

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, October 17, 2012, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Greg Butcher, Michael Cornelius, Wendy Francis, Chris Hove and Jeanelle Lust (Leirion Gaylor Baird, Lynn Sunderman and Ken Weber absent); Marvin Krout, Steve Henrichsen, Brian Will, Sara Hartzell, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Cornelius requested a motion approving the minutes for the regular meeting held October 3, 2012. Motion for approval made by Francis, seconded by Hove and carried 5-0: Butcher, Cornelius, Francis, Hove and Lust voting 'yes'; Gaylor Baird, Sunderman and Weber absent.

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

**October 17, 2012**

Members present: Butcher, Cornelius, Francis, Hove and Lust; Gaylor Baird, Sunderman and Weber absent.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 12015 and SPECIAL PERMIT NO. 1118A.**

There were no ex parte communications disclosed.

Francis moved approval of the Consent Agenda, seconded by Lust and carried 5-0: Butcher, Cornelius, Francis, Hove and Lust; Gaylor Baird, Sunderman and Weber absent.

**ANNEXATION NO. 12004;**  
**CHANGE OF ZONE NO. 12027,**  
**FROM AGR AGRICULTURAL RESIDENTIAL DISTRICT**  
**TO R-3 RESIDENTIAL DISTRICT;**  
**AND**  
**SPECIAL PERMIT NO. 06001B,**  
**AMENDMENT TO THE GRAND TERRACE**  
**COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED AT**  
**SOUTH 84<sup>TH</sup> STREET AND AMBER HILL ROAD.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**     October 17, 2012

Members present: Butcher, Francis, Lust, Hove and Cornelius; Sunderman, Weber and Gaylor Baird absent.

The Clerk announced that the applicant has requested an additional two-week deferral of the public hearing.

Lust moved to defer, with continued public hearing and action scheduled for Wednesday, October 31, 2012, seconded by Francis and carried 5-0: Butcher, Francis, Lust, Hove and Cornelius voting 'yes'; Sunderman, Weber and Gaylor Baird absent.

There was no public testimony.

**COUNTY COMPREHENSIVE PLAN CONFORMANCE NO. 12014**  
**TO REVIEW THE FY2013 AND 2014-2018 LANCASTER COUNTY**  
**ROAD AND BRIDGE CONSTRUCTION PROGRAM AS TO**  
**CONFORMANCE WITH THE COMPREHENSIVE PLAN.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**                     October 17, 2012

Members present: Butcher, Cornelius, Francis, Hove and Lust; Gaylor Baird, Sunderman and Weber absent.

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

There were no ex parte communications disclosed.

Staff presentation: **Sara Hartzell of Planning staff** made the presentation on behalf of Mike Brienzo. This proposal is commonly called the "1 and 6" because it is separated into the first year being the budget year of projects funded and then years two through six are for planning years.

The 1 and 6 program must be reviewed every year for conformity with the Comprehensive Plan. This 1 and 6 has been found to emphasize roads that function as

arterials in the county and to emphasize RUTS agreements with the City's Public Works and Utilities Department, and that is recommended to continue. The staff is recommending that the Planning Commission find the proposed plan to be in general conformance with the Comprehensive Plan.

The Comprehensive Plan talks about when it is appropriate to pave county roads in terms of traffic numbers at different stages. The paving stage starts at about 400 trips per day; and that paving is to carry traffic up to about 6,000 trips/day. The program refers to projects programmed for two-lane widening – those are paved roads that are planned to be widened. The program also refers to programmed paving projects – those are county gravel roads which have not yet been paved and are programmed to be paved in the near future based on traffic and funding.

The construction program includes engineering, right-of-way acquisition, grading, culverts, pavement and second stage pavement and widening and culvert maintenance. The first level of review looks at safety improvements as being a top priority, with pavement being second and then widening. The second level of review looks for pre-paving projects.

