

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, August 1, 2007, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Gene Carroll, Michael Cornelius, Gerry Krieser, Roger Larson, Mary Strand, Lynn Sunderman and Tommy Taylor (Dick Esseks absent). Marvin Krout, Ray Hill, Ed Zimmer, Brian Will, Christy Eichorn, Brandon Garrett, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

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

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held July 18, 2007. Motion for approval made by Carroll, seconded by Krieser and carried 7-0: Carlson, Carroll, Cornelius, Krieser, Larson, Strand and Sunderman voting 'yes'; Esseks and Taylor absent.

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

August 1, 2007

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

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 07038 AND SPECIAL PERMIT NO. 07028.**

Ex Parte Communications: None.

Carroll moved to approve the Consent Agenda, seconded by Strand and carried 7-0: Carlson, Carroll, Cornelius, Krieser, Larson, Strand and Sunderman voting 'yes'; Esseks and Taylor absent.

Note: This is final action on Special Permit No. 07028, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**REQUESTS FOR DEFERRAL:**

**MISCELLANEOUS NO. 06007 AND  
MISCELLANEOUS NO. 07006,  
PROPOSED TEXT AMENDMENTS TO  
THE CITY OF LINCOLN DESIGN STANDARDS  
RELATING TO STREET TREES AND  
SCREENING AND LANDSCAPING.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 1, 2007

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

The Clerk announced that the applicant has requested a two-week deferral.

Carroll moved to defer, with continued public hearing and action scheduled for August 15, 2007, seconded by Strand and carried 7-0: Carlson, Carroll, Cornelius, Krieser, Larson, Strand and Sunderman voting 'yes'; Esseks and Taylor absent.

There was no public testimony.

**COUNTY SPECIAL PERMIT NO. 07009  
KADAVY ESTATES COMMUNITY UNIT PLAN,  
ON PROPERTY GENERALLY LOCATED  
AT N. 56<sup>TH</sup> STREET AND BRANCHED OAK ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 1, 2007

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

The Clerk announced that the applicant has requested a four-week deferral.

Cornelius moved to defer, with continued public hearing and action scheduled for August 29, 2007, seconded by Carroll and carried 7-0: Carlson, Carroll, Cornelius, Krieser, Larson, Strand and Sunderman voting 'yes'; Taylor abstaining; Esseks absent.

There was no public testimony.

**CHANGE OF ZONE NO. 07040  
TO DESIGNATE THE  
HAVELOCK AVENUE LANDMARK DISTRICT  
FROM 6024 HAVELOCK AVENUE TO 6242 HAVELOCK AVENUE,  
AND FROM 6033 HAVELOCK AVENUE TO 6245 HAVELOCK AVENUE.  
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 1, 2007

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

Staff recommendation: Approval

Ex Parte Communication: None

Staff presentation: **Ed Zimmer of Planning staff** appeared on behalf of the Historic Preservation Commission. Zimmer stated that this is a landmark district application with a mix of uses – retail and service, entertainment and residential. Opposition was received from one property, that being the property on which The Tobacco Shack is located.

Havelock has a distinct history. It was originally one of the independent towns. This town originated around the railroad yards as opposed to a college. The main street was originally called Jackson St., then “O” St., then Havelock Ave. One of the buildings in the district is already in the National Register. This was the founding building in many ways. It continues to be a handsome rehabilitated building. The guidelines for the district were included in the staff report. Some of the buildings have been altered. Along the whole stretch, even the newer buildings are in keeping with the character and scale of the district. The Engine House Café was the original town hall.

The building at 6242 Havelock Ave. is the only objection received. The Historic Preservation Commission advised to include this building in the district. It is on the extreme northwest corner and does not greatly contribute to the district, but they felt that future incarnations of the building should be included in the guidelines.

Larson questioned the restrictions on the owners if this is approved. Zimmer replied that the same rules as the Haymarket landmark district would apply. Redesign or demolition of a building has a required review before a building permit can be issued. If the owner and Historic Preservation Commission cannot come to a mutual resolution, there is a 90 day waiting period. If demolition is wanted, another 90 days can be instilled. The waiting period does not apply to signs in the district. Signs require approval of the Historic Preservation Commission.

Carroll questioned if the architectural design has to be the same as the rest of the district after a demolition. Zimmer replied that it would have to be compatible with the district. The

owner could also wait out the full waiting period over the objections of the Historic Preservation Commission and then the building could look however the owner wanted.

Strand wondered if other buildings have been pulled into a district that have no historical significance. Zimmer replied that the new parking garage was pulled into the Haymarket district. Part of the previous building at that location was under the review of the Historic Preservation Commission. When the garage was built, the whole building was reviewed because they felt the impact to the district was so great. The Sinclair Hille building was not in the district but the owners voluntarily came to the Historic Preservation Commission for their review and input because they Hille knew that the building would be perceived as part of the district even though it was just outside the lines.

