

MEETING RECORD

NAME OF GROUP:

PLANNING COMMISSION

**DATE, TIME AND
PLACE OF MEETING:**

Wednesday, April 6, 2011, 1:00 p.m., City
Council Chambers, First Floor, County-City Building,
555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN
ATTENDANCE:**

Leirion Gaylor Baird, Michael Cornelius, Dick Esseks,
Wendy Francis, Roger Larson, Jeanelle Lust, Jim
Partington, Lynn Sunderman and Tommy Taylor;
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 Lynn Sunderman called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Sunderman then requested a motion approving the minutes for the regular meeting held March 23, 2011. Motion for approval made by Cornelius, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

CONSENT AGENDA

**PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:**

April 6, 2011

Members present: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 10028, CHANGE OF ZONE NO. 11008 and STREET AND ALLEY VACATION NO. 11004.**

Ex Parte Communications: None

Taylor moved approval of the Consent Agenda, seconded by Francis and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'.

SPECIAL PERMIT NO. 11005
FOR A DOMICILIARY CARE FACILITY
ON PROPERTY GENERALLY LOCATED
AT SOUTH 27TH STREET AND WILDERNESS HILLS BOULEVARD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 6, 2011

Members present: Esseks, Lust, Taylor, Cornelius, Gaylor Baird, Francis, Partington, Larson and Sunderman.

Ex Parte Communications: None.

Staff recommendation: Conditional approval, as revised.

Staff presentation: **Christy Eichorn of Planning staff** explained the proposal for a domiciliary care facility generally located on the corner of 27th Street and Wilderness Hills Blvd. At this location, South 27th is an arterial street, Wilderness Hills Boulevard is a collector street and Keystone Drive is a local street.

The proposed facility would normally be allowed 31 residents; however, the applicant is requesting a density bonus to allow 32 residents. There will be two buildings with 16 residents in each building. The applicant intends to phase construction so they would have one building with 16 residents, and then another building in the future. There will be 13 full-time employees, with 4 employees in each building at all times. The facility will face Keystone Drive and will back onto S. 27th Street and Wilderness Hills Boulevard.

Eichorn further explained that this type of facility is recognized in the Comprehensive Plan as an acceptable transition from commercial to residential. There are townhome lots south of the proposed facility on both sides of Keystone Drive, with mostly single-family residential to the east, as shown in the existing community unit plan.

Eichorn clarified that the existing zoning of the property on which the facility will be built is R-3 Residential under a CUP. Domiciliary care facilities are permitted by special permit in all residential zoning districts. They are not permitted in commercial zoning districts.

Esseks sought confirmation that the Comprehensive Plan specifies a domiciliary care facility as an acceptable transitional residential use. Eichorn explain that the Comprehensive Plan does not specifically refer to “domiciliary”, but it refers to assisted living facilities for people who need care and “elderly housing facilities”.

Gaylor-Baird noted that some of the comments in opposition mention Lincoln Federal and she wondered where that might be coming from. Eichorn explained that Lincoln Federal is the owner of the site and the applicant for this special permit intends to purchase the

property. Eichorn attended the neighborhood meeting that the applicant sponsored and the neighbors did express concern about not being notified by the property owner (Lincoln Federal) prior to being notified by the applicant and the city.

Lust confirmed with Eichorn that a domiciliary care facility is considered a residential use, and Eichorn agreed.

Proponents

1. Dan Klein, owner of **Regal Building Systems**, 1960 S.W. 112th Street, presented the proposal. Regal Building systems is the applicant for this special permit and has built four assisted living facilities over the last 15 years. This domiciliary care facility is licensed as “assisted living” in the State of Nebraska. Its specific need is to fulfill caring for the elderly that have dementia or Alzheimer’s disease and are not able to care for themselves – although they might be quite healthy physically, they cannot live alone.

This facility will be known as The Waterford at Wilderness Hills and will be built in two phases, with the east building being built first. The first phase will include the parking lot and access drive through to what would not only be the first phase, but also the second phase building. This facility will provide 13 FTE jobs. It is a 24-7 business operation.

Klein advised that currently, there are three facilities that are licensed as assisted living centers that Regal has built in the Lincoln community. The only one they operate is The Waterford at 40th & Pine Lake Road. The proposed facility on South 27th would be less than 2 miles from that location and would provide some advantage flexibility for staffing.

