MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, March 12, 2008, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor-Baird, Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Tom Cajka, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order and announced that Robert Moline resigned from the Planning Commission on March 5, 2008.

Carroll then requested a motion approving the minutes for the regular meeting held February 27, 2008. Motion for approval made by Sunderman, seconded by Francis and carried 7-0: Gaylor-Baird, Carroll, Cornelius, Esseks, Francis, Sunderman and Taylor voting 'yes'; Larson abstaining.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: March 12, 2008

Members present: Gaylor-Baird, Carroll, Cornelius, Esseks, Francis, Larson, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 08002, SPECIAL PERMIT NO. 08015 and WAIVER NO. 08002.**

Ex Parte Communications: None

Item No. 1.2, Special Permit No. 08015, was removed from the Consent Agenda at the request of Mark Hunzeker on behalf of the applicant and scheduled for separate public hearing.

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

Note: This is final action on Waiver No. 08002, 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.

SPECIAL PERMIT NO. 08015
FOR SOIL EXCAVATION
ON PROPERTY GENERALLY LOCATED
AT N.W. 56TH STREET AND WEST O STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 12, 2008

Members present: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda at the request of Mark Hunzeker on behalf of the applicant.

Staff presentation: **Ray Hill of Planning staff** presented the request to extract 762,000 cubic yards of soil over a three-year period. The conditions of approval set forth in the staff report are standard, including daylight hours only, Monday through Friday. The staff has found that the application is acceptable if the applicant complies with the conditions of approval as recommended by staff.

Esseks noted that the last three applications that have come before the Planning Commission had a total of five standards which were added and he was hoping they would become part of the precedent. What he sees missing here is the limit of extracting from no more than 20 acres at a time; that the area would not remain open for more than 10 months; and that the seeding would occur in the first growing season after extraction. He thought these were to be used consistently. Hill suggested that the applicant's submittal may have included those conditions. The application and site plan are used for enforcement so if those conditions were included in the application they need not be restated here.

Proponents

1. Mark Hunzeker appeared on behalf of **Schwisow Construction,** the owner. The owner generally has no objection to the conditions of approval; however, Hunzeker proposed the following amendments:

2.1.1 Revise the plans to meet the requests of the ~~Public Works and~~ Watershed Management memos. **(**Per Planning Commission, at the request of the applicant, 3/12/08**)**

~~2.1.2 Revise the plans to show access to the parcel to the east acceptable to Public Works.~~ **(**Per Planning Commission, at the request of the applicant, 3/12/08**)**

~~4. Operating hours shall be limited to daylight hours Monday through Friday only.~~

Hunzeker requested that the requirement to comply with the Public Works comments be stricken because the issues of grading and access to West O Street are within the jurisdiction of the Nebraska Department of Roads (NDOR). Hunzeker believes the NDOR may grant access because they are comfortable with this site plan and grading plan.

In addition, Public Works talks about access to the property to the east. The property to the east is preliminary platted with the idea that Lincoln Poultry would be going out there. As you come off of O Street, the Lincoln Poultry property is basically the same grade and it will also need to be graded down in order to take a good access onto O Street at the time that the state makes the improvements to West O Street. Therefore, Hunzeker requested that the requirement to match the grade at this time be deleted.

With regard to the restriction on hours of operation to daylight hours during the week, Hunzeker suggested that there will not be very much in the way of neighborhood opposition in this area because there are no neighbors and it is a very commercial/industrial type area. Having the ability to move dirt at different times for different projects is important and it does facilitate getting the project completed quicker. The intention is to get this excavation done within the three years allocated by the permit. Hunzeker suggested that the hours of operation is an arbitrary restriction in this situation.

