

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, May 23, 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, Mary Strand, Lynn Sunderman and Tommy Taylor (Roger Larson absent). Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Tom Cajka, Stephen Henrichsen and Jean Walker 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 May 9, 2007. Motion for approval made by Carroll, seconded by Krieser and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Strand, Sunderman and Taylor voting 'yes'; Larson absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

May 23, 2007

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

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 07011; CHANGE OF ZONE NO. 07025; CHANGE OF ZONE NO. 07026; and SPECIAL PERMIT NO. 1692D.**

Ex Parte Communications: None.

Item No. 1.2, **Change of Zone No. 07025**, and Item No. 1.3, **Change of Zone No. 07026**, were removed from the Consent Agenda and scheduled for separate public hearing.

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

Note: This is final action on Special Permit No. 1692D, 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.

REQUESTS FOR DEFERRAL:

CHANGE OF ZONE NO. 07018,
GLYNOAKS PLAZA PLANNED UNIT DEVELOPMENT,
ON PROPERTY GENERALLY LOCATED
AT S. 84TH STREET AND GLYNOAKS DRIVE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 23, 2007

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

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

Carroll moved to defer, with continued public hearing and action scheduled for June 20, 2007, seconded by Strand and carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting 'yes'; Larson absent.

There was no public testimony.

CHANGE OF ZONE NO. 06082,
FROM AGR AGRICULTURAL RESIDENTIAL
TO R-3 RESIDENTIAL
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:

May 23, 2007

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

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

Carroll moved to defer, with continued public hearing and action scheduled for June 20, 2007, seconded by Cornelius and carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting 'yes'; Larson absent.

There was no public testimony.

CHANGE OF ZONE NO. 07027
FROM R-4 RESIDENTIAL TO B-3 COMMERCIAL
and
STREET & ALLEY VACATION NO. 07003,
ON PROPERTY GENERALLY LOCATED
AT THE SOUTHEAST CORNER OF
S. 9TH STREET AND SOUTH STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 23, 2007

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

The Clerk announced that the staff has recommended and the applicant has agreed to a four-week deferral.

Strand moved to defer, with continued public hearing and action scheduled for June 20, 2007, seconded by Taylor and carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting 'yes'; Larson absent.

There was no public testimony.

COUNTY SPECIAL PERMIT NO. 07009,
KADAVY ESTATES COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT N. 56TH STREET AND BRANCHED OAK ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 23, 2007

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

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

Carroll moved to defer, with continued public hearing and action scheduled for June 20, 2007, seconded by Strand and carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting 'yes'; Larson absent.

There was no public testimony.

CHANGE OF ZONE NO. 07026
FROM AG AGRICULTURAL DISTRICT
TO R-3 RESIDENTIAL DISTRICT;
FROM R-3 RESIDENTIAL DISTRICT TO R-5 RESIDENTIAL DISTRICT;
AND FROM AG AGRICULTURAL DISTRICT TO R-5 RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
AT N.W. 48TH & W. CUMING STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 23, 2007

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

Staff recommendation: Approval.

Ex Parte Communications: None.

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

Staff presentation: Tom Cajka of Planning staff explained that this change of zone is one of three parts. There is an associated final plat and the area being rezoned is part of an agreement that was reached with the City, the Airport Authority and LPS to rezone this land to residential and have part of it set aside for the new Arnold Heights school and possibly future library/recreation center. The purpose of the change of zone is to coincide with the final plat to make sure the lots conform to the lot size required by the zoning district. Most of it is now AG zoning. The area to the far west would be set aside for future development. It is an outlot now.

Carlson inquired about the access. Cajka showed the draft proposal for future development. Cuming Street would be extended. The area to the north would be open space. Access would come off of future West Cuming Street. This was all negotiated in the agreement approved by City Council earlier this year.

Opposition

1. Lisa White, 5410 Wilkins Circle, testified in opposition. This rezoning would directly affect their home. It would be right in their backyard. They purchased their home in 2000 and they were sold on the openness of the view, the trees, and the open field beyond the trees. She is fearful that a housing development would decrease the value of their property, and it would certainly decrease the value to them as the home owners. In addition, this zoning will disrupt the habitat of the wildlife living in that area, i.e. deer, wild turkeys, red fox, wood ducks, red-tailed hawks. She is concerned for the peace and quiet in her neighborhood. The trees on the north provide protection and shade.

