City Council Introduction: **Monday**, April 25, 2011
Public Hearing: **Monday**, May 2, 2011, at **3:00** p.m.

Bill No. 11-45

FACTSHEET

TITLE: **MISCELLANEOUS NO. 10005,** requested by the Director of Planning, to amend Title 26 of the Lincoln Municipal Code relating to Procedures for Processing Subdivisions.

STAFF RECOMMENDATION: Approval, as revised on 4/06/11.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/06/11
Administrative Action: 04/06/11

RECOMMENDATION: Approval, as revised by staff on 4/06/11 (9-0: Gaylor Baird, Lust, Esseks, Cornelius, Larson, Partington, Francis, Taylor and Sunderman voting 'yes').

FINDINGS OF FACT:

1. This is a request to amend Chapter 26.11 of the Lincoln Municipal Code to revise the procedure for the timing for installation of and the release of surety for sidewalks, street trees and detention/retention facilities after a final plat is approved. In part, the proposed amendments:

   A. Allow the developer to either post the surety for street trees or pay cash to the city, no matter how many lots are included in a final plat. There is currently a restriction of 10 or less lots.

   B. No longer require surety be posted for sidewalks for residential lots on non-major streets. The sidewalk would be shown at the time of building permit and would be required to be built prior to occupancy permit.

   C. Require the planting of street trees within 6 years after final plat approval. They are currently required to be planted in 4 years.

   D. Provide that the surety to guarantee construction of the stormwater detention/retention facilities would be released upon termination of a construction stormwater permit and acceptance by Public Works.

2. The staff recommendation of approval, as revised on April 6, 2011, is based upon the "Analysis" as set forth on p.2-4, concluding that the proposed amendments to the Land Subdivision Ordinance would eliminate the need to track and release sureties for sidewalks on residential lots while still assuring their construction. Extending the time to install street trees will give the developer needed time on subdivisions that are slow to develop. This should save developers the need to ask for waivers to extend time to install sidewalks and street trees on residential lots.

3. Testimony in support is found on p.6-8. Attorney Peter Katt submitted proposed amendments as set forth on p.12-13 relating to 1) the cash contribution for sidewalks and street trees, and 2) the installation of street trees along non-major streets abutting residential lots.

4. There was no testimony in opposition.

5. On April 6, 2011, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval, as revised by staff on April 6, 2011. The Planning Commission did not recommend approval of the amendments proposed by Attorney Peter Katt based upon the staff recommendation that such amendments require further discussion with the city departments and the development community (See Minutes, p.6).

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: April 18, 2011

REVIEWED BY:_____ **DATE**: April 18, 2011

REFERENCE NUMBER: FS\CC\2011\MISC10005 Text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for APRIL 6, 2011 PLANNING COMMISSION MEETING

PROJECT #: Miscellaneous No.10005

PROPOSAL: Amend Section 26.11.039 and 26.11.040 of the Land Subdivision Ordinance to revise the procedure for insuring sidewalks, street trees and detention/retention facilities are installed and when the surety shall be released.

CONCLUSION: The proposed amendment to the Land Subdivision Ordinance would eliminate the need to track and release sureties for sidewalks on residential lots while still assuring their construction. Extending the time to install street trees will give the developer needed time on subdivisions that are slow to develop. This should save developers the need to ask for waivers to extend time to install sidewalks and street trees on residential lots.

RECOMMENDATION: Approval

GENERAL INFORMATION:

ANALYSIS:

1. This amendment is in regards to the timing of installing improvements after a final plat is approved. The Land Subdivision Ordinance requires that all improvements be completed within 2 years after the final plat is approved, except sidewalks and street trees.

2. Currently, sidewalks and street trees are required to be installed within 4 years after the final plat is approved. If the sidewalk and street trees are along an unimproved major street, the developer is required to pay the City to install the improvements when the street is improved.

3. There are times when a development may take more than 4 years to be built out due to economic conditions. Due to the most economic downturn in housing over the past several years, there are several subdivisions in Lincoln that have been slow to develop and are past the required completion date for installation of improvements.

4. The Planning, Parks & Recreation and Public Works and Utilities Departments have been working on a text amendment to the subdivision ordinance that would amend the process for installing sidewalks and street trees for the past year.

5. A surety for sidewalks would **no longer be required** for residential lots along local streets. The sidewalk would be required to be installed prior to an occupancy permit. If weather conditions prohibit installation of the sidewalk prior to the issuance of the Occupancy Permit, Building & Safety Department must be provided with one of the following documents:

– Copy of a surety or other arrangements has been provided to quarante the installation of the sidewalk as soon as weather permits, but no later than 6 months after the issuance of the occupancy permit.

6. In discussing the proposed amendment for sidewalks with developers, home builders and the Building & Safety Department it was determined that sidewalks were routinely being installed prior to the issuance of a occupancy permit. The Building & Safety Department checks to see if sidewalks are installed prior to issuing an occupancy permit. In reviewing residential subdivisions where the installation of sidewalks were past due, the Planning Department found that these were usually on vacant lots. Developers have concerns that if sidewalks are installed prior to construction that the sidewalks would be destroyed during construction.

7. The requirement that street trees along local streets be installed within four years of final plat approval would be amended to six years or one year after the issuance of the occupancy permit, whichever occurs first. If after 6 years all of the street trees have not been installed, the developer shall replace the surety with cash paid to the City. The City will then be responsible for installing the remaining street trees.

