

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, February 19, 2014, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Cathy Beecham, Michael Cornelius, Tracy Corr, Maja Harris, Chris Hove, Jeanelle Lust, Lynn Sunderman and Ken Weber (Dennis Scheer absent); Marvin Krout, Steve Henrichsen, Brian Will, Paul Barnes, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

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

Lust requested a motion approving the minutes for the regular meeting held February 5, 2014. Beecham moved approval with an amendment to include Hove in attendance on the first page, seconded by Cornelius and carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber voting 'yes'; Scheer absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

February 19, 2014

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber; Scheer absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 14001.**

Ex Parte Communications: None

Cornelius moved approval of the Consent Agenda, seconded by Hove and carried 8-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, Sunderman and Weber; Scheer absent.

**STREET & ALLEY VACATION NO. 06007
TO VACATE PINE RIDGE LANE WEST OF
THE WEST LINE OF WESTSHORE DRIVE.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 19, 2014

Members present: Cornelius, Harris, Sunderman, Beecham, Weber, Hove, Corr and Lust (Scheer absent).

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

Cornelius moved to defer, with continued public hearing and action scheduled for March 19, 2014, seconded by Weber and carried 8-0: Cornelius, Harris, Sunderman, Beecham, Weber, Hove, Corr and Lust voting 'yes'; Scheer absent.

There was no public testimony.

**STREET & ALLEY VACATION NO. 14001
TO VACATE THE NORTH-SOUTH ALLEYS AND CONNECTING
LINK THERETO, FROM THE SOUTH RIGHT-OF-WAY LINE
OF "P" STREET BETWEEN 14TH STREET AND CENTENNIAL MALL NORTH
SOUTH TO THE NORTH RIGHT-OF-WAY LINE OF THE EAST-WEST
ALLEY BETWEEN NORTH 14TH STREET AND CENTENNIAL MALL NORTH.**

PUBLIC HEARING BEFORE PLANNING COMMISSION: February 19, 2014

Members present: Cornelius, Harris, Sunderman, Beecham, Weber, Hove, Corr and Lust (Scheer absent).

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

There were no ex parte communications disclosed.

Staff presentation: **Paul Barnes of Planning staff** explained that this is a request to vacate an alley in downtown Lincoln in conjunction with a redevelopment project at 1421 P Street, i.e. the Case, Case and Case Project (housing project) at that location. It is an irregular shaped alleyway containing about 2500 sq. ft., one leg being 8' wide and the other 10' wide. There is some very minimal vehicular access today. There are LES utilities within the public alley; there are no public city utilities in the alley but there are private sanitary sewer service lines located within the alley; thus there will be a utility easement over the vacated right-of-way. The existing east-west alley will remain open and that would provide garbage service to the properties.

The other condition of approval is to include the signatures of all property owners abutting the alley which have not yet signed the petition to vacate prior to scheduling this vacation on the City Council agenda.

Lust clarified that the Planning Commission's role is a determination of conformance with the Comprehensive Plan. Barnes concurred. The Nebraska Capitol Environs Commission is also scheduled to review this vacation on February 27th, and their recommendation will also be forwarded to the City Council.

Proponents

1. **Tom Huston**, 233 S. 13th Street, Suite 1900, appeared on behalf of **TB Rentals**, the redeveloper of the 1421 P Street property. He is working with the abutting property owners with regard to signing the petition to vacate. Huston pointed out that several meetings ago, this project came forward as a redevelopment plan amendment. They are now working on a redevelopment agreement that will go to the City Council in the near future.

Huston pointed out that this alley is a liability for the city today. The property owners have two principal concerns, i.e. securing the area and resurfacing the alley so that it is consistent as far as materials. They will be providing some hard-scaping, such as benches, etc., as well as landscaping once it is secure.

Huston agreed with the staff findings and recommendation and agreed that this vacation request is consistent with the Comprehensive Plan.

Beecham inquired as to whether or not the brick is old or historic. Huston did not know whether the existing brick would be removed or covered up. A lot of it is dirt. They need to secure the buildings.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

February 19, 2014

Cornelius moved to find the alley vacation to be in conformance with the Comprehensive Plan, with the conditions of approval, seconded by Hove.

Cornelius stated that any concerns he had were addressed by the assertion that before this goes to City Council the abutting property owners will be required to sign the petition. It looks like a good plan.