Esseks inquired whether the realtor or developer told Ms. White anything about the likely future for the land to the north when she purchased the property. White indicated that they were told nothing about future development and as far as they knew, it was owned by the Airport Authority, which they were told by their neighbors who had lived there for 20 years.

2. Mark White, 5410 Wilkins Circle, also testified in opposition. The area with the trees and the area around N.W. 48th and W. Cuming was severely flooded with the rain event on May 12th. He believes that this property was called "Huskerville" in the '50's and it was wiped out by flood in the early '50's. White does not believe there will be adequate area for runoff. He has concerns about building in this area with the kind of flooding that is possible. They have videos and photos of the flooding.

Esseks noted that the City Council declared this property surplus in January of this year. Prior to that City Council meeting, were you informed by mail of this possible change? White indicated that the letter from the Planning Department dated May 11, 2007, is the first notice they received. The realtor told them that the area right behind their house was a commons area and that the Airport Authority owned everything from the trees and beyond.

Staff response

Cajka advised that the west side is shown as an outlot as a future development area on the final plat. It would require a preliminary plat or community unit plan before any development could occur on the outlot. Hopefully, they would save the tree mass and that could be required in a community unit plan special permit. If they came in with a straight preliminary plat, the staff could strongly suggest saving the trees but the developer could not be forced to keep the outlot. Cajka confirmed that the property is owned by the Airport Authority and they will retain ownership until some time in the future.

Cajka also advised that the development would require a grading and drainage plan to address all of the stormwater issues. He is not aware what the grading and drainage plan is to date, but he would have to assume that LPS would have investigated this because they would not want their buildings being flooded.

Esseks inquired whether the adjoining property owners would have been informed of the agreement so that they could have made input at the City Council meeting. Cajka did not believe it was a requirement to notify property owners of the agreement.

Steve Henrichsen of Planning staff was involved in the agreement with LPS. He clarified that all that had been declared surplus is the LPS property. The westernmost lot would be declared surplus in the future and sold by the Airport Authority. In several Comprehensive Plans in the past, the entire area has been shown as urban residential. This site would have been shown for future housing in the year 2000. Olsson Associates will be looking at a drainage plan and infrastructure for the new school and would be making sure the

school site is properly done and how to handle the drainage. Henrichsen acknowledged that there is definitely a drainage way that will need to be addressed in a future subdivision. At this point in time, we really would not know how that would work in terms of saving the trees or utilizing that land for the future development.

Carroll inquired as to the time frame for construction of the school. Henrichsen stated that they will begin construction in the fall of this year so that it could open in the fall of 2009.

Henrichsen also clarified that LPS was part of the previous agreement that dealt with the entire site, but the LPS site was already zoned R-3 and is not part of this change of zone request.

ACTION BY PLANNING COMMISSION:

May 23, 2007

Carroll moved approval, seconded by Cornelius.

Carroll supports the change of zone because there is a need for a school in this area. And, and if you build a school, you will want to have residents. We know that the west outlot will be residential, and he believes the city will require or urge the developer to protect the mass of trees and address the water drainage problem. At the point in time that we approve the plat for that section, these homeowners could come back again to express their concerns, but he believes they will be protected from flooding.

Esseks stated that he will vote in favor, but he hopes that home buyers in the future will be fully and adequately informed about the future use of vacant land near them. He would encourage the realtor community to do this.

Motion for approval carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting 'yes'; Larson absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 07025,
FROM R-3 RESIDENTIAL DISTRICT TO
B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT,
ON PROPERTY GENERALLY LOCATED AT
S. 80TH STREET AND PIONEERS BLVD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 23, 2007

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

Staff recommendation: Approval.

Ex Parte Communications: None.