Klein stated that the objective of this proposed Alzheimer/dementia facility is to provide great care and compassion and dignity. The goal is to serve not only the needs of the residents but also the families going through this difficult time. Senility is now called dementia and Alzheimer’s. That’s the difference from assisted living.

It is anticipated that the facility will be built and opened this fall in October or November.

Esseks asked, “why here?” Why not locate in a facility in a commercial zone somewhere where you would not have neighbors across the street that did not like it? Klein explained that this facility cannot be built in a commercial zoned area. It is a “live-in” opportunity for people to live close to the community. These people will not be outside the facility unless personally attended by a care staff or family member. One of the facilities located on South 48th Street is right in the middle of all single-family residential homes. Although this application has begun part of a conversation with the neighbors living in the neighborhood, he was not aware that there was some negative concerns because he was the first to notify them in March. Klein acknowledged that he had made a wrong assumption that they would have been notified earlier by Lincoln Federal.

Klein stated that his facilities are good neighbors; these residents do not interact with anyone in the community other than their family members that visit. Although larger than a single-family home, the facility will be an attractive addition in this buffer between South 27th Street and the commercial property to the north.

Lust inquired whether it is the applicant's goal to make these facilities appear and be as residential as possible for their location. Klein agreed. This facility is single-story, slab on grade construction. The exterior of the building will be of all brick/stone so that it will not have a downgrading effect. The exterior landscaping will be more than the minimum requirement. It is in a location with the drive-by traffic helping people to become informed that there is a convenient area in their neighborhood where a loved one may be cared for.

In Regal Building's history of owning and managing other facilities, Esseks wondered what problems have occurred with the neighborhood. Klein stated that he is not aware of any complaints. The first building was built in 1995, and they have built a total of four additional facilities, with one being outside of Lincoln. These have all been assisted or retirement facilities. The ones in Lincoln are licensed for "assisted living" and the one outside is a retired assisted Alzheimer's unit. He is not aware of any complaints or difficult interactions with the neighborhood community at any of these locations.

Esseks wondered what it is about this type of facility that results in no complaints. Klein suggested that it is because the residents are growing older and have less interest in being interactive out in the community. Some use walkers or wheel chairs, thus they do not have the mobility that they once had and would rather stay in a comfortable and safe environment. These assisted living facilities are not intended to be any different than a regular home. It is their legal address. It is a restriction of further involvement with the community because of the incapacity of the individuals to be able to redirect themselves. It will be a locked facility. Visitors will not be able to just walk into the building.

In terms of environment or community setting, Taylor inquired whether the other settings are similar to what this facility will be. Klein stated that there are two on South 48th Street that do not have any other businesses within a number of blocks – the area is all single-family residential. The facility on 40th & Pine Lake Road has the Savannah Pines retirement facility immediately to the north and then transitions into the Williamsburg residential area. On the east side there is a commercial business on the northeast corner of 40th & Pine Lake Road with single-family homes immediately to the east as well as the north. The same would be true on the south side, with a larger medical facility on the southwest corner. The southeast corner immediately begins with single-family homes.

Lust inquired whether Klein anticipates much increase in traffic along Keystone Drive. Klein understands from the planners in the Planning Department that the expectation of traffic counts in other areas that have similar facilities would be far less than the townhome traffic pattern for which these lots are designed. There are eight townhome lots on this site. Because the residents cannot leave and family does visit but not as much as with assisted

living, Klein believes that the amount of traffic from the Alzheimer's facility will be far less than an assisted living facility or townhome development. The Waterford had just three visitors at lunch time today. It would be a rarity to have two families even in the same day that would visit this facility.

Lust then suggested that if they put in the eight townhomes, with two cars each, this facility will actually have less car traffic. Klein agreed. The coming and going on a daily basis would be less than the townhomes.

Gaylor Baird inquired about the landscaping – what would you do about screening the parking lot? Klein has not yet seen what the city will require for the parking area, but he assured that the screening and landscaping will literally dress the front and the back. In the other facilities, they have actually added more landscaping than the city required.