Lust commented that this is an important part of the redevelopment project that the Planning Commission reviewed a few weeks ago. The Planning Commission's role today is to determine conformity with the Comprehensive Plan, and she believes that it is.

Motion for a finding of conformance with the Comprehensive Plan, with the conditions of approval set forth in the staff report, carried 8-0: Cornelius, Harris, Sunderman, Beecham, Weber, Hove, Corr and Lust voting 'yes'; Scheer absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 985A,
AN AMENDMENT TO THE KESS KOVE COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED AT
SOUTH 60TH STREET AND KESS DRIVE.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 19, 2014

Members present: Cornelius, Harris, Sunderman, Beecham, Weber, Hove, Corr and Lust (Scheer absent).

Staff recommendation: Conditional approval, including approval of the waiver of grading and paving south of Kess Drive, and denial of the waiver of grading and paving north of Kess Drive.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** explained that the original special permit was approved back in 1982. The property is bounded by South 56th Street, Yankee Hill Road, South 70th Street and Rokeby Road – just northeast of the intersection of S. 56th Street and Rokeby Road. This 15-acre tract currently consists of a large outlot and three lots, each one occupied by a residence. The request today is to modify the special permit to create a fourth lot without changing the boundaries, setting the stage for a final plat. The design standards allow the additional density so the proposal is in compliance with the zoning ordinance and design standards.

Will acknowledged that there is only one issue, i.e. the street internal to the development. The original final plat of Kess Estates created 7 lots, including today's 15-acre tract. That final plat required that the internal streets be improved at that time. Kess Drive was improved, but the other two north/south streets were not improved. With this amendment to the CUP, it is at the time of final plat when the required improvements need to be installed. South 60th Street is not currently improved. The waiver requested is to not improve any of South 60th Street. As sort of a compromise, staff is recommending that at least the north half of 60th Street north of Kess Drive be installed, which is adjacent to the lot being created by this amendment. It is consistent with the subdivision ordinance and it is a required improvement. Will went on to state that to some degree, staff agrees that there be no improvement of the south leg because there is not a lot being created next to it. Otherwise, staff supports the application.

Lust inquired as to what other street was not improved that was supposed to be. Will pointed to South 58th Street back about a block. The two north/south streets in the original

final plat were not improved. A surety was provided with the original final plat, and that surety was extended to allow more time, which has also expired. At this time, there is no guarantee being held for those improvements.

Hove inquired whether it is simply just an access issue. Will's response was, partially. But it may also be part of the larger issue. Will then showed an aerial of the larger section of land. The square mile has been pretty much divided into acreage developments and the existing street network has all been improved. As "these areas" developed, the street connections were made to adjacent unsubdivided properties for that development when it does occur. While South 60th Street terminates to one of the few remaining unsubdivided parcels, Will pointed out that the square mile is shown for low density urban residential development, i.e. acreage development, in the Future Land Use Plan. So it is not beyond the realm to assume the area will someday be developed and the street connections like this one are the way we continue and build out the internal street networks. Will also pointed out that there is already a street connection to the north, so presumably the street would be carried forward. The connections have been brought to the edge of all those developments for the purpose of building the streets as the property is developed.

Lust referred to the southern portion along 60th Street. Will believes that was a recreational feature at one time. It is not a part of the detention facilities.

Beecham posed the question that if the Planning Commission did not think that the north section of 60th Street needs to be finished at this time, and then in the future the land to the north is developed, what would the process be to get this section of North 60th Street finished? Will stated that that is what is problematic. If it is not built now, it is going to be very difficult to make that happen in the future. You cannot mandate an improvement on someone else's property.

Lust pointed out, however, that the improvement was supposed to be done 30 years ago.

In regard to the street to the west, Weber wondered whether the property owners abutting the street would be assessed if they want to finish that street in the future. Will responded that by virtue of the fact that someone is here today to create a lot, it is a requirement of the subdivision ordinance that this improvement be done. The applicant is requesting a waiver and the staff finds no justification for waiving paving of the north half. It should be built. There is no reason it should not be built. The property to the north is going to further subdivide at some point.

Weber then referred to the street that is not built where the lots are built – if they develop to the north and want to connect to the street that is not built, who builds it? Will stated that to be the problem. There is no mechanism to require it to be built when the north property develops. That is what we are trying to preclude.