Proponents

**1. Bob Rokeby**, 3840 Dudley St., appeared in support. He and his wife, Vicki, have two properties in the district and another property just outside the district. This has been going on for 10 years. He is in support of the district.

Cornelius wondered what Rokeby perceived as the benefits to conducting business in a landmark district. Rokeby believes that this instills a neighborhood feel. It gave him the opportunity to put sweat equity into his building. Havelock is going back to the way it was before. A lot of the buildings have had their second floors filled again. They have put apartments on the second floors of their buildings and the tenants seem to love it.

**2. Glen Witte**, 6120 Havelock Ave., supports the idea that Havelock Ave. has its own identity. He believes it has maintained its own identity over the years. He has had people who live in the apartments above store fronts tell him that they enjoy living above the shops. He hopes to maintain the structure of the neighborhood.

There was no testimony in opposition.

Strand is somewhat bothered about bringing in the business that has raised an objection, but the City Council can always leave the property out if they so desire.

Carlson believes it is nice to square the corner.

**ACTION BY PLANNING COMMISSION:**

August 1, 2007

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

**SPECIAL PERMIT NO. 07026**  
**FOR A DOMICILIARY CARE FACILITY**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 25<sup>TH</sup> STREET AND OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 1, 2007

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

Staff recommendation: Approval

Ex Parte Communication: None

Staff presentation: **Christy Eichorn of Planning staff** submitted four additional letters in opposition. This application is for a domiciliary care facility for persons with Alzheimer's. The applicant is requesting a density bonus to accommodate 33 people. Without the bonus, 26 people would be allowed. This is at 25<sup>th</sup> St. and Old Cheney Rd. Other things that could be built in this zoning are seven single family lots, schools, churches, group homes, domestic shelters and early childhood care facilities. Domiciliary care facilities are allowed under a special permit.

Proponents

**1. Marty Hug, CEO for AgeMark Corp.,** stated that AgeMark Corp. builds assisted living facilities. They own 12 nationwide, primarily in the midwest. Country House is an assisted living facility for people with dementia or Alzheimer's. It is very homelike in appearance. Security is provided. They treat every day like the best day of their residents' lives. They like to locate in residential areas because first and foremost they are a business, but they are also a residence. He believes they make a positive impact. Their buildings are high quality and they take every care in the maintenance of their grounds. Traffic, parking and noise are nonexistent. He has never fielded a noise complaint in 20 years. This will bring jobs and income to the community. Five million people in the nation suffer from Alzheimer's. Lincoln is a growing community and this facility is needed. He believes this will fit nicely into the community.

Strand noticed that the drawing provided doesn't seem to include a whole lot of parking. Hug advised that the plan shows 19 stalls. Strand questioned how many parking spaces are for staff and how many are for visitors. Hug replied that they have nine daytime staff, six evening staff, and four overnight staff. They have done estimates as to how many guests visit on a daily basis. According to their estimates, it is six people per day. Visitation is not nearly as high as they wish it would be.

Cornelius questioned if the company's other four facilities are located in single family areas. Hug replied that two are located in single family areas and they have not had any issues.

Taylor noted that concerns have been raised about traffic counts due to deliveries, etc. This is a 24-hour facility. Hug replied that the staffing pattern goes down as the day goes on. He does not see tremendous traffic in the evening. They average three to five deliveries daily and one ambulance response per month. He believes their impact to traffic is minimal.

Carroll referred to the site plan. There appears to be a fence on the south side of the facility. Hug advised that the fence is designed to look nice. Often they use a vinyl type fence or wrought iron. It keeps the people in. They need to be safe and secure. The fence is typically six feet tall and surrounds the perimeter. The front doors are alarmed.

**2. Marcia Houchen**, 2801 Park Place, is marketing director for AgeMark. She presented the Commissioners with information on some of their other facilities.

**3. Mark Hunzeker**, testified on behalf of the applicant. These kinds of facilities are referred to in various ways. This is a residential facility. These facilities are only permitted in residential districts under Lincoln's zoning ordinance. This is compatible with group homes and day care centers. There are many of these types of facilities in Lincoln. Many have been approved in the last ten years. He presented a map of their locations. There are facilities spread throughout the community and they are all in residential zoning districts. All of the facilities have lower parking ratios. Most of the residents of these facilities do not drive. Most of these places provide on-site activities. The parking ratios range from 327 residents and 74 parking stalls to others which have independent living and higher parking ratios. The goal is to provide a home-like existence for the residents.

This is residential in character. The building is at an angle to break up the facade. The design is broken up with stone and brick. Lincoln has only received one complaint for 30 some facilities over the years.