Opposition

1. Bryan Van Deun, 8940 S. 28th Street, submitted his testimony in writing. This facility will be in his front yard. Right now, in Lincoln, policies are being implemented that will ultimately eliminate our freedoms and destroy The Good Life of Nebraska. Lincoln officials have unilaterally joined those promoting global regional development with help from the *International Council for Local Environmental Initiatives (ICLEI): Local Governments for Sustainability*. ICLEI is used as one of the mechanisms to undo our political sovereignty. He suggested that zoning has become a matter not of planning but of control. Because of our awareness of this international fight, Van Deun stated that he is one of the many sleeping citizens of years past who is now awake. Citizens are paying attention when you change the agreement upon which he made a \$350,000 housing and property decision for his retirement home. Do not fall into the sustainability trap. "While we may lose the battle, we do look to win the war." He is opposed to this special permit.

2. Brad Williams testified in opposition. He asked the Commission to put themselves in his shoes. His home is located on the northwest corner at 8900 S. 28th Street. This facility will be across the street from his front door. He would not have purchased his home had he known about this facility. He does not believe the facility will be accessed on Keystone Drive that often. The most convenient way to approach will be to turn in on Wilderness Ridge Boulevard. That is where most of the traffic will be and he is concerned about employee traffic, service vehicles and visitors. Williams stated that he is sympathetic for the need to have these kinds of buildings and establishments, but there is a right and a wrong spot. In his opinion, this is not the right location. He is also concerned about the children in the area with regard to the additional service units and traffic. The traffic will be right in his front yard. Another concern is the impact upon the value of his property.

Larson suggested that there would be a lot more traffic coming off of the Kohl's property than from this facility. The visitation rates are very, very low. There are not that many residents that would require deliveries of food, supplies, etc. Larson suggested that it

would seem that Mr. Williams' concern should be more about the location of the Kohl's Department store than this facility. Williams stated that he is not concerned about Kohl's because the traffic coming down Wilderness Boulevard to Kohl's does not go by his property. If you are going to this facility, however, you will turn right in front of his property. There are going to be service vehicles; there are going to be visitors; there are going to be employees. If you build townhouses, more of the traffic will go up to the other approach which is further south. Williams would be willing to bet that most of the traffic going to this facility will turn right in front of his house. The townhouses make more sense to him.

Larson stated that he does not see any danger or any disadvantage to having those people there. Williams stated that it is just the connotation – unfortunately, Alzheimer's has a bad ring to it to a lot of people. If he or his neighbors decide to move, he is sure this facility will affect the resale value of the residential properties. Even assisted living has a better sound than the Alzheimer's. It will impact the vicinity and a lot of the other neighbors. He was assured there would be single-family and townhouses built on this property.

Larson wondered why Mr. Williams feels the owners of any potential townhomes would have a different attitude about entering. Williams suggested that the townhomes would be built further up the street than this building and it will be closer for them to go down 27th Street.

3. Judy Lerdahl, 9020 S. 28th Street, testified in opposition. She built her home with the idea that this would be her retirement home. Upon receiving a notice that there would be a meeting held at Lincoln Federal about a possible memory loss unit, this was the very first the neighbors had heard of it. Her home was built two years ago. She attended the neighborhood meeting with Mr. Klein. There was no sign of Lincoln Federal being there to talk to. We had no knowledge of this happening. We all knew Kohl's was there when we purchased our homes. There is not a whole lot that can happen on the subject property and she would surmise that the cost of that property was quite expensive as compared to other properties that might be available. She suggested that there is a piece of land owned by Lincoln Federal at Yankee Hill and 40th Street that looks to be suitable and has no other homes around it. Then, if you purchased a home, you would know what is next to you, just like purchasing near a school or a day care facility, etc. It is a total shock to all of us. We are very worried about our property valuations. We have felt very uninformed. It is a disgrace to Lincoln Federal.

4. Tiffany Moeller, 9200 S. 28th Street, testified in opposition. She is a resident, a mother and a nurse. She has worked in facilities with dementia and Alzheimer's patients. The residents of these facilities can be very irrational and very confrontational and they do get out. Being a mother with children in this neighborhood, she would be scared of a patient getting out and arriving at her doorstep and scaring her children. She has dealt with this as a nurse. In addition, there is a lake on the other side of Kohl's. If a patient were to get out, they could get up there and fall in the lake and drown. She does not think this is a good location considering the Kohl's traffic. If you add in all the traffic to this facility, there

will be a lot of traffic on that street and this is a safety concern for the children in the neighborhood. Would our home sell? Would you want this in your neighborhood?