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

Staff presentation: **Brian Will** of Planning staff explained that this is a change of zone to B-2 on a 1.2 acre parcel located at about S. 78th Street and Pioneers Blvd. It is adjacent to an existing parcel that is zoned B-2. The intent would be to expand and incorporate this property into the existing B-2 property. The adjacent B-2 is included The Preserve use permit. The Comprehensive Plan does identify a neighborhood commercial center somewhere in this vicinity that would be tied to the B-2 center. If the adjacent B-2 is expanded to include the lot for this change of zone, it would still meet the Comprehensive Plan criteria for a neighborhood center.

Proponents

1. Kent Braasch, Nebraska Nurseries, appeared on behalf of the applicant and owner. The purpose of this change of zone request is to expand the B-2 area that was originally zoned on the preliminary plat back in 2001. At the time the preliminary plat was approved, Nebraska Nurseries did not own this property; however, they did have an option on the land and purchased it two years later. They now have a developer that is interested in purchasing the proposed B-2 on the corner of Lucile and Pioneers, and expanding on into the current B-2 zoned area.

Braasch showed a concept plan for the subject area along with the existing B-2. The west property line bisects one of the buildings that will be constructed on that property. The area subject to this change of zone will be a 10,000 sq. ft. single-story building and 65 parking stalls. The original area was approved for 66,000 sq. ft. of office and retail space. They will have about 67,000 sq. ft. with this expansion, so it really reduces the density of the overall area. Braasch reiterated that the only reason this applicant did not zone this property in 2001 is because they did not own it.

Opposition

1. Dave Zeplin, 7800 Viburnum Drive, which abuts the lot in question, testified in opposition. He purchased his property in April of 2006, and completed construction in October, 2006. At the time of purchase, he was shown plans of the overall development of The Preserve, in which this property was designated as green space with walking trails. He was told that there were no plans for commercial development on this site. It now appears the commercial portion has grown significantly in scope and his property will abut portions of a commercial building and parking lot. Had he known about this, it would have certainly influenced a decision not to purchase this lot. There is a tall berm, so any construction that occurs will look down on his property. He questions the need for additional commercial development along Pioneers at this time. He is extremely concerned about the financial and aesthetic aspects this zoning change will have on his property.

Zeplin believes that the property was owned by Essex Corporation and that the concept

plan was provided by Essex Corporation. Essex Corporation also managed Zeplin's homeowners association at this time. Esseks inquired whether Zeplin was informed that the property was designated for business in the Comprehensive Plan. Zeplin stated that he was informed that the portion "here" was going to be trees, green space with walking trails. He was not told that it would be commercial.

Will clarified that this property could not stand alone as B-2. It would have to be added to the existing B-2 area.

Response by the Applicant

Braasch clarified that the residential builder/developer is not Essex Corporation. Representations about "what was and what wasn't" did not come from Nebraska Nurseries or Essex Corporation. It must have come from the builder of the townhomes.

Braasch acknowledged that there are some elevation differences. The B-2 property being rezoned is on the other side of the trees. If the top of the berm represents zero, the property on the other side will actually get cut down probably 10' at a minimum because of the grade. That site raises about 22' from Lucile going east. In order to get access to this property, there cannot be much slope and it has to be nearly the same as Lucile Drive. Therefore, the whole area and parking lot will get dropped down. He believes that this is consistent with what has already been approved in the existing B-2 area.

Esseks wanted to know how this home buyer, just a year ago, got the impression that this parcel would be open space. Braasch suggested that he was looking at an earlier rendering that was done in 2001 or 2002 that had never been changed. Nebraska Nurseries did own the property at that time, but had not tried to do anything with it; however, they knew it was going to be commercial. Braasch believes that the lot was sold to Mr. Zeplin by an independent realtor, i.e. the builder.

Braasch also advised that the green area represented on the drawing shown by Mr. Zeplin was not owned by the applicant at that time. That area has never been upgraded. The existing B-2 area and what is planned is consistent with what was proposed. They are not increasing the commercial density in that area.