As far as program funding, the report actually shows projects that have been accomplished and then programs for the one year and then the six years. There is a total for FY2013 of \$7,867,000 for roads and \$2,715,604 for bridges. The RUTS program is coordination through an interlocal agreement with the City Public Works and Utilities Department to identify roads in the 3-mile area that are possibly eligible for paving but also may be brought into the city at some point. This includes right-of-way acquisition and grading of those roadways to ease that transition. Environmental compatibility is also an important part of review and mitigation activities that may be required due to wetland impacts or floodplains.

Lust asked about the difference between "in conformance" and "in general conformance" in the staff recommendation. Hartzell explained that "in conformance" means that you can actually point to a place in the Comprehensive Plan that identifies that particular project. "General conformance" relates to the general goals about maintenance and safety. For example, if a culvert is replaced, that would be considered a maintenance issue and would generally conform with an overall goal of the Comprehensive Plan.

Hove inquired about the increase in the budget from last year. **Doug Pillard of County Engineer's office** explained that the main increase is due to three federal aid projects that were on hold until this year, i.e. West Denton Road involves three miles of two-lane widening at a little over \$3,000,000 itself, and two bridges in the range of \$700,000 each. We did not have these improvements in the program last year.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

October 17, 2012

Lust moved a finding of general conformance with the Comprehensive Plan, seconded by Francis and carried 5-0: Butcher, Francis, Lust, Hove and Cornelius voting 'yes'; Gaylor Baird, Sunderman and Weber absent. This is a recommendation to the Lancaster County Board of Commissioners.

**WAIVER NO. 12020**  
**TO WAIVE THE REQUIREMENT TO**  
**CONSTRUCT A PEDESTRIAN SIDEWALK**  
**ON PROPERTY GENERALLY LOCATED**  
**AT LUCILE DRIVE AND PIONEERS BLVD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 17, 2012

Members present: Butcher, Cornelius, Francis, Hove and Lust; Gaylor Baird, Sunderman and Weber absent.

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

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** presented the proposed waiver of the pedestrian connection in a block in excess of 1,000 feet located in the Hamann Meadows development generally northwest of Pioneers Boulevard and Lucile Drive, specifically between Diamond and Crystal Courts.

The subject pedestrian connection was originally shown with the preliminary plat for Hamann Meadows approved in 2006; that preliminary plat was slightly modified in 2010 with the community unit plan, there being no significant change; however, with both the preliminary plat and the CUP, the pedestrian connection had been shown from the beginning.

Will advised that the staff is recommending denial of this waiver request, finding that this sidewalk meets both the letter and intent of the subdivision ordinance; it is an enhancement to the larger sidewalk and trails system throughout the city; and the sidewalk has been installed and is in use today. Based upon these factors, staff is recommending denial of the waiver request.

Lust inquired whether the townhouses in this subdivision have sidewalks in their front yards. Will explained that there are sidewalks in front of the homes and in South 76<sup>th</sup> Street. The sidewalks in front of the homes are closer to the homes than the sidewalk in the back. Will further explained that the outlot is approximately 60 feet wide; there is a minimum setback from the rear lot line to the dwellings of at least 15'. He estimated

that it would be 43', give or take, from the subject sidewalk to the nearest point of a dwelling. Most of the dwellings are actually set back further than the minimum 15'.

Hove asked what the subject sidewalk connects. Will stated that it connects to the sidewalk system on both sides of 76<sup>th</sup> Street and connects to the existing trail that runs along Antelope Creek all the way to downtown. It is flush with the sidewalk in 76<sup>th</sup> Street.

Lust inquired about the studies referred to in the staff report finding that back yard sidewalks are no more dangerous than front yard sidewalks and, in fact, improve safety. Will explained that the research had been done associated with other issues – one study was done in 2000 referring to the recreational trails system in Omaha, and another study was done back east in Vermont in 2006. The general finding was that there is no more risk or safety hazard associated with these facilities. As far as property values, the finding in the studies was that it would be neutral, but in some cases there is an enhancement to the property value just because these sorts of facilities are viewed as being associated with outdoor, healthy lifestyles, outdoor activities, etc. Will could not point to a study that finds an increased safety hazard or property devaluation.

