MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, February 25, 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, Michael Cornelius, Dick Esseks, Wendy Francis, Jim Partington and Lynn Sunderman (Roger Larson and Tommy Taylor absent). Marvin Krout, Steve Henrichsen, Brian Will, 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 requested a motion approving the minutes for the regular meeting held February 11, 2009. Motion for approval made by Sunderman, seconded by Francis and carried 6-0: Gaylor Baird, Carroll, Esseks, Francis, Partington and Sunderman voting 'yes'; Cornelius abstained; Larson and Taylor absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: February 25, 2009

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

The Consent Agenda consisted of the following items: **STREET AND ALLEY VACATION 08009 and STREET AND ALLEY VACATION NO. 09001.**

Ex Parte Communications: None

Cornelius moved to approve the Consent Agenda, seconded by Partington and carried 7-0: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Partington and Sunderman voting 'yes'; Larson and Taylor absent.

REQUESTS FOR DEFERRAL: None.

SPECIAL PERMIT NO. 1762D,
AN AMENDMENT TO THE VINTAGE HEIGHTS
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY BOUNDED BY
SOUTH 84TH AND SOUTH 98TH STREETS,
AND OLD CHENEY ROAD AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION: February 25, 2009

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval, as revised.

Staff presentation: **Brian Will of Planning staff** explained that this is a request to adjust the special permit for the Vintage Heights CUP. The area of this application has been expanded beyond the applicant's original request at the recommendation of city staff.

The area of the application includes everything along S. 98th Street, Pine Lake Road, and Old Cheney Road within the boundary of the Vintage Heights CUP. It originally started out as an application to amend the CUP to adjust the setback for Lot 12 adjacent to S. 98th Street. The circumstance was that a building permit was issued for the home on this property and construction commenced. Subsequently, an additional 10' of right-of-way was acquired for S. 98th Street, creating a nonconforming condition because the house no longer met the required front yard setback along 98th Street. The house was set back approximately 28' from the right-of-way line of 98th Street. After the additional 10' was taken, the setback became 18'. The city had agreed to help eliminate that nonconforming condition, if possible. The remedy in this case is the amendment to the CUP to adjust the setbacks of the CUP.

The review of this application by staff points out that the CUP is adjacent to three arterial streets and staff believes that perhaps there is a likelihood of this circumstance happening again in the future. Therefore, staff is recommending to add a note to the CUP stating that if additional right-of-way is taken for one of the surrounding arterial streets and creates a nonconforming condition, that the setback for that lot is then automatically adjusted so that the lot conforms with the requirements of the zoning ordinance, thereby avoiding creating a nonconforming condition. The staff has expanded this application to include all of the properties adjacent to the arterial streets to eliminate the creation of a nonconforming condition in the future.

Esseks queried whether this could become impractical if the city, in its wisdom, decides to create an even larger, wider arterial road in one of these three roads, whereby so much land is taken away resulting in homes located almost right up to the roadway. Will stated

that regardless of whether this application is approved or not, that circumstance could occur. Staff is suggesting that by allowing this automatic adjustment, we eliminate the creation of a nonconforming condition to no fault of the owners. Esseks thinks this could set up the city for something that is unworkable. Will agreed that there is no upper limit; however, he pointed out that the Comprehensive Plan shows these arterial streets to be four-lane facilities, and the staff is basing this recommendation on what is shown in the Comprehensive Plan for those facilities.

Gaylor Baird asked staff to respond to the letter of concern received from Mr. Hanneman. Will stated that the ordinance allows those setbacks to be adjusted by the Planning Commission or City Council. However, this application does not adjust any of the setbacks within the CUP, nor even those lots adjacent to the arterial streets. It only adds a note that if additional right-of-way is taken that creates a nonconforming condition, the setback is automatically adjusted. There are no other adjustments to this CUP being requested.

Gaylor Baird inquired whether this could be considered a unique one-time circumstance brought on by the unforeseen need for a right turn lane. Will believes it is sort of a limited circumstance. He has not seen this before. 60' of right-of-way to the centerline was dedicated for 98th Street, or had been acquired with this development. This circumstance is probably not typical.

Rick Peo of the City Law Department advised that this situation has come up in the past. When the city needs additional right-of-way, the city has to buy that under threat of condemnation. Property owners were always looking to say that it was a taking and made their property less valuable. In the past, we have had to go to the Board of Zoning Appeals to get individual lot adjustments to reduce that potential impact. There is flexibility under the CUP regulations to adjust the setback requirements, so looking at this particular application, it probably will not happen very often. This type of situation gives us the result up front. This is for the nominal situations of one or two or three feet. This attempts to avoid the procedural steps when a nonconforming use is created.

Support

1. Mike Anderson, 9733 East Andre, the original applicant, testified in support. He got a building permit in October of 2007 for the house, and when he met with Midwest Right-of-Way in February of 2008, they were surprised that he already had a foundation in place. The problem was that the building permit was not to have been issued. He has sat almost a year on that house without the ability to continue building until the setback issue is resolved. It is less than 2' out of compliance. He is selling the house and did not want it to be nonconforming.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: February 25, 2009

Francis moved to approve the staff recommendation of conditional approval, as revised, seconded by Sunderman.

Francis believes this is a nice way to correct an issue and hopefully people will be able to plan for road widening before permits are issued.

Gaylor Baird commented that it would be nice to see things in logical order and avoid the situation where homes are falling into the streets or sidewalks. It's a pragmatic approach to a real problem.

Carroll commented that as a Board of Zoning Appeals member, he has seen these come forward and it is a tough situation to deal with. This is proactive and helps everyone in the city and the property owners.

Motion for conditional approval, as revised, carried 7-0: Esseks, Sunderman, Francis, Cornelius, Gaylor Baird, Partington and Carroll voting 'yes'; Larson and Taylor absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 1:25 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 11, 2009.

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