contiguous to existing development

and should be provided with basic infrastructure within six years. The proposal includes some area that is already annexed. Eichorn cautioned, however, that the proposed development, although in conformance with the Comprehensive Plan, does have some issues dealing with the sanitary sewer. The applicant is still working to resolve the issues pertaining to the sewer alignment and easement, and gaining access to the abutting properties.

Eichorn displayed the site plan showing the sanitary sewer easement going through abutting property owners to connect to S.W. 36th Street. The applicant does not yet have the easement in place.

Esseks inquired as to the implications of the failure to secure an easement. Eichorn indicated that the proposed subdivision could not have sanitary sewer and the development would not be able to go through. The applicant's representative will address these issues in his testimony.

Proponents

1. Mark Hunzeker appeared on behalf of Joey Hausmann, the owner and applicant, and requested to only address the annexation, with the change of zone and preliminary plat placed on the Planning Commission pending list, pending action by the City Council on the annexation request.

Hunzeker noted that the entire area is shown in the Comprehensive Plan for urban residential in Tier I, Priority A. The Hausmann property meets all the criteria for annexation, zoning and subdivision of the site. Water is available, but the sewer needs to run through property which the applicant does not control. This area is an extensive drainageway that runs from southwest to northeast through the entire site along the west side of the Woodland View subdivision and runs on up to the north. The sewer will need to connect at "about this point" and "up through here" across to S.W. 36th Street.

Hunzeker indicated that his client has had contact with the owners of the property to the north who have declined to allow him to extend that sewer voluntarily at this time. Hunzeker believes that it would be appropriate to take the annexation and an annexation agreement forward to the City Council that allows for either 1) the sewer to be constructed by an Executive Order, which would entail voluntary grant of the easements and construction at his client's expense; or 2) the possibility of construction by a district, which would enable the city to acquire the easement to extend the sewer, and again, with the possibility of assessments. In this case, #2 is unlikely because the applicant is not proposing to annex the properties through which the sewer will extend. The third, and maybe the second of really two alternatives, is to ask the city to allow the developer to build the sewer after acquiring an easement, and for the developer then to be reimbursed through the use of tap fees at such time as the other properties are developed and tap into that sewer. It is common for sewers to be extended short distances outside the city limits.

The city ordinance allows for establishment of tap fees for those stretches of sewer benefitting property outside the city limits but which is ultimately going to become part of the city. Hunzeker gave the example of the sewer extended from South 56th Street through the Country Meadows area, which allowed for Country Meadows to eventually tap onto it, but it was built at the time to serve the Southfork subdivision.

The developer has met with staff a couple of different times. There were a couple of issues that came up with respect to the plat that will require some re-engineering and the filing of a community unit plan application to go with the subdivision. Hunzeker believes they know how to deal with those issues but the developer does not want to go forward with that expense unless there is some fairly firm idea of how the sewer issue is going to be resolved.

Hunzeker requested that the Planning Commission forward the annexation request, subject to the applicant and the city agreeing to the terms of an annexation agreement providing for the means of extending sanitary sewer to the site. There needs to be an agreement with the city in order to go forward with the zoning and subdivision of the site. If unable to reach that agreement or if the City Council does not approve, then there won't be much point in the annexation or rezoning.

Carroll asked Hunzeker to show where they are crossing with the sewer. Hunzeker referred to the aerial photograph which shows a pond, which is an outlot for the first phase of the project and it contains a detention cell. The actual draw is a fairly wide swath and the sanitary sewer would come up somewhere "about in this area" (drawing on the map), so there will be three property owners affected. There may be a place or two where it would be crossing through what is now a parking lot where it might cause some temporary disruption, or the possibility would exist to bore it. There are a lot of details about how this might be accomplished. He does not believe there would be too much disruption. It is not a matter of depth as much as where the flow line is located. The connection to the sewer that is in S.W. 36th Street is a stub street, so the sewer is right at the west edge of the stub street. The intention has always been that there would be a sewer line extended from the end of that street. The intent is to stay as low as possible along the floodplain, which is the best way to get there. The details of alignment of the sewer and how to accommodate existing activities on those sites will have to be dealt with as the final design is done and the negotiations are done for the easement.

Opposition

1. Steve Oborny, 1500 S.W. 40th Street, one of the north property owners, stated that his major concern is that the applicant has only talked to him once for 5 minutes about this proposal. He did not get a notice of this proposal and he does not know exactly where the sewer line will go. He may have been more receptive if the applicant had worked with the neighbors and been more specific. This is the first time he has seen any type of map showing where the sewer would be located, how deep, etc.

