MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, February 11, 2009, 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, Dick Esseks, Wendy Francis, Jim Partington, Lynn Sunderman and Tommy Taylor (Michael Cornelius and Roger Larson absent). Marvin Krout, Steve Henrichsen, Mike DeKalb, Brian Will, 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 January 28, 2009. Motion for approval made by Sunderman, seconded by Francis and carried 6-0: Gaylor Baird, Carroll, Esseks, Francis, Sunderman and Taylor voting 'yes'; Partington abstained; Cornelius and Larson absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: February 11, 2009

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 09001 and CHANGE OF ZONE NO. 09003, Yankee Hill Apartments Planned Unit Development.**

Ex Parte Communications: None

Item No. 1.1, Comprehensive Plan Conformance No. 09001, and Item No. 1.2, Change of Zone No. 09003, were removed from the Consent Agenda and scheduled for separate public hearing.

CHANGE OF ZONE NO. 09002,
FROM AG AGRICULTURAL DISTRICT
TO AGR AGRICULTURAL RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT S. 96TH STREET AND SALTILLO ROAD.
REQUEST FOR DEFERRAL: February 11, 2009

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

Staff recommendation: Conditional Approval.

The Clerk announced that the applicant has submitted a written request for a six-week deferral.

Francis moved to defer, with continued public hearing and action scheduled for Wednesday, March 25, 2009, 1:00 p.m., seconded by Taylor and carried: 7-0: Sunderman, Taylor, Partington, Esseks, Gaylor Baird, Francis and Carroll voting yes; (Cornelius and Larson absent).

There was no public testimony.

CHANGE OF ZONE NO. 09003,
YANKEE HILL APARTMENTS PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 84TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 11, 2009

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

Ex Parte Communications: None.

This application was removed from Consent Agenda and had separate public hearing.

Staff recommendation: Conditional approval.

Staff presentation: **Brian Will of Planning staff** stated that the property for this proposed PUD is located northeast of the intersection of South 84th Street and Yankee Hill Road. This property was previously approved within the Yankee Hill Townhomes Community Unit Plan project. This request includes an apartment complex on the eastern portion of the Yankee Hill Townhomes site. There were waiver requests for modifications of the requirements of the zoning ordinance and design standards in that CUP approval which are being carried over into this PUD proposal, and staff supports those waiver requests.

Esseks noted the reference in the staff report to a pipeline on South 84th Street, and how it should be identified. Esseks also recalled that two weeks ago there were one or two cases on the Planning Commission agenda where, in addition to identifying the pipeline on the site plan, there was also an effort in the staff recommendation to alert future purchasers and users of the property of the possible threat to health from a pipeline leak. Shouldn't there be something similar in this application? Will explained that the reason not all of that language was brought forward in this application is because the western portion of this development was previously approved and most of it has been final platted. There is not any change there. The only change is the eastern portion. In addition, he advised that staff has been working with Health and Law Departments on potential amendment to the subdivision ordinance to include some sort of standardized notification to give better notice to the property owners. This area was previously approved and those same conditions approved previously are brought forward in this PUD.

Will further explained that the only change in the previous proposal is deletion of the remaining townhomes on the eastern portion and replacing the townhomes with apartments. That townhome CUP was approved prior to the joint task force between the Planning Commission and the Board of Health. The staff has been attempting to live up to the spirit and intent of those recommendations. With regard to Lots 110 and 111, Will suggested that one or both of those lots may develop in the future and at that point in time there would, at a minimum, be the language here or something that becomes more clearly defined in the ordinance.

Gaylor Baird inquired whether a potential buyer would be required to look at a site plan in order to become aware of the pipeline. And, if the ordinance is amended in the future, what would be the difference for the consumer? Will pointed out that the City's GIS system has a layer showing those pipelines. But he agreed that it would most likely require one to review the site plan to see that note about the pipeline. There has been some discussion about an amendment to require some more formal notification in the future, such as recording against the property where it would show up in a title search.

Esseks stated that in those deliberations about such a text amendment, he would appreciate consideration of some type of regulation that could prohibit development where there is a high risk of personal injury. The Health Department comments note that this project has a possibility of injury, and here they are recommending a 221 ft. buffer. It sounds as though there are some empirical parameters here that can guide us, or some sort of measure to improve the pipeline's capacity so that it will not rupture.