Staff questions

Lust confirmed with staff that this is not a change of zone. Eichorn stated that it is a request for a special permit, not a change of zone. The zoning will remain R-3 and the community unit plan stays in place. One of the conditions of approval is to amend the CUP and show the facility at this location.

Taylor commented that this is not the first time the Commission has had individuals opposed to something like this. He inquired whether there is any record of complaints about facilities of this nature. Eichorn stated that she could not answer the question with 100% accuracy; however, such complaints would be made with the Building & Safety Department. She did ask Building & Safety and they did not recall any recent complaints. specifically at the 25th & Old Cheney facility. They did not have anything on record.

Taylor then inquired whether there is any record of property values going down because of the close proximity to these facilities. Eichorn did not have such data. She stated that she had encouraged the people who attended the neighborhood meeting to call the County Assessor to discuss how valuations are made and if this facility would have any impact on their property values. It would be difficult to draw a parallel that a residential property value has decreased specifically because of a facility like this, particularly because of the current housing market with houses selling at reduced values and staying on the market a lot longer. That would be very difficult to determine.

Eichorn pointed out that Condition #1.2 has been moved to Condition #2.6 because the facility would not be able to be licensed until the building is constructed.

Eichorn also clarified that this application for special permit does not request any waivers to any setbacks; there are no special conditions; this is a unique site also because it has frontage on 27th Street, on Keystone Drive and on Wilderness Hills Boulevard. It has three front yard setbacks, which means they have to have a 25' front yard setback on three sides of the property, and the applicant is meeting those setback requirements. Eichorn further pointed out that at a minimum, the facility would have to meet the city's landscape design standards for new parking lots and they would not be allowed to park in their front yard setback, so there would be at least turf or green space in the front yard.

Gaylor-Baird wondered whether there was adequate notification to the neighbors about this potential change and about this meeting. Eichorn stated that the Planning Department is required to notify all neighbors within 200' at least one week prior to the Planning Commission hearing. The applicant scheduled a neighborhood meeting to talk with the abutting neighbors, which is not a requirement. That meeting was held on March 15th, about three weeks prior to this hearing. The applicant did not leave that neighborhood

meeting with any recommendations for changes in regard to the site plan or for something above and beyond what they were already proposing. There were no changes that could be made to accommodate any sort of complaints in order to meet the needs of the neighbors. These neighbors are simply opposed.

Response by the Applicant

Having been a builder for over 20 years, Klein stated that he is sympathetic to the neighbors' concerns. However, he has no doubt that the neighbors of his existing facilities would consider these facilities as a good neighbor in this community. He has not been able to find anyplace that has actually done a study to determine how much impact there might be on the property values.

Klein reiterated that it is his experience that there is a lot of traffic created from townhomes. The coming and going of traffic out of a townhome is much higher, thus he does not believe that traffic is an issue because the numbers are so small compared to townhomes.

Partington inquired about the security systems that would be in place to prevent people from getting out into the neighborhood. Klein advised that all exterior doors are electronically locked. The residents cannot walk out of the doors, nor can someone come in from the outside. It is not a deadbolt system. It is electronic so that it can be overridden by an administrator, nurse or care giver to allow family to come in.

Partington asked whether there will be any personal alarm systems on the individual residents. Klein stated, "no". Klein further advised that there will be an enclosed 6' fence where residents would be able to get outside and walk on concrete paths on the west side of the first building. They would not have access into the neighborhood. Most likely, they would be with one of the staff members.

Taylor asked Klein how often patients have gotten out of his facilities in the past 15 years. Klein pointed out that none of the existing facilities are memory units. They are either retirement facilities or assisted living where they can leave the facility.

Cornelius inquired whether incidents like patients evading the security system and getting out have to be reported under the licensing requirements. As with assisted living centers, Klein acknowledged that there are number of licensing components and guidelines that must be followed. The requirements and operation guidelines are very carefully and thoroughly monitored. These facilities receive unannounced inspections by the Health Department and Fire Department. If there is a death of one of the residents or a change in venue, those things all have to be communicated in the proper channels.