Larson inquired about the southwest corner of the property. Hunzeker advised that there is railroad right-of-way there. The reason that the NDOR is going to drop the O Street grade is to increase the clearance under the bridge. NDOR has indicated that 500' of clearance from that bridge is enough sight distance for access on O Street. The grade of the area being excavated will be a slope that will drop from north to south. When the right-of-way is graded for the road project, that set of contours will go away and it will be a relatively flat contour from this property to O Street.

Opposition

1. Eunice Cernohlavek, 6205 West O Street, testified in opposition and submitted her testimony in writing. She has concerns about health issues, i.e. dust, effects of her asthmatic condition, effects on the grazing of llamas; water holes for mosquito breeding.

She also has safety issues – the trucks turning off onto West O Street will slow down traffic and could potentially cause accidents; silt, mud and dirt on the highway will cause slick areas; it will result in additional traffic on O Street. She urged that the applicant must adhere to the hours of operation. There are also aesthetic issues and mental issues, i.e. peace and tranquility. She is concerned about the entrances and exits to the field of operation and air pollution. Seeding needs to occur within 7 days of removal. All inspections must be done on a routine basis. Cernohlavek also suggested that the applicant be assessed $1.00 per truck load of dirt to help the taxpayer defray the costs of road maintenance.

2. Karen Kurbis, 17500 N. 84th Street, testified in opposition. She does not recall seeing anything on the application that addresses the 20-acre limitation. She also did not see any kind of statement about a contract being signed for repair of any road damage that might occur, which she believes is a fairly normal standard. She suggested that the staff is relatively conservative on the conditions of approval. She disagrees with the amendments proposed by the applicant. She does not believe there is any information from NDOR. This is an ongoing problem. If Mr. Hunzeker has that information, it should be provided.
With regard to the hours of operation, Kurbis also pointed out that Pawnee Lake and Conestoga Lake create a lot of traffic on West O Street on the weekends. The Plamor Ballroom activity includes a lot of drinking and there need not be nighttime soil excavation to conflict with this. Kurbis also urged that there be a requirement for annual inspections.

Staff questions

Esseks inquired whether staff agrees with the applicant's proposed amendments. Hill explained that the staff was not aware of any opposition until today.

Hill advised that the full set of drawings that were submitted with the application do discuss some of the questions that have been raised. The project schedule does talk about the 20-acre provision. The general notes on the application also include the conditions which Esseks was concerned about not being listed in the staff report.

Esseks inquired about annual administrative reviews. Hill indicated that the staff would not object to making this a condition of approval.

Gaylor-Baird inquired whether staff had any suggestions for improvements to the area in terms of traffic safety. Hill stated that the NDOR recognizes some of the difficulties because of the railroad overpass and that is why they are considering realigning O Street to have a higher separation and also to have better sight. Hill also pointed out that there is a letter from NDOR indicating they have no objections to this application. NDOR was specifically asked about the access issues and they had no objections.

As far as the proposed amendments to Condition #2.1.1 and deleting #2.1.2, Hill believes that the concern is actual control of access to O Street. NDOR has the authority to grant

the access – not Public Works. **Dennis Bartels of Public Works** indicated that the NDOR will have to approve the driveway access to O Street. He had raised some of the questions about access in an advisory capacity. He was also concerned about the east side of the project because of the preliminary plat on the east. At the time of that preliminary plat, the engineers for the east property owner had shown a driveway somewhat east of the common property corner. His comments were meant to be advisory to make sure that the applicant had considered these issues. The previous plat had shown two different streets that intersected the common property line, but for this north one, it meets at grade. He is not in a position to make the property to the east lower their property, but he wanted to point it out. As an earth moving operation, Bartels believes that the proposed plan works efficiently. He is not opposed to deleting the conditions because Public Works does not have the authority.

Sunderman inquired about the access that the property has now. Bartels assumed there was a driveway right at the east property line from O Street going to this property. They will have to get approval from NDOR. He does not believe there is access control on O Street at this point in time.

Carroll confirmed that Bartels' concern is not the access to O Street for hauling the soil, but the future development to the east. Bartels agreed – they should not over-excavate and have to come back and fill.