Strand asked Braasch to describe what the B-2 zoning will consist of and the plans for the walkability for the community to get over there and utilize that area. Braasch showed a walking path on the map that is partially built behind the townhomes. Once they obtain the grading plan from the developer for the existing B-2 area, they will know better what will happen to the future walkway. It will be a very nice well treed B-2 area. They have tried to preserve the grades as well as the trees in that whole area, all at a fair amount of cost.

Carlson observed that the layout being shown is not completely representative of the use permit. To what degree is the existing use permit represented by the design being shown? Braasch explained that the drive is at the same location as originally shown. He showed

what was originally proposed and approved, which is 66,000 sq. ft. in two-story buildings. What has been developed is actually single-story with the exception of one building that may have a two-story.

Carlson inquired whether the modification of the use permit will be administrative or go through the public hearing process. Will acknowledged that they will have to come back and amend the existing use permit, either administratively or through Planning Commission. If there is no significant increase in floor area being requested, it can be approved administratively. Pedestrian connectivity and access to Pioneers are issues that need to be discussed. The use permit will have to be amended to incorporate this property and the plan will have to fit with what has already been approved.

Braasch advised that there were walkways approved on the preliminary plat that may get somewhat modified.

ACTION BY PLANNING COMMISSION:

May 23, 2007

Strand moved approval, seconded by Carroll.

Strand commented that she has not sold a property in The Preserve but it is one of the most beautiful subdivisions in Lincoln with the way they have preserved all of the trees. She does not imagine that the applicant will do anything to destroy that feeling. She trusts they will put in the walking trails, protect the berms and protect the residences.

Esseks was struck by the fact that there have been two cases back-to-back today where the buyers have been unaware of the risk of commercial development. Maybe we need to review our ordinances to encourage better communication to the prospective buyers.

Carlson pointed out, however, that the Planning Commission is being asked whether it is appropriate to change that residential to commercial. He is always in favor of additional communication, but the Planning Commission has the opportunity to decide the appropriateness. The use permit is in place, so we do have some opportunity to create some mitigation.

But, where the Comprehensive Plan designates an adjacent property for business purposes, even though the current use is residential, Esseks believes the seller should inform the buyer of the plan. Carlson agreed, but the staff report says that the property is designated for residential land uses. Esseks pointed out that the staff report also refers to a neighborhood center at this location.

Will explained that with regard to neighborhood centers, the Comprehensive Plan does not designate specific properties – they are “floating” dots indicating future land use in a general area.

Strand commented that there is no guarantee anytime you buy a property that backs up to another property that is not the same owner. People need to be aware that when they back up to a property the association does not own or maintain, it is always subject to change.

Carlson commented that if the change were for B-1 or B-3, he would be a lot more hesitant. B-2 allows some restrictions. He will support the change of zone because there is opportunity for some mitigation.

Cornelius indicated that he will support the motion as well. The map shows that the existing residential areas that do not already about B-2 zoning are buffered by outlots or unused residential zones. They look nonstandard – small and unlikely to be developed – so there is a buffer between the business and residential as it stands.

Motion for approval carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting 'yes'; Larson absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 07028,
FROM AG AGRICULTURAL DISTRICT
TO AGR AGRICULTURAL RESIDENTIAL DISTRICT
and
SPECIAL PERMIT NO. 06061A,
AN AMENDMENT TO THE HIDDEN VALLEY ESTATES
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S. 112TH STREET AND PINE LAKE ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 23, 2007

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

Staff recommendation: Approval of the change of zone, subject to a zoning agreement, and conditional approval of the amendment to the community unit plan.

Ex Parte Communications: Esseks submitted the ex parte communications he had with Mike DeKalb in writing.

Staff Presentation: Mike DeKalb of Planning staff advised that this is a request to change 36 acres within the Hidden Valley Golf Course area from AG to AGR. The entire area of the Hidden Valley Golf Course is within the Community Unit Plan. The CUP is a blended density of AG and AGR. The prior approval of the AG area included 26 lots. This change of zone is requested to add 14 lots on down the road. The prior agreement and approval by the City for the change to AGR and the Hidden Valley CUP was in fact to accomplish the Comprehensive Plan goal of extending South 112th Street and getting that road shifted

around the intersection.