8. A developer would also have the option to pay cash to the City for street trees that would be planted at a later date when the lots develop through the City's voucher program. Currently this option is only available for subdivisions of 10 or fewer lots, but the proposed amendment would allow the payment regardless of the number of lots.

9. Some in the development community requested that we also delete bonds for street trees. Planning and Parks & Recreation Departments considered having street trees installed with the occupancy permit, similar to what is being proposed for sidewalks. It was determined that although sidewalks were routinely being installed with the house construction, street trees were not being installed. Typically the developer will hire a nursery to install the street trees. The nursery will wait to install the street trees until there are several houses built.

10. Currently Parks Department does not release the surety until the street trees have been in for one growing season. If there is no surety and the tree dies within that one year the City cannot order in street trees as they can with sidewalks. The Parks Department also does not have the personnel to inspect street trees one lot at a time. Today, street trees are planted on many lots at one time.

11. The Director of Parks and Recreation Department has concerns with street trees with occupancy permit. There are two planting seasons, April through June and late September through mid-November. Since many houses would be completed outside of these two planting seasons, there would be numerous temporary occupancy permits. This could lead to other issues of tracking and inspecting one house at a time. This would take up an excessive amount of city personnel time. If trees are required with occupancy permit, most likely trees would be planted one at a time. This is likely to be more expensive than contracting for planting a large number of trees at one time.

12. The amendment would also clarify the timing for the installation and release of sureties for storm water detention facilities. The surety would be released upon termination of the Construction Stormwater Permit and acceptance of the completed work by the Director of

Public Works and Utilities Department. Currently the storm water detention facility is required to be completed within 2 years after the final plat is approved. However, Public Works & Utilities Department will not accept the detention facilities has being complete until the Construction Stormwater permit has been terminated. This is often well after the 2 year period. The new text removes this conflict.

Prepared by:

Tom Cajka
Planner

DATE: March 21, 2011

APPLICANT: Marvin Krout, Planning Director
Lincoln-Lancaster County Planning Department

CONTACT: Tom Cajka, Planner
Lincoln-Lancaster County Planning Department
(402) 441-5662

MISCELLANEOUS NO. 10005

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 realty, 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.

MEMORANDUM

TO: Planning Commission

FROM: Tom Cajka, City-County Planning Department

SUBJECT: Miscellaneous No.10005; Text Change to Subdivision Ordinance

DATE: April 6, 2011

The attached ordinance replaces the previous City proposed changes to the subdivision ordinance. The attached ordinance makes only one change to what was in the staff report. The revised ordinance deletes some proposed new language in 26.11.039 (f) regarding street trees. All other sections of the ordinance remain unchanged.

The deleted language required the developer to replace the surety for street trees with a cash payment to the City. This would occur if the street trees had not been installed within six years. Based on input from members of the development community, this language was removed because it took away the ability for the developer to request a time extension to install street trees as allowed by 26.31.010. Time extensions are approved administratively.

This revision is acceptable to the Parks and Recreation Department. Developers will still have the option to make a cash payment to the City for the remaining street trees or request a time extension.

Lincoln City-Lancaster County Planning Department
555 S. 10th St., Rm. #213 • Lincoln NE 68508
Phone: (402) 441-7491 • Fax: (402) 441-6377

Tom J. Cajka

From: Lynn Johnson
Sent: Monday, March 21, 2011 2:46 PM
To: Tom J. Cajka
Cc: Parks TreeSurety; Jerry J. Shorney
Subject: Peter Katt Suggestion Regarding Street Trees

Tom: Kevin and Tom shared your recent message regarding Peter Katt's suggestion that street tree planting be handled in a similar manner to the proposal regarding sidewalks (i.e., tying completion of the improvements to certificate of occupancy). We discussed the proposal during a meeting this morning and have the following concerns:

1) There are two planting periods during the year when it is most suitable to plant trees – essentially April through early June, and late September through mid-November. (The time period for pouring concrete is much broader – possibly mid-March through early December.) We would not advocate for a system that would encourage planting of trees outside of the spring and fall planting periods because of the greater likelihood of tree loss. There would likely be a number of houses for which a temporary certificate of occupancy would need to be issued for three months waiting for an appropriate time to plant trees.
2) Sidewalks can be installed with other concrete flatwork on site (e.g., entry walk, driveway). Tree planting may not be related to other construction work on the site. Ideally, trees would be planted by a landscape contractor, and not by a building construction contractor.
3) It seems likely that trees would be planted essentially one-at-a-time as houses are constructed. Planting trees singly is likely more expensive that contracting for planting of a larger number of trees at one time.

Please let me know if you have questions or need additional information. Thanks, Lynn

Lynn Johnson, Parks and Recreation Director
Lincoln Parks and Recreation
2740 A Street
Lincoln, NE 68502
(402)441-8265, ljohnson@lincoln.ne.gov

Lincoln Parks & Recreation

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Amend 26.11.039 (e) as follows:

(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 (c) 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, plu accrued interest shall be returned to the person making the deposit. The cash contribution will be deposited in the Street Construction Fund in a separate project account for each final plat for which a cash contribution has been furnished to install sidewalks and street trees along such major street.

STREET TREE ESCROW AMENDMENTS:

26.11.039 Requisites 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. The amount of the bonds or escrow or security agreement shall be established by the city and may be increased or decreased according to current conditions. If the amount of the bond or escrow or security agreement is less than the actual cost of the installation of the improvements, the subdivider shall be responsible for the payment of any such additional costs of the improvements.

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.