Proponents

**1. Mark Schniederjans**, 7221 Crystal Court, the applicant, testified in support. His property abuts the sidewalk in question. He stated that, “obviously, 90% of us want this sidewalk removed.” (The petitions to which the applicant referred are attached to the staff report). The topography of how this sidewalk lays in relationship to the homes that were built is not acceptable. One of the letters the Commission has received is from the sales agent for these properties, attesting that no one who bought homes in Hamann Meadows knew the sidewalk was going to be constructed. The sidewalk is up higher and people can look directly into the homes. These homes were built with a lot of glass windows in the back because this is a pretty spacious area and the property owners were promised a meadow on one side with a pond on the other side. The people coming down this sidewalk do not treat it as a sidewalk. Schniederjans works at home and watches it every day. It is the behavior of the people that is a concern. The people who are riding bikes ride down this path (which is downhill) are really moving once they hit the bike path. There was a near miss one day recently. There are seven windows and two glass doors in the back of his house, and now there are people looking in from this sidewalk. There is no more security. The bike path is used by lots and lots of people but they are not coming up through this subdivision. He believes it is a safety concern, regardless of the research cited.

Schniederjans reiterated that the people in this subdivision overwhelmingly do not want the sidewalk in their back yards. Everyone who abuts this property unanimously signed the petition opposed to the sidewalk – 31 are opposed. It is an imposition that this sidewalk was not adequately disclosed to the residents. The aerial photograph does

not show this, but the sidewalk negatively impacts the property the way it is positioned. You can look into the main level of most of these homes from that sidewalk. It poses a hazard and risk to the homeowners in this neighborhood.

Butcher inquired whether there are any requirements within the homeowners association with regard to fencing. Schniederjans stated that at this point, the homeowners association is still held by the developer and has not been turned over to the homeowners.

Support

**1. Nancy Reissig**, 3842 S. 76<sup>th</sup> Street, testified in support of the waiver. She is the Neighborhood Watch person for the area. If the goal of placing this sidewalk was to connect the bike trail to 76<sup>th</sup> Street, she believes there is adequate access either from Cooper Street or down Lucile to Pioneers. They do have some history of problems with people violating the properties in Hamann Meadows, e.g. at the end of the cul-de-sac, the public bike pedestrian trail is very close to the back of the Hamann Meadows homes. One night after 3:00 a.m. the owner heard three teenagers knocking on his windows and they set off fireworks before they left. There have been several other things that have happened. So the new sidewalk between Crystal Court and Diamond Court has taken away the privacy of the people who live there and is setting up the same kind of environment where property rights are violated and mischief could cause serious harm to homeowners and their property. She wants the sidewalk removed.

**2. Lee Nugara**, 3932 S. 76<sup>th</sup> Street, testified in support of the waiver. The builder informed him of a pond and the bike trail, but they never mentioned the sidewalk. The van he parks on the street has been egged 28 times, and he reported it to the police the last time it occurred.

Lust asked Nugara to be specific about when his van was egged. Was it after the sidewalk was installed? Nugara explained that it has been egged 28 times since last summer, and it has happened three times since the sidewalk was installed. He clarified that is not saying the sidewalk is why it happened.

**3. Jill Schniederjans**, 7521 Crystal Court, clarified that the covenants made by the developer provide that there shall be no fences. The homeowners association has not yet come together and is still run by the developer. They have begun preliminary meetings.

There was no testimony in opposition.

Staff questions

Francis sought clarification as to the topography of the land. The applicant is suggesting that the sidewalk sits higher and you can see into the homes. She recalled that requests to waive sidewalks have come before the Commission in the past because the lay of the land was not conducive to having the sidewalk installed and thus it was more common sense not install the sidewalk. Francis assumes that if the topography would not meet ADA requirements, the sidewalk would not be required. Will stated that there is potential that there would not be sidewalks in that situation. There is a slight incline on both sides for grading up to the sidewalk but it is not what he would characterize as "significant". Francis indicated that she personally visited the site of the sidewalk and it looked pretty level to her. Will stated that the sidewalk as constructed meets all the applicable standards.

Francis then confirmed that the location of that sidewalk would be no closer to the properties than a house on a corner lot in a residential neighborhood with a sidewalk on two sides. Will believes that the separation would be increased or greater than what you would find with a typical sidewalk in front or along side of your house.