ACTION BY PLANNING COMMISSION:

April 6, 2011

Esseks moved to approve the revised staff recommendation of conditional approval, seconded by Lust.

Esseks stated that he is very sympathetic to the concerns of the nearby property owners, but this is an important public health issue – where to locate such facilities. Our population is aging; we need these facilities; and according to our city ordinance, they have to be in residentially zoned areas. This is a location as good as most. He can't imagine an entirely new residential development with an area specified for a domiciliary care facility. What happens is that as areas initially planned for single-family attached or townhouses don't sell and develop, then the owner of the property or developer or bank seeks to do something with the property. He thinks this property may be particularly good – it has public streets on all sides; it has existing residential units only on one side, and they are separated by the street and by the required setback. It could be a situation whereby the facility goes right next to homes with only the setback. Here you have the setback plus the street. We have to put these facilities some place. Esseks had done some research and reported that at age 77, the chance of getting Alzheimer's disease is 13%. A lot of folks are going to be faced with this illness. There are going to be more applications like this as our population ages and he believes they will be located in similar areas.

Taylor commented that he appreciates the Comprehensive Plan and the basis of the decisions that are being made, i.e. the fact that it considers our whole community. In terms of residents, everyone wants to be treated as part of the community. However, he does understand fear. "It's always good if it's not next to me." That is why he posed the questions about whether those fears have been validated. He is relatively certain that there have been other situations like this one and he cannot think of anytime that the fear has been justified. He does not believe the residential properties will notice a reduction in the valuation of their properties. The way this facility is designed, it would almost seem to help the values of the properties. He appreciates the care that the applicant has placed in terms of how he plans to design this facility and the history that has been behind it. He does not see how it is possible as a Planning Commissioner to vote against this application.

Francis stated that she can appreciate the concerns of the neighbors. She agreed and understands that that is one of the drawbacks of being some of the first to build in a new subdivision – there is no guarantee of what is going to be built around you as the development completes. This is not a change of zone. She does not believe the property values will decrease because of this facility. You would see a better chance of values decreasing because of commercial space. If there were townhomes built, they would be difficult to sell because they back up to 27th Street and they might turn into rentals, which would be a bigger deterrent. This is a good use of this land. She encouraged anyone building in a new area to do their research and due diligence before buying in a new area based on the zoning.

Lust stated that she has a unique perspective as she does live in the Wilderness Ridge area and from her deck she watches Kohl's department store on what used to be a beautiful vista. She also understood that the zoning across the street on 27th Street was commercial. She believes the Comprehensive Plan takes that sort of development into account and has listed these types of facilities as a buffer for those kinds of commercial facilities. From her view of the neighborhood, she would much rather have a residential facility blocking her view of Kohl's. Lust stated that she is very sympathetic to the fears about property values. But, in the long run, she thinks this development may actually serve as a buffer to that commercial area and we may see property values having a better chance of being maintained because of this type of buffer. We are living in an age where our population is aging. We need this type of facility, and this type of facility needs to be in a residential neighborhood for the dignity of the people that are living there. She supports this development.

As a mother with young children, Gaylor Baird acknowledged the concern about children's safety. She is in a neighborhood where there are group homes. She suggested that perhaps we could consider this type of situation as an opportunity to discuss the realities in our community with our children – use it as an educational opportunity to have some discussions about what it means to be aging and to lose your memory. By being informed, our children might be able to also better protect themselves should there ever be a highly unlikely incident of someone getting out.

Cornelius agreed with the previous comments. This is not a change of zone. This is not really a matter of predictability because this zoning specifically calls out this type of facility as a permitted special use. We've heard from the best experts that we have available that the vehicle trips are likely to be far fewer than if developed as townhomes. When looking at the aerial photos and maps, Cornelius gets the impression that any impact on property values that this facility may or may not have is likely to be dwarfed by the presence of a major shopping center just across the street. Personally, he has the gut feeling that a facility like this will prove to be a better neighbor in the long run than a townhouse development that runs the risk of becoming rental units because it backs up to a major arterial.

Partington commented that he spent several years with a company that manufactures security systems for facilities like this. Therefore, he has some understanding about the structure. He believes this is an attractive design that will fit into the neighborhood; the traffic will be minimal; and the security system will minimize opportunity for residents to get out into the neighborhood.

