MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, October 22, 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, Roger Larson, Jim Partington, Lynn Sunderman and Tommy Taylor (Wendy Francis absent); Marvin Krout, Steve Henrichsen, Brian Will, Christy Eichorn, Brandon Garrett, 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 requested a motion approving the minutes for the regular meeting held October 8, 2008. Motion for approval made by Sunderman, seconded by Cornelius and carried 8-0: Gaylor Baird, Carroll, Cornelius, Esseks, Larson, Partington, Sunderman and Taylor voting 'yes'; Francis absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: October 22, 2008

Members present: Gaylor Baird, Carroll, Cornelius, Esseks, Larson, Partington, Sunderman and Taylor; Francis absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 08052, USE PERMIT NO. 107C and SPECIAL PERMIT NO. 08036, Hartland Estates 1st Addition Community Unit Plan.**

Ex Parte Communications: None

Item No. 1.3, Special Permit No. 08036, was removed from the Consent Agenda and scheduled for separate public hearing.

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

SPECIAL PERMIT NO. 08034A,
AMENDMENT TO THE
WHISPERING MEADOWS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S.W. 27TH STREET AND WEST A STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 22, 2008

Members present: Partington, Sunderman, Taylor, Larson, Esseks, Gaylor Baird, Cornelius and Carroll; Francis absent.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested a four-week deferral. Taylor moved to defer, with continued public hearing and action scheduled for November 19, 2008, seconded by Partington and carried 8-0: Partington, Sunderman, Taylor, Larson, Esseks, Gaylor Baird, Cornelius and Carroll voting 'yes; Francis absent.

There was no public testimony.

SPECIAL PERMIT NO. 08036,
HARTLAND ESTATES 1ST ADDITION
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S.W, 12TH STREET AND WEST A STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: October 22, 2008

Members present: Partington, Sunderman, Taylor, Larson, Esseks, Gaylor Baird, Cornelius and Carroll; Francis absent.

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing due to letters in opposition.

Staff presentation: **Christy Eichorn of Planning staff** stated that this is a unique parcel of land and gave a brief history of the area.

First, to take a broad overview, this area was preliminarily platted in the late 1990's. Even before all of this existed, the state put an overpass over Highway 77. In doing so, access to one IT lot was eliminated. In order to provide access, the state put in a frontage road and acquired a piece of land becoming part of the right-of-way to connect A Street to this vacant IT parcel. Ten years later, the developer preliminarily platted the subdivision. As

part of that development, the original engineers thought there should be some detention required. Since that time, it has been determined that the outlot created for detention is no longer needed for detention.

Currently, there are townhomes located south of the outlot, a church on the IT lot to the east, and four single-family houses to the west.

The applicant is proposing four single-family residential units on the outlot. The zoning ordinance would only allow three units on the lot. If approved, this application would allow three units with the potential for an additional unit if they can use the design standards for a density bonus.

There are a lot of easements that run across the outlot, leaving very little developable land. One of the waivers requested is a 15' rear yard setback. The applicant currently has a 15' side yard setback (versus the required 5' side yard setback).

The applicant has agreed to provide sidewalk along the south side of the frontage road. There is already a sidewalk along the south side of A Street.

There is one letter in support from the church on the property to the east. The church does not like the looks of the outlot as it currently exists because it is covered with weeds, junk cars, trash, litter, etc., and the church is taking the position that developing the outlot would be a better entryway to their church.

There are two letters in opposition, both objecting to additional townhouse/rental units which are nuisances. They do not want any more rental units.

Esseks inquired about the reduction of the rear yard setback. Eichorn explained that the rear yard setback for the rest of the lots is already 15', and it will give them more developable area and keeps the rear line consistent. Esseks does not believe that 15' is very much. Is it common to have this in single-family home developments? Eichorn would not say that 15' is necessarily common. Generally, the standard is 30' or 20% of the depth. The development as a community unit plan gives us the ability to make adjustments to those standards. The applicant may be amenable to making the lot line go back to 28' in order to be more accommodating to the neighbors. But, Esseks observed that with the building envelopes for Lots 1, 2 and 3, it would be hard to make the setbacks any larger. Eichorn suggested that The CUP allows them to request the lot depth waivers.

Proponents

1. Peter Katt appeared on behalf of the owner/applicant. He concurred that this property was originally contemplated to be an outlot. The original engineer and Public Works got it wrong. The present circumstances need to be made better. This is currently a large outlot that is difficult to maintain and unattractive. The proposal from the owner is to find

an acceptable use to improve the value and the neighborhood in this area. He submitted a memorandum that discusses the fact that the applicant understands that there are unique challenges because of the past history. Developing this area and putting it into productive use has benefits to the city with impact fees of over $18,000, sales tax from the materials to build the project, an annual income stream of $13,000 to the taxing jurisdiction, and it takes advantage of an under-utilized parcel which is supported by the Comprehensive Plan because it takes advantage of the community investments and infrastructure and limits the need to sprawl.