Response by the Applicant

Hunzeker believes the issue about access has been resolved. They have an access on O Street today near the east property line which will be lowered. With respect to access in the future, it appears that NDOR has said "okay". Therefore, Hunzeker would appreciate the modification to Condition #2.1.1 and the deletion of Condition #2.1.2.

With respect to hours of operation, Hunzeker submitted that West O Street carries a lot of traffic anyway. There is a need for these kinds of operations because people need to move dirt. Anyone could simply opt to take out a building permit and grade a site for construction, which would not give the Planning Commission the benefit of all of this review. There is no requirement that you actually then build a building. Hunzeker believes that the applicant has addressed all of the concerns relative to dust and environmental regulations in the application submitted.

The only issue that remains is the hours of operation. The house across the road does sit considerably above the grade of O Street and thus would not be adversely affected by automobile lights. There will be a certain amount of dust but it is regulated by the Health Department and DEQ regulations. That is part of the permit. Hunzeker does not believe it makes sense to restrict the operation to daylight hours and Monday through Friday

because we can't control when it rains and what kinds of projects to which the dirt is being moved. We need to be able to get the dirt out and a restriction on the hours is unreasonable.

Gaylor-Baird inquired whether the applicant would be open to considering a provision that if at some point in the next three years there were complaints investigated, that the city could reschedule a hearing to review the project. Hunzeker agreed that certainly at the end of the three-year period the city has the opportunity to revisit. The applicant would be willing to have it reviewed if it becomes a traffic concern. Yes, there is more recreational traffic on weekends, but there is a lot less normal business traffic during the week. He does not believe there will be a traffic issue.

Gaylor-Baird also observed that there would be a lot of traffic going to the recreational areas during the daylight hours on Fridays, which the hours of operation would not cover.

Cornelius asked what the applicant would propose as an alternative to lifting the hours of operation restriction. Hunzeker suggested that as a practical matter, nobody pays people to work at night if they don't have to. If there is not a construction site or a road construction project that requires work at night, they prefer not to work at night or pay overtime to work at night or on weekends. He does not believe there will be an excessive amount of night or weekend work except when it has been raining or when a road contract might require it.

With regard to deleting the requirement to comply with the Public Works comments, Carroll confirmed that the applicant is not trying to waive the contour issue, but merely to eliminate the Public Works comments. Hunzeker acknowledged that the Public Works memo refers to a contour issue. There is a berm in the O Street right-of-way. When the O Street project is done by the state, that berm will go away and this property's grade will be even with the O Street grade. Bartels added that there was an outlet elevation given for the pipe and Public Works is asking for clarification. Lyle Loth stated that it was basically a typographical error that has since been corrected. They did show the elevation too low and it has been corrected. Bartels stated that he is not terribly concerned about the O Street grades.

ACTION BY PLANNING COMMISSION: March 12, 2008

Taylor moved to approve the staff recommendation of conditional approval, with the amendments requested by the applicant, seconded by Larson.

Esseks moved to amend to retain Condition #4 restricting the hours of operation to daylight only, Monday through Friday, and to add a condition requiring annual administrative reviews, seconded by Francis.

Esseks believes that the operating hour limitations are necessary. Such time limits have been imposed on the previous three applications for soil excavation. We need to be consistent. There is in fact a neighbor. There are some real possibilities beyond just nuisance, i.e. asthmatic conditions.

Taylor agreed about the hours of operation since there is a close neighbor.

Motion to amend carried 8-0: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll voting 'yes'.

Main motion, as amended, carried 8-0: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

COUNTY CHANGE OF ZONE NO. 08008,
FROM AG AGRICULTURAL TO
AGR AGRICULTURAL RESIDENTIAL AND B BUSINESS,
ON PROPERTY GENERALLY LOCATED
AT S. 162ND STREET AND HIGHWAY 2.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 12, 2008

Members present: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll.