Larson also indicated that he is empathetic to the opposition. In fact, some of them are his good friends and he hates to vote against their wishes, but he believes this is a good use for this property. He thinks their fears will be unfounded as far as security and traffic.

Sunderman agrees that this is a residential facility. It will fit well. It will be a nice entryway into the neighborhood.

Motion for conditional approval, as revised by staff, carried 9-0: Esseks, Lust, Taylor, Cornelius, Gaylor Baird, Francis, Partington, Larson and Sunderman voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

MISCELLANEOUS NO. 10005

TEXT AMENDMENTS TO CHAPTER 26.11

OF THE LINCOLN MUNICIPAL CODE

RELATING TO PROCEDURES FOR PROCESSING SUBDIVISIONS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 6, 2011

Members present: Esseks, Lust, Taylor, Cornelius, Gaylor Baird, Francis, Partington, Larson and Sunderman.

Ex Parte Communications: None.

Staff recommendation: Approval, as revised.

Staff presentation: **Tom Cajka of Planning staff** submitted a revised ordinance which is now the staff recommendation as opposed to the ordinance attached to the staff report. Previously, the ordinance contained language providing that if street trees were not planted within 6 years after final plat, the developer would be required to then pay a cash contribution to the City, with the Parks Department then being responsible for installation on those residential lots. After discussion with some of the development community and taking a further look, we realized that if this language was left in, the developer would not have the opportunity to ask for a time extension. Currently, there is the opportunity to request a time extension for up to two years to install improvements on vacant lots. Subdivisions have been taking longer to develop, so the staff has agreed to remove that new language.

Overall, the major changes proposed in this ordinance include the following:

--The developer now has the option, on a final plat of 10 or less lots, to either post the surety for the street trees or pay cash to the city. This text amendment eliminates that 10-lot provision to allow developers to have that option regardless of how many lots are under final plat.

--There would no longer be a surety required for sidewalks for residential lots on non-major streets. The sidewalk would be put in at the time of building permit and would be required prior to occupancy permit. After talking with Building & Safety and developers and home builders, we found that routinely this has been done. The sidewalks are being put in when the houses are built. We have found that the

majority of lapsed work was on vacant lots and it was not an issue of sidewalks not being put in on developed lots. This will save the developers and staff a lot of time from the standpoint of tracking, requesting waivers, etc.

–Currently, street trees are required within 4 years after final plat approval. This is being changed to 6 years, keeping in mind that it has been taking longer for developments to build out. No one wants street trees planted on vacant lots.

–Currently, stormwater detention/retention facilities are required to be installed within 2 years of final plat; however, in reality, they usually don't get finalized until the development is almost completely built out. Public Works does not want to sign off on those facilities until most all the grading is done and most of the development has been built. This ordinance changes that to provide that the detention facilities would be released after termination of a construction stormwater permit and acceptance by Public Works.

The goal of this legislation is to help the developer in not having to post as much surety up-front, eliminating the tracking and requirement to ask for waivers.

Lust inquired whether there is an ultimate time limit. For example, the one random lot in a development that is not built upon. Will it eventually get sidewalk and street trees? Cajka advised that the Mayor has the authority to require that sidewalk to be installed in such a situation.

Steve Henrichsen of Planning staff explained that the revision submitted today is the result of some discussions over the past week from members of the development community such that people not be forced immediately to the voucher program. This amendment is a big part of helping both the public and private sector to clean up bonds that have been sitting for 10-20 years. Some have had to go into litigation, and it is anticipated that this legislation may allow us to have a few of those cases such as sidewalks for residential lots handled outside of the court system.

Henrichsen also advised that the staff met with Peter Katt last week, who has a proposal to do away with bonds for street trees for residential lots as well. While this certainly may have some merit, it would involve a very different process and would require a lot more time to get the details worked out. Staff agrees that Peter Katt's proposal is worth reviewing in the future, but Henrichsen encouraged that the Commission keep this text amendment moving forward to help resolve all of the other issues. The staff has committed to come up with a better system to save the Parks and Planning Departments time and to save the development community time and money by bringing this legislation forward. There is also a committee currently working on the subdivision review process. The staff does not want to stop this amendment while we spend time on Peter Katt's proposal.