2. Mark McVicker, 3635 West A Street, testified in opposition. His property is adjacent to the Timber Ridge development. He has received no communication about the project; he has heard nothing from Mr. Hunzeker; and he has not had any contact with the applicant. The only contact he received is when he got a pencil drawing of a top view of his property showing the proposed sewer line. The communication has been sporadic and very infrequent. With regard to the parking lot, McVicker operates a landscape and tree care business on his property. The parking lot referred to by Mr. Hunzeker is actually the service yard for his business, so that is where he has trees and shrubs and a turnaround for his compost pile, etc. During a certain part of the year, he would be real hesitant about getting closed in by construction. It is a business that would be impacted and it is his livelihood.

McVicker clarified that the West Garfield Street stub is actually further to the north in the middle of his property. McVicker believes the sanitary sewer is being shown as going right across his service area near S.W. 36th Street as opposed to West Garfield Street.

3. Vicki Rogers, 3703 West A Street, testified in opposition because she has not been notified about any part of this proposal. The proposed sewer line will run into her property, but she does not know where. She does have a horse and if she has to give a 30' easement, she does not know how she will be affected. Her family uses the pond for ice skating and recreation. If they have to give an easement, she does not know if they will be able to continue to use the pond. She has owned the property for 20 years. It is disturbing to not be contacted by anyone about this issue.

Staff questions

Esseks inquired whether the city can be a facilitator of agreements. Should the developer go up to S.W. 40th Street instead and find a public right-of-way? Eichorn suggested that the developer is interested in working these issues out in the annexation agreement. It would be best to require an annexation agreement and work with the neighbors on the location of the sewer line. The engineer needs to do more planning with the neighbors.

Esseks wondered whether the developer typically offers a cash amount to compensate the property owners for any inconvenience or loss. Dennis Bartels of Public Works explained that the city would buy an easement to build the sewer that would be figured into the computation for a construction easement. The construction easement would have to compensate for the disruption or loss of revenue.

Esseks inquired whether there are statutes or ordinances which provide for fair compensation. Bartels explained that if the city was authorized to condemn the easement, the city is required to negotiate with the property owners by law. The city would need an acquisition plan as to where the sewer is going to go. Sometimes the plan is altered to make the easement easier to acquire. The city is required to negotiate and would be required to pay fair market value and damages based upon an appraiser's analysis.

With regard to the location, Bartels clarified that the sewer is actually stubbed to the west line of the Timber Ridge subdivision – not West Garfield Street as indicated by Mr. Hunzeker.

Response by the Applicant

Hunzeker apologized. He has not been involved in any of the meetings that have taken place with respect to the sewer. He knows that the engineer has met with the McVickers; however, he was under the impression that the other owners had been contacted. There is apparently information to which these property owners are entitled. He believes that information can be provided and the developer can come back with at least them having been fully apprised of their options. Therefore, Hunzeker requested a two-week deferral.

Hunzeker also corrected his previous testimony – there is a gap between the lots and the sewer is stubbed to the McVicker property. It is not nearly as far north as he showed previously. It is important to lay out the options more clearly to the opposition and property owners.

With regard to compensation, Hunzeker suggested that if the city takes the easement, then the city is required to pay fair market value for the interest in land that is taken and damages to the remaining property as determined by an appraisal, and, if necessary, by the County Court and then possibly District Court. It is a constitutional requirement that the city pay fair market value. However; there are other options available, including the developer simply building the sewer and for these folks to have access in the future without paying a tap fee. These options will have to be discussed with the property owners over the next couple of weeks.

Esseks sought confirmation that the property owners would still have access and be able to cross the easement. Hunzeker stated that they would be able to cross the easement. You can do almost anything on top of the easement except build a building. The city has the ability to perform maintenance or reconstruction, if necessary.

Carroll inquired whether 60 days would be acceptable for deferring the change of zone and preliminary plat. Hunzeker believes that 60 days would be agreeable. Those two applications need to be on the pending list until the annexation can get through the City Council. The plat will need to be a revised to address the issues that have come up.
Carroll moved to defer the annexation for two weeks to March 14, 2007, and to defer the change of zone and preliminary plat for eight weeks to April 25, 2007, seconded by Sunderman and carried 7-0: Sunderman, Esseks, Krieser, Taylor, Cornelius, Carroll and Carlson voting ‘yes’; Strand and Larson absent.

There being no further business, the meeting was adjourned at 1:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 14, 2007.

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