Staff recommendation: Denial.

Ex Parte Communications: None.

Additional information for the record: **Ray Hill of Planning staff** submitted a letter in opposition from Jim and Jo McGurk, 9725 S. 148th Street, Bennet.

Staff presentation: **Ray Hill of Planning staff** explained that a previous change of zone request on this property to AGR in 2005 was denied. There was an application to change the zone to I-1 southeast of this area, which was also denied by the County Board. Throughout the Comprehensive Plan, we find that residential/commercial/ industrial development should take place in the city or in the incorporated villages. In Lancaster County, the Comprehensive Plan recommends to preserve areas within one mile of the incorporated towns for their future growth. It also talks about supporting new growth in the incorporated areas of the County. As one can see, the subject property is a long way from any incorporated village. In fact, the Village of Bennet has adopted a Comprehensive Plan which indicates that the subject area should remain agricultural. If the area is rezoned AGR, the applicant could create as many as 31 lots on this property. The County Engineer has recommended that this application not be approved.

Sunderman inquired about the uses in the County B Business District. Hill suggested that it would allow any type of retail. The County does not have as many categories as the city, so the B is basically the business district for retail type operations, service stations, truck stops, etc.

Proponents

1. Jerry Fletcher, the applicant, pointed out that the state is taking seven acres plus three acres for the new road. He has talked to the state about his subdivision and they have no objection. Access will be on the north side and the south side. The property has good access – just a few minutes to shopping, restaurants, etc. You can also get to 70th & Old Cheney in eight minutes.

At the time of the previous application for change of zone, the property did not have paving and access. It also did not have water at that time. A new water tower with a 10 inch water line is being located on the half mile north of this property.

Fletcher advised that he did meet with the Bennet Board and they told him that they have no comment and nothing to do with this. The Hwy 2/Bennet access is the safest between Lincoln and Syracuse because it is the only overpass.

Fletcher also pointed out that the Fire Department is just three miles away. There will be covenants on the subdivision and the owners will maintain the road. The County will have no expenses except for the Fire Department. The Superintendent of Palmyra Schools has said they would appreciate any additional students. There are 14 houses on acreages one mile to the east. The three-acre parcels will save 320 acres for farmland. Most people want three acres. In time, the properties are going to fill in between Bennet and this property. It has not developed before now because of the water problem. That problem will no longer exist.

Larson inquired whether the new bypass is a state road. Fletcher believes that the state will build the road but once it is built, the County will own the road. It is being built because of all the accidents that have occurred at 148th & Hwy 2. 148th will not go through anymore. Larson has never seen any stacking of any kind. He thinks it would be cheaper to put a traffic light there than build a road. That was a state decision and Fletcher believes the state is looking to build the road next March. It is already funded.

If Bennet has no comment, Francis wonders what that means. Are they not in opposition but neutral? Fletcher did not know.

Francis inquired whether each of the three-acre parcels would have their own septic system. Fletcher stated that they can go septic tank or lagoon. Each three-acre parcel would have rural water as opposed to a well. He is asking for the permit ahead of time in order to get the water and the electricity while they are building the road. There are four businesses on the mile to the north.

There was no testimony in opposition.

Staff questions

Esseks observed that the Comprehensive Plan includes a sizable number of acres designated for AGR zoning. The Bennet Comprehensive Plan shows commercial and industrial on the south side of Highway 2. Ray Hill also observed that this tract is not associated with any other grouping or cluster of acreage development. When we talk about clustering the AGR, we like to do that so that we do not spread out all of the services that the acreage owners demand. The Comprehensive Plan shows a lot more area for AGR zoning than would be necessary to take care of the demand.

Esseks inquired whether Bennet has planned for the area near the subject property. Hill referred to sections from the Bennet Comprehensive Plan as set forth in the staff report. It provides that highway commercial uses be utilized on the southwest and southeast corners of the interchange of State Highway 43 and U.S. Highway 2. Esseks inquired whether Bennet indicates that the property to the north should be agricultural. Hill believes that is what the plan calls for.