Proponents

1. **Peter Katt** stated that he is appearing as someone in the public that has been involved with developments for 20 years. He believes this represents a very good change to the requirements and fixes the problem with sidewalks.

Katt submitted two amendments. With regard to section 26.11.039(e) relating to the cash contribution for installation of sidewalks and street trees along major streets, Katt suggested the following:

(e) A cash contribution to the City has been furnished in an amount ~~sufficient to pay not more than a current bid amount of~~ the cost to install sidewalks and street trees along major streets that have not been improved to an urban cross section. When there is not adequate space along the major street for the installation of street trees a surety shall be required as stated in ©) above. The cash contribution shall be held and spent only to fund installation of street trees and sidewalks abutting said final plat in conjunction with construction of the major street(s) to an urban cross section. If the cash contribution is not spent within 6 years of the date it is deposited, the contribution, plus accrued interest, shall be returned to the person making the deposit. . . .

Katt explained that when there is a development or subdivision along a major street which street is going to change in the future, and the developer is wanting to get a subdivision approval, the city will not allow the developer to construct the sidewalk or plant the street trees if the street is going to be changed. But the city will take the money with a promise to put the sidewalk and street trees in at a later date. Katt also suggested that the actual cost to construct the sidewalk and plant the street trees is significantly less than the money the city takes from his clients. The amount that it costs to build the sidewalk and to put in the street trees is the amount of cash they should give to the city. And if the money isn't spent after six years, it should be returned to the depositor. It is not right for the money to be held indefinitely without any improvement or any benefit to the community. Katt explained that he is suggesting "six years" for the purpose of tying it into the CIP. If the city is not confident enough that they will be doing a road project in six years, the city is better off with the street trees and sidewalks being put in up front.

Katt also submitted the following proposed amendment to the legislation with regard to street trees (proposed amendments are in bold and italics):

Section 26.11.039: Requisite for Final Plat Approval:

(h) Prior to the approval of the final plat, the appropriate city department shall estimate the cost of completing the improvements. The surety amount for sidewalks shall be twenty-five percent of the estimated cost of construction, excluding sidewalks along major streets. No surety, bond, escrow, or security agreement is required for sidewalks **or street trees** along non-major streets abutting residential lots.

Section 26.11.040: Installation of Improvements:

(f) Street trees along major streets shall be installed at the same time the adjacent street is improved to urban cross section. If the major street is built to urban cross section, the street trees shall be installed within two years of final plat approval. Street trees along non-major streets **that do not abut residential lots** shall be installed within one year after the issuance of an occupancy permit ~~or within four six years of final plat approval, whichever occurs first.~~ **Street trees along non-major streets abutting residential lots shall be installed within one year of the City issuing an occupancy permit. Prior to issuing a [building permit] [occupancy permit] the City shall be provided with satisfactory evidence that a cash deposit has been made to the Parks and Recreation Department or an approved Street Tree Voucher has been posted to guarantee installation and survival for one year of any required street tree(s).** The Planning Director may waive street trees along outlots reserved for future development.

Katt agrees that there has been a lot of money spent by city staff and the private sector in tracking and enforcing the escrows, sureties and guarantees for sidewalks and street trees. When do you want them installed? There is one answer – when a home is built. You don't want to build sidewalks before then because they will be broken during building; you don't want to put in trees until someone is there to take care of them. The city has created a system that gets the sidewalk constructed at the time the home is built. Katt is suggesting that this same process be done for street trees. The concept is exactly the same. When you go in for a building permit, you either give the cash to the city or you submit a voucher (there is a voucher program currently being used by the Parks Department). That way the City knows that a tree will be planted in the spring or fall. It removes all of the administrative headache of tracking escrows and security deposits.

With regard to the sidewalk amendment proposed by Katt, Lust wanted to know who currently determines the sufficient amount to be paid. Katt suggested that it is "random", but generally it is Public Works. It has nothing to do with what the client says it will cost. There is no negotiation. The biggest determination to be made by the City is whether they will really be building the sidewalk in six years. In most cases, they are not. So the City will then require the sidewalks and street trees to be built.