Lust asked whether there will be further development in this area. Will showed the aerial photograph and stated that it is anticipated that the three cul-de-sacs will be fully built out. There are opportunities for further subdivision across the street as well.

Hove inquired whether there was any change that precipitated the construction of this sidewalk or just the fact that the sidewalk got built in a couple days. Will reiterated that the sidewalk has been part of the original preliminary plat approved in 2006, and also the update of the preliminary plat in 2010. It has always been shown as part of the development and as final platted. He believes it is the fact that the sidewalk was actually installed that prompted this application.

Hove wondered whether the covenants can be changed to address any fencing issues once the association is turned over to the homeowners. Will explained that the city is not a party to those covenants – they are agreements among private property owners. Generally, there is a provision for modifying and amending.

Response by the Applicant

Schniederjans reiterated that the positioning of these homes are such that you can look into the people's home if you walk down this sidewalk. The owners are going to have to maintain the sidewalk, keep it trimmed and remove the snow. It is going to be dangerous. There is a serious safety issue and a serious privacy violation to the homeowners. There are a lot of elderly people here who cannot pay any higher association dues. This is an unnecessary burden on the homeowners. None of the homeowners were told about this sidewalk. "We feel we have been cheated and have a

lessened property by this sidewalk.” The homeowners are going to have to pay for the maintenance of this sidewalk.

Hove inquired as to who would pay for the removal of the sidewalk if this waiver is approved. Schniederjans stated that he will personally pay for the removal of the sidewalk. In all honesty, he wants his meadow back. He does not want to overlook this sidewalk and have people looking into his property.

**ACTION BY PLANNING COMMISSION:**

October 17, 2012

Lust moved to deny, seconded by Francis.

Francis is sympathetic that this seems to be something that is new to the homeowners. But, with real estate transactions, there is something called “caveat emptor” – let the buyer beware. The fact that the real estate agent who was promoting these homes on the seller’s behalf did not know about this sidewalk is no excuse for anybody not to have picked up the phone and called the city about the platting of this ground. That is the biggest drawback of new construction. Anything that is vacant can be changed. She understands that the homeowners purchased the property and that they want to see the nice green space, but that is not realistic in today’s world.

Lust knows that change is hard, and what was quite a bit of space of vacant property now has a sidewalk. She suggested that when it first comes in, it is very concerning, but after you live with it for awhile, she believes the property owners will actually benefit from it; there will be children getting to the bike path; the neighbors will get to know each other better. Connectivity in the city to the wonderful bike trail system is extremely important. Furthermore, the sidewalk is no closer to the homes than the sidewalk that you have in your front yard; and being able to look out your window and see neighbors walking though your front yard is no different. While she is disappointed that the agent that sold the property did not advise about the sidewalk, she really thinks it is actually a benefit to the neighborhood as a whole and it needs to stay for connectivity reasons. And, it is probably a lot better than two of these sidewalks, which would have been the alternative if the sidewalk had not been located where it is now. She has to vote denial.

Lust further urged that the property owners call the police the second there is any vandalism or problems. That’s their job.

Cornelius agreed with Lust regarding issues of trespass and violation – if you let it go and do not call the police, it is impossible to resolve the problems. The sidewalk exists as a result of the principles set forth in our Comprehensive Plan and the values that we have as a community have stated that we want a connected pedestrian network – a degree of friendliness for walking and biking in our residential and commercial areas – and this is what this sidewalk is meant to facilitate. Living in the city, you have these pedestrian facilities where people can look in windows. People can look in his front

window as well. He understands further that this is a change and it changes the complexion of the area behind the homes; however, this is something that was in the plan from the beginning and it is unfortunate that as the properties were bought and sold that this information was not conveyed, but it is on record. As far as maintenance, that was part of the community unit plan as well.

Motion to deny carried 5-0: Butcher, Francis, Lust, Hove and Cornelius voting 'yes'; Gaylor Baird, Sunderman and Weber absent. This is final action, unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 1:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 31, 2012.