Cornelius pointed out that the subject property is outside Bennet's area of jurisdiction. He wondered about the water tower to the north. Hill explained that the staff has a concern about the amount of services that people who live on acreages demand and expect. AGR needs to be clustered so the services can be more efficiently provided.

ACTION BY PLANNING COMMISSION: March 12, 2008

Cornelius moved to deny, seconded by Sunderman.

Cornelius commented that "what we have heard and what we see is that this application is not in compliance with the Comprehensive Plan of either Lincoln or Bennet". There are problems with regard to infrastructure; there are problems with regard to the future land use plan and the level of detail we have been given. We don't really know what is intended to be built, and for that reason he supports the staff recommendation of denial.

Francis indicated that she has mixed feelings bout this. With another rural water tower, this development could make sense.

Taylor also has mixed thoughts about this. He favors what the applicant is attempting to do. He would like to hear more discussion because he sees some good sound reasons for this change.

Esseks observed that the Comprehensive Plan urges us to limit the residents outside of incorporated areas, both Lincoln and villages, to about 6% of the total county population. He believes in this principle of limitation because of the high cost of servicing rural residents. We have to be cautious, and before we approve a development of this size, we need to have very good reasons for it. It is close to Hwy 2, but he is not sure that we have strong enough reasons to place it here. Maybe it would make more sense at some time in the future. He does not believe he has a persuasive argument to do it now.

Carroll agreed that there is potential at this site for development, but he believes it is premature at this time. There is no site plan provided. It is too early for this to move forward.

Motion to deny carried 7-1: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson and Carroll voting 'yes'; Francis voting 'no'. This is a recommendation to the Lancaster County Board.

WAIVER NO. 08001
TO WAIVE THE PEDESTRIAN WAY EASEMENT
ON PROPERTY GENERALLY LOCATED AT
N.W. 56TH STREET AND WEST ADAMS STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 12, 2008

Members present: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll.

Staff recommendation: Denial.

Ex Parte Communications: None.

Additional information for the record: **Tom Cajka of Planning staff** submitted comments from Public Works & Utilities.

Staff presentation: **Tom Cajka of Planning staff** explained that this is an application to waive the pedestrian easement requirement with Hartland Homes Northwest 1st Addition Final Plat. The easement was required because the block length was in excess of 1320 feet in the preliminary plat, although the developer did get a waiver to have a block length in excess of 1320 feet. The subdivision ordinance also provides that blocks in excess of 1000 feet shall have a pedestrian easement. The block length is 1430 feet. Without the pedestrian easement, the length is 1000 feet one direction and 430 feet another direction. This easement was shown on both the preliminary plat and the final plat. It will provide

access to a future bike trail that will be located on N.W. 56th Street. The bike trail will be on the west side of N.W. 56th Street, but Public Works has determined that there would be the possibility to put a temporary sidewalk to cross over Adams to get onto the bike trail. There may need to be some minor grading between the lots to accommodate this pedestrian easement. The final plat required that the pedestrian easement was to be installed at the same time that Cleveland Street was paved, but this was overlooked. Just because it was not put in at that time is not justification to waive the pedestrian easement. This pedestrian easement is on Lot 9. The frontage is 52 feet. The easement is the same as the side yard setback.

Sunderman inquired whether the grading matches what was on the original plans. Dennis Bartels of Public Works did not know.