2. Dick Campbell, Campbell's Nurseries, 5625 Pine Lake Road, the developer of Village Gardens and the nursery putting in a lot of street trees for other developments, testified in support of the staff proposal as well as the amendments proposed by Peter Katt for street trees. Presently, when a developer opens a new subdivision, they are required to post the bonds. The problem is that they get a lot of different subdivisions going and quickly reach their bonding ability. Several years ago, Campbell's Nurseries set up a program with developers where Campbell's assumed the bonding for street trees, and when they closed on a lot with a builder, the money for the street tree(s) is sent to Campbell's and is

deposited into an escrow account. When the tree gets put in, the expense of that tree is paid from the escrow account. Since trees can only be planted during the spring, summer and fall, it would be very easy to set up this process. This would eliminate unbelievable hours of time spent by Parks and Building & Safety, as well as his time. However, he is not sure six years is even long enough. Most subdivisions are not filling up within six years.

3. Danay Kalkowski, appeared on behalf of **Ridge Development** and **South View, Inc.** in support of the amended staff recommendation. She has had opportunity to work with staff on the language and they have considered some of the developers' suggestions and requests.

She agrees that this is a better process for residential sidewalks and will help clean up some of the outstanding escrows specifically tied to residential lots that have not yet been developed, which has been magnified by the economy.

With regard to Katt's proposed amendment regarding the cash contribution for sidewalks and street trees along major streets, she understands that the number established by Public Works is based upon their bid prices, but we can all acknowledge that the City's bid prices are a lot different than the bid prices of the developer. She is supportive the amendment proposed by Katt. It would make sense to have the discussion during the final platting process.

Kalkowski advised that her clients would also support additional discussions on amending the street tree language in order to eliminate some of the escrowing process; however, she does not want to slow down the sidewalk process to talk about street trees. There is an immediate use for the sidewalk language. She would encourage additional discussion on street trees, but she does not want it to slow up the process for the sidewalks.

4. Lynn Johnson, Parks & Recreation Department, testified in support of the staff recommendation. He has reviewed Katt's proposal regarding street trees and would like some time to work through that proposal. This really will result in a change as to responsibility. It would shift the responsibility for funding street trees from the developers to the home builders and he will need time to work through that discussion with the home builders. We really need to know how many street trees are out there. We need to set up a system and that will take some time. We are very interested in the discussion, but it will require discussion first with the developers, attorneys, landscape contractors, home builders, and Building & Safety.

There was no testimony in opposition.

Dennis Bartels, Public Works & Utilities, advised that Public Works calculates the arterial street sidewalk amounts – it is not just a random number – they use historical data where sidewalks have been built along arterial streets. It is not an inflated number but based on recent past. He has been told that the developers could build it at a lesser value per square foot than the City's bid prices, but the City has been consistently using its bid numbers.

Lust clarified that the reason for the cash deposit or bond is to protect the City if the City has to do the installation. So the cost needs to be what the city would pay. Bartels agreed that to be the philosophy that the City has been using.

Henrichsen commented that of the two separate amendments proposed by Peter Katt, the one that talks about "not more than the current bid amount" is the same that is used today. In terms of the point of "do you wait a number of years", certainly that could be a discussion for a future date about walkability. The challenge is that sometimes there are culverts to be built and the grading has not all been done, making it difficult to get the sidewalks in. It has been the City's philosophy to get the funds and it removes the private sector from the process. Staff does not support the amendment that goes to changing the system. The six years "use it or lose it" is unfair because the city is trying very hard to get these streets done.

In terms of the street tree bonds, Henrichsen acknowledged that there is a lot of merit to enter into discussions. Today, the homeowner is ultimately paying for the street tree. Because it would be a change in the system, it is something that we want home builders to have time to understand before bringing that proposal forward.

ACTION BY PLANNING COMMISSION:

April 6, 2011

Lust moved to approve the revised staff recommendation (not adopting any of the additional amendments requested by Mr. Katt), seconded by Francis.

Sunderman commented that this is a good process. The sidewalk process is going to be a lot better system. The amendments proposed by Peter Katt have merit, but he believes that the details need to be fleshed out and we don't want to have unintended consequences.

Motion for approval of the revised staff recommendation carried 9-0: Esseks, Lust, Taylor, Cornelius, Gaylor Baird, Francis, Partington, Larson and Sunderman voting 'yes'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 20, 2011.

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