Esseks asked for clarification as to where this property is located in relation to the current city boundaries. DeKalb explained that it is about ½ mile east of the city limits.

Esseks wanted to know why the property is not in Tier I or Tier II. DeKalb explained that the property drains to the east and the pipe is coming from the north. It falls short of the Tier I with the pipe coming from the north.

Proponents

1. Kent Seacrest appeared on behalf of **Developments Unlimited**, the owner of the Hidden Valley Golf Course area. This is also the developer who has completed the Wilderness Ridge Golf Course, and those lots are gone. There has been a lot of interest in the first 26 lots at Hidden Valley, and now there is interest in these 14 additional lots.

Seacrest reminded the Commission that last year the Commission unanimously voted to support doing this hybrid mixing of AG and AGR and doing it as a build-through. This proposal goes directly to the final product of build-through with urban lots on day one, with rural water and community sewer treatment plant. The streets will be paved. The developer will dedicate 112th Street. 112th Street is not on the map in the Comprehensive Plan but yet it is important for the community interest. Getting an arterial street dedicated ahead of time is huge, particularly when it goes through a golf course. In order to get 112th Street to go through, the developer purchased two acres to the north. A straight alignment would have taken it through a major water course with enormous consequences to mitigate going through a waterway. This developer is helping the city move the right-of-way. The staff report points out that this is not ag land; there are no farm conflicts; Public Works and the County Engineer desire to get 112th Street; and the developer has indicated willingness to pay impact fees, even though this is not in the city limits. The developer is willing to pay the road impact fee of \$35,000, even though it is not required.

2. Mike Eckert of Civil Design Group explained some of the design details. The 14 lots are an extension of the original 26 lots. They will be served by rural water. He portrayed the layout for 112th Street. The developer has proactively gone about the process of grading and installed a new golf hole so that 112th Street can come through. The community treatment plant was built in a modular fashion. The permit with NDEQ will be renewed to add more lots. Detention was addressed in the first 26 lots and they will do so with the additional 14 lots.

Esseks commented that it looks like a very well designed development; however, the Comprehensive Plan calls for limiting of acreages to approximately 6% of the county's total population. Why will people choose this area should the Commission approve this area and not others that will come along? **(Amendment requested by Commissioner Esseks**

on 6/06/07). Seacrest referred to the Comprehensive Plan. When you deal with acreages or AGR zoning requests, you look for the darker yellow color on the plan. This tract is not even yellow. It is green – open space. This is a “unique duck” – it’s called “golf course” or “open space”. This has been a golf course for years. It has had a pre-existing community use as a business-type activity. This is a unique fact pattern. The Comprehensive Plan sets out a lot of goals, and sometimes the goals are not in perfect alignment. The developer came very close to bringing this area in by annexation for city services, but Public Works was a little nervous about having a package plant. In hindsight, maybe they should have just brought it in as urban.

In addition, Seacrest pointed out that the Comprehensive Plan contains a goal of having recreation in the city and county. This keeps the golf course alive. It also still allows the green space which is called for in the Comprehensive Plan, and the Comprehensive Plan also calls for 112th Street to go through. The Comprehensive Plan also says to protect the strategic riparian waterways. This developer shifted and purchased two acres (at a very expensive cost) in order to move the alignment.

There was no testimony in opposition.

CHANGE OF ZONE NO. 07028**ACTION BY PLANNING COMMISSION:**

May 23, 2007

Carroll made a motion to approve, subject to a zoning agreement, seconded by Strand.

Esseks believes this is a very good choice for AGR because it is so close to the City and the people who live here are likely to make contribution to the city in tax dollars, social participation, etc.

Carlson stated that he will support the motion because it makes efficient use of ground that has already been removed from AG service. It is efficient use of the land.

Motion for conditional approval carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting ‘yes’; Larson absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 06061A**ACTION BY PLANNING COMMISSION:**

May 23, 2007

Carroll moved approval of of the staff recommendation of conditional approval, seconded by Strand and carried 8-0: Strand, Cornelius, Taylor, Carroll, Krieser, Esseks, Sunderman and Carlson voting ‘yes’; Larson absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 2:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on June 6, 2007.

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