Proponents

1. Mark Hunzeker appeared on behalf of **Hartland Homes,** the applicant. There is a grade problem and that is why they are requesting this waiver. This plat was originally part of a plat called Airport Heights platted back in the 1950's. There are lots to the east of this property that take direct access onto Adams Street. Back in 1999, Duane Hartman had assembled the rest of Airport Heights and had suggested this area be replatted to remove those frontage lots on Adams Street, which the city liked. In the process of approving this plat there were a number of compromises made. He does not believe there was a lot of thought put into this particular sidewalk. However, if it had been done as originally planned, the grade would be something like 8%, which is more than those highways you drive on in Colorado with the truck runoffs into the sand. The grade that is being proposed now for N.W. 56th Street is 8' below what was assumed when this plat was done. So when you drop the grade by 8', and match up the grades on the lots, you end up with a grade of about 16%. As Public Works suggests, if you grade on those lots and take the grade down to match the sidewalk out in front of the houses, you get way down to about an 11.75% grade. Hunzeker submitted that this is not safe. It is unsafe for kids on bicycles and skateboards who will end up in the middle of N.W. 56th Street. It will be unsafe for handicap people; it is unsafe for elderly people; and in the wintertime it is unsafe for everyone.

In addition, Hunzeker pointed out that the easement is only 5' wide, so to go in and grade it down to 11.5 or 12 percent, you will have to do a vertical cut along the edge of that easement in order to make it fit. Hunzeker suggested that to be unreasonable, not only because of the grade but because it is an unreasonable imposition on those homeowners to have that kind of a “valley” cut between their homes.

Hunzeker also noted that the original Public Works memo stated that Public Works has no objections and that the steep grade from the lots to the right-of-way justifies the waiver. Hunzeker does not know why Public Works has reconsidered and is now opposed.

With regard to the bike path on the west side of N.W. 56th Street, Hunzeker pointed out that the school is going to be on the north side of Adams, so there is really not much benefit. 400 feet to the south there is a street that goes out to N.W. 56th Street, and eventually there will be a bike path on the west side (if and when the City gets around to paving N.W. 56th Street).

Hunzeker reiterated that construction of this sidewalk is unsafe. There is a bond in favor of the city posted for construction of that sidewalk. He advised his client that if the waiver is not approved, let the city have the bond and let them build it and take the liability for it.

Gaylor-Baird inquired whether the developer was unaware of this easement requirement. Hunzeker stated that he was not involved in that plat, but it is his understanding that there was not much attention put into that particular piece of this plat at that time. There were other more important issues and this was a minor consideration that did not get a great deal of attention. The assumption was that the grade of N.W. 56th Street was going to be higher. The change in the grade of N.W. 56th Street creates this great vertical drop.

Staff comments

Dennis Bartels of Public Works stated that unless he looked at the cross-sections wrong, the developer was supposed to grade the back of the property to meet the future street grade. He does not believe the city has changed the grade. His calculations show about a 14% grade and it is preferred to be 10% to 11%. It would take some grading but he does not believe it is quite the extreme as stated by Mr. Hunzeker. These easements are always difficult when they are not built with the subdivision. There are alternates at the two street intersections for the handicap. This same developer graded the lots and built the houses on the lots. Bartels believes that the 10% to 11% grade is possible with some additional grading. Admittedly, however, it is not easy to make the grading.

Esseks assumed, then, that there is a total of 15' within which this sidewalk can be built. The Comprehensive Plan calls for connectivity. Is connectivity possible here at a safe level? Bartels stated that he was making some assumptions when he reviewed it. There is not a survey.

Carroll inquired whether the grade is set for N.W. 56th Street. Bartels advised that when Urban Development can acquire the right-of-way, they will proceed with N.W. 56th Street.

Hill further advised that the zoning ordinance indicates that the minimum separation between the building and the pedestrian easement shall be 10', so there would be a 25' separation between the buildings.

Taylor suggested not paving the easement. Hill's response was that the easement is there and the public has a right to walk on that lot whether it is paved or not. Taylor wondered about some type of alternate surface that would prove less hazardous than concrete or

asphalt. Bartels suggested that if the waiver is approved, the easement will be released and the people will walk to the street intersections 1/4 mile away. The property owners would have to maintain whatever alternative surface were put in place.