Carroll stated that the Planning Commission and the Board of Health reviewed this for over a year and put forth some recommendations which are being reviewed by staff. There will be some sort of text amendment in the future, but he does not want to delay this application.

Proponents

1. Tom Huston, 233 S. 13th Street, Suite 1900, appeared on behalf of **Cameron Townhomes, LLC.** This area was approved for a community unit plan of 164 townhomes 18 months ago. Since that time, sewer has been brought down so that the first phase of the townhomes is currently being developed, with 84 units being in the first phase. His client has considered the current economic conditions and recognized that there are fewer townhome purchasers and potentially more renters of apartments. This phase two is proposed as a conversion of townhomes to apartments, is adjacent to the major arterials of 84th and Yankee Hill Road, in close proximity to Highway 2 and next to a railroad track.

Because of the requirement to show connectivity to neighborhoods, the proposed site plan shows a connection to Lot 110 and Lot 111, if and when those owners ever choose to sell and develop for a higher intensity use. One of the other variables is the southeast corner of Lot 110 which is included in this PUD. The developer does not own this property and may need to revise the legal description and site plan to exclude that southeast corner prior to City Council if the developer cannot purchase that property. That southeast corner is separated from the improvements to Lot 110 by a natural wetlands area. It is possible that the developer will have an agreement to acquire this ½ acre in the southeast corner before this application goes to the City Council. It would help square off the lines of this development.

The connection to Lots 110 and 111 are through S. 85th Street. Planning and Public Works also wants the developer to show a connection on the east side of those lots in the event there is no 85th Street. The general standard is that the developer is required to show a projected "ghost" connection if Lot 110 were developed for high intensity use.

Opposition

1. Richard Johnston, 8140 S. 84th Street, the owner of Lot 110, testified in opposition. The first he learned of this application to change from townhomes to apartments was when he received the letter form the city about this hearing. He has had no contact with the developers. He is disappointed and concerned about all of the traffic that will be added to this area with the number of apartments that are going to be built. He was pleased with the townhome development previously approved for this area. He has not entered into any negotiations about selling the southeast corner of his lot to the developer.

Johnston acknowledged that he has had some conversations with the engineer over the past couple of years, and he did receive a letter from the Yankee Hill Townhomes with an offer to purchase that southeast corner. He has not yet formally responded to that offer and certainly with this new proposal he may not be quite so inclined to favorably consider it.

Francis asked Mr. Johnston to describe the landscape barrier from his house to where the apartment complex would be built. Johnston stated that his acreage is one acre wide by five acres deep from west to east. The westernmost half of that acreage is landscaped and he has two outbuildings and a residence. To the east is mainly wetlands except for the southeast corner proposed in the Yankee Hill Apartments. The southeast corner is not wetlands, but developable land. He has access to the wetland area and has potential to enjoy it.

Staff questions

Esseks asked staff to discuss the southeast corner issue. Will explained that not including that southeast corner makes for a more difficult layout of this site. Staff had suggested that the developer should investigate including that southeast corner to provide for a better layout and better access and traffic flow. By doing it now, it allows some time between this public hearing and City Council hearing for those parties to have some discussion. It can be deleted if they cannot reach agreement.

Esseks inquired about access for the larger number of residents. Will stated that there are two main accesses, i.e. Dunrovin and Sutherland. And both Yankee Hill Road and 84th Street are arterial streets designed to handle that sort of traffic.

Dennis Bartels of Public Works stated that there is a requirement in an annexation agreement that by the end of next year Yankee Hill Road would be extended from the intersection of 84th Street east. With directed impact fees, the developer was supposed to develop it to the railroad tracks. The City has been planning to subsidize the project to close the gap between the railroad tracks and 91st Street. He anticipates that this year or next year that gap would be closed. There was also a requirement for temporary turn lanes in 84th Street to provide right-turn lanes, but that requirement has not been completed at this time. By the time construction of the apartments would occur and be occupied, the paving project should come together to add to the access. 84th and Yankee Hill will be busy roads, but development within the allowed density does not require any additional traffic study.

Response by the Applicant

Huston added that his client is aware of their obligation to build out Yankee Hill Road to make the connection to 91st Street, and that would have to be done prior to issuance of a certificate of occupancy for any apartments. The apartments are intended to be developed in two phases but the road improvements would be installed and constructed prior thereto.