The existing street is a public street. It has the capacity and ability to meet its purpose and the applicant has agreed to construct curbs on it. It will not have any detrimental impact. The developer has satisfied all staff concerns with regard to the technical issues.

Katt suggested that the neighborhood opposition primarily reflects upon management problems with the rental properties immediately to the south, and he does not believe that is relevant to this application. Notwithstanding the stack of complaints submitted by the opposition, the Lincoln Police Department does not object to this application.

With regard to the use of these properties, Katt advised that there has been no determination whether they will be rentals or sold as owner-occupied. The owner does build properties to keep suppliers busy and depending on market demand, it is possible that they may be put into rentals for a period of time. That decision, however, has not yet been made.

Esseks inquired as to responsibility for the parcel to the north of the access road for the church. Katt does not believe that anyone is responsible at this time. One of the staff conditions is to include a requirement that the adjoining property owners be responsible for the maintenance and upkeep (just like any other public right-of-way adjoining a lot). The adjoining landowner will be the owners of the lots in this community unit plan. Esseks pointed out that apparently, the land being petitioned for development has not been well maintained and has not been mowed. Therefore, to protect the interests of the community, the Planning Commission is confronted with someone who wants approval but has not performed that well in maintaining the open spaces. What do we do? Katt disagreed with the assumption that it has not been well maintained. The question is the level of maintenance. The level of maintenance on an outlot does not satisfy the same level as a green lawn. There is no evidence that the owner has not satisfied all legal requirements of the city for the maintenance. There is no economic incentive to maintain it beyond the minimum requirements. This community unit plan will make a productive use of this property so that there will be maintained lawns and green space. At this time, it is very isolated and difficult to maintain. Approval of this community unit plan will minimize the amount of area that will need to be maintained.

Gaylor Baird noted that the staff report suggests that the applicant agreed to maintain the outlot during the approval of the preliminary plat, and that the church has reported that it

is currently overgrown and being used for park cars. Katt responded that the generic language in the preliminary plat assumed that this area would be developed and used for the benefit of all of the lots as a detention facility, and that never happened because it was determined that the detention cell could not function properly. The owner, engineer and Public Works concluded that it was not in anyone's interest to utilize that parcel as a detention cell. Because of the timing of that and the subsequent development of the subdivision, we now have a very large piece of land that was intended to serve as a detention cell (that can't), and the question is, what do you do with it? The choice is to continue to have it be not very attractive and maintained to all legal requirements, or improve the neighborhood with this development and its financial benefits. The city staff is recommending that it is beneficial to the city and neighborhood to put this property into a productive use.

Taylor inquired as to what would be considered the proper level of maintenance for that area. Katt showed a photograph of the current level of maintenance, comparing it to the current level of maintenance used in our city parks. It is not a lawn but yet not tall weeds. It is not developed and it is raw. The city has a vegetation ordinance with a certain height restriction and the enforcement mechanism is to report it to the city. This owner is currently well within those parameters.

Larson inquired about the lot sizes. Katt advised that Lot 3 is 80 x 75 and the building envelope is 30 x 70. Lot 4 is 95 x 75 with a 30 x 70 building envelope. (This is assuming the lot depth waiver is granted).

Esseks expressed concern that we may be getting into a situation whereby these lots are too small to be marketed, especially with the major highway close by. He is curious as to what type of residential property will fit on these lots that will sell. Katt pointed out that the building envelope footprint is 2100 sq. ft. This owner has lots available in Lincoln that are 800'. The owner believes he has a product list that will fit within these building envelopes. The owner is comfortable that there is a market demand for an improvement on these lots in this area.

Carroll confirmed that the applicant/owner maintains the outlot north of the service road now. Katt concurred, and if he sells, he will notify the new purchasers that they are required to maintain that outlot. There are two places where that notification takes place. The maintenance requirements are put in the city's records, and they would be a provision in the restrictive covenants.

Notwithstanding the benefits to the revenue bottom line, Cornelius observed that there is some opposition from the neighbors that seems to indicate that they would prefer the unattractive, minimally maintained parcel over the possibility of what they perceive to be a potential raft of problems based on complaints about the management of the properties to the south. Can we reassure them that what they are going to be getting is an improvement rather than another set of properties that they may have to call police about

on a regular basis? Katt pointed out that the neighbor most dramatically impacted is the church property and they have submitted a letter in support. He suggested that the balance between the competing interests of the neighbors should generally weigh in favor of those that have the most at stake. The impacts that the neighbors have are primarily problems that occur in another development. He does not recall that they express any great concern other than the lack of green space. In balancing the competing comments by the neighbors, he would think that the opinion of the church property would carry greater weight.