Carroll wondered whether it might be better to have a survey instead of basing this discussion or decision on assumptions on grading plans that might or might not have been followed. Hill agreed that to make a good decision, the Commission should have as many facts as possible. The applicant could provide us with the grade and the design grade of N.W. 56th Street. It would be helpful. These pedestrian easements are really becoming a difficult thing to enforce because the developers do not put in the sidewalks when they are required to do so. They wait until the houses are built and then it becomes difficult to install the sidewalks. The Comprehensive Plan keeps talking about connectivity and we try to accomplish that, but then it is not followed through.

Esseks wondered about enforcement. Hill advised that it is written into the final plat conditions, but the developer did not comply. The individual is asking for his bond back and the only way the city will give it back is by waiving this requirement.

Hill also suggested comparing the number of days it would be unsafe versus the number of days it would be safe. We do have bad weather and the streets are even sometimes unsafe. There are certain things that we have to understand when we live in a climate that has ice and snow.

Larson believes it looks like this is going to be the primary way for the kids in this subdivision to get to the school, and it is going to be very inviting for them to ride their bikes down that slope. That just does not seem safe.

Esseks stated that he would be in favor of a two week delay in hopes that the Commission can be told of the likelihood that this will be safe throughout the year. He thinks someone has made a mistake here. Maybe we are in a situation where it is better off to make the pedestrians go to alternative routes.

Gaylor-Baird wants to know what percentage is considered safe. Hill offered to attempt to find out what the driving aisle slope is in our parking garages just for comparison.

Francis wants to know what the building lot grade was supposed to be at the time it was platted and what the grade is now.

Response by the applicant

Hunzeker referred to the Bike Trail Design Standards as a guide for grades, which says that for a normal length or maximum length of 262 feet, 5% is not recommended; for a normal length of 131 feet, 5% is not recommended; 4.5% is usually the maximum and a 10% grade for 33 feet or maximum length of 66 feet is not recommended. No one has

talked about this grade even approaching 10%. The easement is 5' wide. There is no easement to get into the yards of those abutting houses to cut the grades down to create a smoother transition up the hill to the sidewalk in front of those homes. He does not believe they can get to a 10% grade.

Carroll wants the applicant to show proposed grades and existing grades from the street to give an idea of the percentage. Carroll wants to know what was proposed and what is existing.

Carroll moved to delay for two weeks, seconded by Taylor.

Cornelius expressed that he is extraordinarily frustrated. Every other week he is here and every other week the Commission reviews plats and imposes conditions, and now we're here because generally, through a series of mistakes, those conditions were not followed and now we're here addressing this problem about whether a sidewalk can be built that should have been built there in the first place. We should not even be talking about it today. Why even bother if the imposition of conditions based on our Comprehensive Plan are not going to be followed?

Gaylor-Baird expressed that her biggest concern is setting a precedent and creating an incentive to ignore the easements for sidewalks and pedestrians.

Larson's concern is that this creates a sort of amusement park ramp right down into 56th Street.

Esseks is hopeful that this discussion will put some pressure on our departments to explain what happened and come up with some solution.

Sunderman pointed out that it may not be the developer that is off on this thing. The 8' change in elevation in the road may have caused the problem. We do not have enough information. The city may have contributed to part of the problem.

Taylor commented that as long as you have human beings involved in anything, you are going to have some human errors. But now, we are here to form some sort of corrective procedures when things get out of place.

Esseks wondered about building steps.

Carroll wants to see the proposed elevations and what is existing to see if it was not built the way it was proposed and to see the change in the grade of the street.

Motion for two week deferral, with continued public hearing on March 26, 2008, carried 8-0: Sunderman, Taylor, Gaylor-Baird, Esseks, Cornelius, Larson, Francis and Carroll voting 'yes'.

There being no further business, the meeting was adjourned at 3:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 26, 2008.

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