Hove wondered whether the owners to the west would be paying for half of the street. Will suggested that staff is recommending that the subdivider is required to either install or guarantee the improvements at the time of final plat, so it is going to be the subdivider's responsibility.

Proponents

1. Mark Hunzeker appeared on behalf of **Chris and Jennifer Thomas**, the owners of the property. Hunzeker referred to the aerial photograph and suggested that what jumps out at you is that this subdivision, Kess Estates, platted in 1978, had these cross-streets required. He does not know, but is pretty sure that the subdivision to the south was platted later. It would be very unlikely that the Planning Department or Public Works would have required these cross-streets to go into the back of an existing house. Nothing has ever been said about paving any streets when approving the two additional lots on the 15-acre parcel. The request is that we not pave all of 60th Street because obviously paving a road into someone's back yard would be a waste. In addition, everybody who had anything to do with the original requirement for paving 60th Street is long gone. The people who are now owners of this property certainly do not have any obligation to pave the whole thing. The property owner to the west of that street benefits and they are not being asked to contribute. The cost of that street as a condition of adding a single lot to the subdivision is over \$70,000, half of which is the cost of the grading, and in order to comply with the design standards to build to the north property line, there will need to be a retaining wall at the end of the street.

Hunzeker advised that he has talked to the County Engineer and she has indicated that she is amenable to not paving this street as a condition of approval. She has said that unused streets like this require extensive repair before they are ever opened to traffic. He received an aerial photo from the County Engineer showing a street in a similar condition to what staff is proposing at 93rd Street and Avon Lane. The street is barricaded and cracks have developed in the street requiring extensive repair and maintenance prior to opening up to traffic. It is wasteful and presents a contingent liability for the county and creates dead-ends. The County Engineer is not here today but Hunzeker believes she is willing to accept a replacement for Condition #1.1.2 as follows:

- 1.1.2 The permittee shall execute and deliver to the County Engineer an agreement that the permittee shall join in a paving district for that portion of South 60th Street abutting the new lot created by this amendment, at such time as the County Engineer deems it necessary to pave South 60th Street. The agreement shall be in recordable form and the recording fees shall be paid by the permittee to the Register of Deeds.

Hunzeker pointed out that we do not know whether this is going to be in the City or County at the time it is needed to be open, if ever. This is a single lot and the cost for the condition to pave the street is excessive, the intent of which can be met by having it

paved at some future time by a district. It would also give the people who benefit from it on the west side an opportunity to contribute.

Lust asked Hunzeker if he had any documentation from the County Engineer that supports the proposed amendment language. The Planning Commission does not have that information. The Planning Commission has the County Engineer comments which state that it should be paved. Hunzeker did have a text message on his phone from the County Engineer which he offered to forward to staff.

Harris clarified that the applicant is still asking for the waiver for south of Kess Drive and a paving district for area north of Kess Drive. Hunzeker stated that they are certainly asking for the waiver south of Kess Drive. In addition to the grading problems present on the north side, they are even worse on the south side. What he is attempting to do is cover this possible future cost in a way that binds the property owners and their successors to enter into an agreement to pay their share at such time as necessary.

Beecham expressed an interest in some analysis of those properties to the south where Hunzeker mentioned no one would build a road into someone's back yard. If the property was developed after and the road had been there, wouldn't it have been easy for the developer to change the way they develop the property knowing that a street was going to be there? Hunzeker suggested that one of two things is true – 1) at the time the lots to the south were platted, either Kess Estates was already in place and the streets had been platted and dedicated and shown as public roads on every map in the county, in which case he would have thought that maybe someone on staff would have said something about the street connections; or 2) Kess Estates was not in place and they platted the lots and someone required that streets be dedicated going into places which really didn't make any sense. It would have been relatively easy to have moved the cross-streets to a point where at least they coincided with the property line. That's why he thinks Kess Estates was in place prior to approval of the subdivision to the south.

Cornelius commented that the proposed amendment sounds reasonable. He suggested that the applicant agree to a two-week deferral to let this play out and get the County Engineer on record. Hunzeker agreed.

Cornelius moved to defer, with continued public hearing and action on March 5, 2014, seconded by Corr and carried 8-0: Cornelius, Harris, Sunderman, Beecham, Weber, Hove, Corr and Lust voting 'yes'; Scheer absent.

There being no further business, the meeting was adjourned at 1:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on March 5, 2014.