Huston acknowledged that he should have contacted the Johnstons prior to this meeting. When he became aware of the requirement to acquire that southeast corner in the staff report, he did write the Johnstons a letter but they have probably not received it yet. His client would like to be able to negotiate with the Johnstons. If the Johnstons are not willing

to sell the southeast corner, then his client would revise the site plan to exclude that portion prior to advancing this proposal to the City Council.

Francis inquired how many units would be lost without the southeast corner. Huston has not done the calculations, but he believes they would lose five apartment units. The biggest challenge is that ultimately they will be required to show a connection on the east side of Lot 111 with a private roadway or public street. So it will just result in a weird angle on the street.

Francis understands that the economy is driving the apartments, but isn't it just as easy to build townhomes and turn them into rentals as opposed to apartment buildings? Huston indicated the issue is basically cost and his client looks to serve a more affordable market.

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

Sunderman believes this to be good use of the land and potential use of the southeast corner. One of the conditions of approval is that the applicant must demonstrate ownership of Lot 110, so that owner is protected at this point. The two parties need to negotiate.

Francis indicated that she has mixed feelings about the fact that they do not own the part of Lot 110 that they need to for this plan, and she is concerned about the increase in density.

Esseks asked whether the Planning Commission has been flexible with owners of property for residential development and commercial development in the past from the standpoint of economic conditions and the market. He could only think of one case.

Carroll did not have specific cases as examples, but he believes the Planning Commission has always attempted to be flexible as long as they are staying within the realm of density factors and not putting more traffic into the neighborhood.

Sunderman stated that he is comfortable with the increased density to a great deal because of the B-5 that exists around it.

Carroll pointed out that the applicant and the Johnstons will still have an opportunity to negotiate about the southeast corner of Lot 110. If the Johnstons do not want to sell, the applicant can make adjustments that are necessary. Carroll does not believe the Planning Commission needs to be in that discussion. He does not believe that this development is that big of an increase in intensity and he agrees that there is a need to consider the economy and the need for affordable housing.

Motion for conditional approval carried 7-0: Sunderman, Taylor, Partington, Esseks, Gaylor Baird, Francis and Carroll voting 'yes'; Cornelius and Larson absent. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 09001
TO REVIEW THE ACQUISITION OF LAND FOR PUBLIC USE
AS TO CONFORMANCE WITH THE COMPREHENSIVE PLAN,
GENERALLY LOCATED AT SUTHERLAND STREET AND
YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 11, 2009

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

Ex Parte Communications: None.

This application was removed from Consent Agenda at the request of Commissioner Taylor and had separate public hearing.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Staff presentation: **Brian Will of Planning staff** explained that this is a request for finding of conformance for the acquisition of 7.5 acres located in the neighborhood of 84th and Yankee Hill Road. This triangular piece of property was created by the new alignment of Yankee Hill Road. Jensen Park is just to the south. It is a requirement of the Charter that the Planning Department prepare a report on this request. Given that there is other land here proposed to be used for public uses and this land could be acquired for public use as well, staff has found the proposal to be in conformance with the Comprehensive Plan. Taylor asked for clarification of #4 in the analysis which discusses the Federal Land and Water Conservation Fund Program.

JJ Yost of Parks and Recreation, explained that in 2007, the City Council approved the sale of 1.32 acres adjacent to Pioneers Boulevard along Holmes Lake Golf Course. That land is under the Federal Land and Water Conservation Fund jurisdiction. That program requires that when we sell property under the Federal Land and Water Conservation Fund jurisdiction, we must replace it on a dollar-for-dollar value. An appraisal has been done on the 1.32 acre parcel at Holmes Lake and Parks is looking at expending those funds for the purchase of 5.75 acres of this 7.5 acre parcel at 84th & Yankee Hill Road. The remainder of the 7.5 acre parcel would be purchased with other funding sources. The Parks Department has been interested in this property for public purposes since the realignment of Yankee Hill Road and its proximity to Jensen Park.

There was no testimony in opposition.

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Gaylor Baird moved to approve a finding of conformance with the Comprehensive Plan, seconded by Francis and carried 7-0: Sunderman, Taylor, Partington, Esseks, Gaylor Baird, Francis and Carroll voting 'yes'; Cornelius and Larson absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 1:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 25, 2009.

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