Taylor believes that the neighbors are experiencing the problem now and they are fearing an expansion of the problem. Even though the church may be directly affected, the homeowners are faced with the problem on a daily basis.

Partington agreed with Taylor. The church is occupied less time than the residences. Katt acknowledged that every neighbor is entitled to their opinion, but he believes that the impact to the two properties that are opposed is a tenuous one at best. The owner has satisfied the legal requirements for current maintenance. His client is doing nothing wrong with the outlot. "We think there is a better option for it." He does not perceive any significant adverse consequence more than in any other neighborhood. This proposal is a net positive for the neighborhood and the community. What do we do with this very large parcel created as a result of an engineering mistake? The solution is not going to be to maintain it in perpetuity as it exists.

Taylor expressed concern because the staff report states that it has not been maintained. We have neighbors saying the same thing. Is this going to be the same thing, even though there is a change in the property? Will the management of the property change? Will there be better management?

Gaylor Baird suggested that the impact on the neighbors is not necessarily just physical, but economic. If the new development is rentals with the same problems as the townhomes to the south, it may depress home values in this area. It appears that several good neighbors have moved because of these issues. It is troubling to her that the neighbors made efforts to contact the landowner and they had trouble having their concerns addressed. Katt does not believe that management, operation and use of property is an appropriate issue upon which to base land use decisions. Those are management issues and there is a wide range of legal remedies available to address and deal with problem properties. If you want to engage in the assumption on every project that there are going to be problems, then we need to expand the issues that we talk about.
Gaylor Baird pointed to the two-page memo from Public Works with many concerns that she believes would lead to a recommendation of denial. Katt advised that all of the concerns set forth in the Public Works report are included within the staff's conditions of approval, to which his client has agreed. This development does not add any burden to the city. It provides additional revenues to the city. That is a very clear intent of our Comprehensive Plan – to take advantage of existing infrastructure and do infills as opposed

to sprawl.

Esseks commented that this is the second case in at least a month or two, where adjoining property owners of homes already established are concerned about rental properties being constructed next to them. His concern is for buffers. This proposal requests to relax those buffers and this is bothersome to him because of the evidence, and he will vote against relaxing the buffer on Lot 1. Katt clarified that the buffer that would be changed buffers the townhomes and duplexes to the south. There is no waiver to the side yard setback, which is a 5' requirement. And we're actually proposing a building envelope that exceeds that minimum. None of the waivers requested impact the land use to the west. What we are proposing actually improves that.

ACTION BY PLANNING COMMISSION: October 22, 2008

Larson moved to approve the staff recommendation of conditional approval, seconded by Sunderman.

Larson believes this will improve this neighborhood and not detract from it. The objections from the two existing homeowners have nothing to do with this application. Their complaints are with the existing homes outside of this application. He believes this development will be worthwhile and a financial benefit to the city.

Esseks made a motion to amend to deny the waiver of the setback on Lot 1. Motion failed for lack of a second.

Partington agrees that this is an improvement, but he believes that the concerns of the neighbors center around the fact that there will be twice as many opportunities for problems. Maybe that's irrelevant for the Planning Commission to consider, but suggested that the City Council could take it into consideration as a city quality issue.

Cornelius believes that this is likely to be, or has the potential to be, an asset to the surrounding area. He knows from personal experience the pain of having a bad neighbor – not next door and not abutting – it has an effect. He agrees that it is probably the case that the Planning Commission cannot, or should not, consider those things too closely – we should consider the economic impact on the neighbors. We can't really punish the current landowner for those problem properties here and now. He encouraged the neighbors and the city to take advantage of the legal recourse alluded to by Mr. Katt.

Larson agreed, but we're making an assumption that the new homeowners or occupants are going to follow the lead of the ones that are objectionable and he does not believe that is proper.

Esseks asked Carroll what kind of product he believes can sell at this location on West A

Street. Carroll suggested that you have to look at the highest and best use of a property, and he agrees that residential is the best use for this property. It does add funds back to the City. It will probably be a 1,000 to 1,200 sq. ft. house – it adds affordable housing in an area that probably needs it.

Motion for conditional approval carried 7-1: Partington, Sunderman, Taylor, Larson, Esseks, Cornelius and Carroll voting 'yes'; Gaylor Baird voting 'no'; Francis absent. This is final action, unless appealed to the City Council within 14 days.

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 November 5, 2008.

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