Taylor questioned the green space. Hunzeker stated that there is a required 30 foot setback. Outdoor lighting would be directed downward and restrict glare. The building height is restricted. The building footprint is 19,000 square feet and they have broken it up with gables and a pitched roof. The design would conform substantially to the rendering submitted. He submitted proposed amendments to the conditions of approval:

- 5.1 All outdoor lighting shall be full cut off fixtures and directed downward to minimize glare.

- 5.2 Height of the building shall be limited to one story, not to exceed 25 feet.
- 5.3 The building footprint of the main building shall not exceed 19,000 square feet.
- 5.4 The building exterior shall utilize gable or pitched roofs, residential style shingles, face brick or stone on a portion of all exterior walls, multiple roof forms to reduce the scale of the building and residential style details. Design shall conform substantially to the elevations submitted by the applicant.
- 5.5 Remove fence from the triangle formed by the southeast lot corner and points 30 feet north and 30 feet west from that corner. Fence shall not have openings more than 4 inches in width.

Carlson believes this is one of AgeMark's larger facilities. Hunzeker replied that they have one facility that is larger than this. He does not expect this to be full most of the time. More than likely there will be three to four free units at any given time due to turnover.

Carlson questioned the signs. Hunzeker replied that the signs would be monument signs that are regulated by the zoning code.

Carroll wondered about the number of parking stalls. Hunzeker replied there will be 19 stalls.

### Opposition

**1. William Gewain**, 2601 Cindy Dr., testified in opposition. They built their home in 1990. He went to Grand Island to observe the traffic flow of AgeMark's facility out there. He had printed up a questionnaire for the neighbors but there were no residential neighbors to interview. He was surprised at what he found. The neighbors are a CPA, an eye clinic, a dentist and retirement homes and a hospital. The houses are all located some distance away. He has an 83-year old mother who suffers from dementia, and he visits her every morning. He is not opposed to these types of facilities. There were six cars under the parking canopy at Grand Island. That facility felt like a hotel. There were delivery trucks and cabs coming and going. He does not feel like this is right for their neighborhood. The meetings he attended were vague. They were made to make the neighbors feel good but the statements did not pan out. He thinks traffic will be a mess.

Taylor questioned traffic flow and children. Gewain believes that traffic will not be careful and look for their children who play in the driveway and walk their dogs on the sidewalk.

Taylor wondered how Gewain perceives the impact on his house from this facility. Gewain believes it will lower the value of his house. There will be delivery trucks coming and going.

Perhaps a facility for 20 people might be acceptable, but he does not believe they would build a facility for 20 people because of the economics.

**2. Jim Stevens**, 5830 S. 25<sup>th</sup> Street, is opposed because this is a residential area. There are houses facing the property. The property has been empty since he has been in the area. A city park was suggested. He is opposed to a health care facility. He believes it will have an impact on traffic, parking and property values. He submitted a petition of signatures in opposition.

**3. David Smith**, 2521 Cindy Drive, testified in opposition. His house is directly across from the proposed facility. He speaks in defense of freedom. He wants an area that is clean, safe and appealing. This was seen as a very good place to live. He has excellent neighbors. His chief concern is for the safety of his children and grandchildren. He is concerned about parking and delivery trucks. He asked the Commissioners if they would want this directly across from their house. Dementia is an extremely difficult issue. It involves the patient and the family. He agrees that care facilities such as this are greatly needed, but he does not believe that this is the right decision for this neighborhood.

**4. Brendan McDaniel**, 5727 S. 25<sup>th</sup> Street, testified in opposition. He lives across from the proposed driveway. He is concerned about parking on the street and decreased property values.

**5. Paul Winkler**, 5737 S. 25<sup>th</sup> Street, testified in opposition. His in-laws bought this property in 1973 and there were initially very few properties in the area. The property in question was zoned R-1 at the time. He enjoys the location. A park was mentioned. There are no parks close to this area to serve the neighborhood children. He is opposed to additional traffic. Access to this property is difficult. He feels that this would cause more disruption to the neighborhood.

**6. Vicki Shank**, 5800 S. 25<sup>th</sup> Street, testified in opposition. She pointed out that she has teenagers. Sometimes there are a lot of cars on the street. With the cars on either side of the street, she does not believe that emergency vehicles could get down the street. Her mother passed away in her home and she knows how many emergency vehicles are involved. She does not want to look at a fence across the street.

**7. Dave Shank**, 5800 S. 25<sup>th</sup> Street, testified in opposition. He lives across the street. The streets are narrow. He does not believe there is easy access for emergency vehicles.

**8. Sharon Gewain**, 2601 Cindy Drive, testified in opposition. This facility would be one block long. There would be traffic from many directions. She has attended all of the neighborhood meetings. She feels like she has been misled. It was put forth as a one-story building that was loved by all the neighbors. This is 19,000 square feet, 25 feet high with dormers. She knows there is a facility at 40<sup>th</sup> and Old Cheney about the same size. She does not believe that AgeMark does not have any noise issues. She googled some

of their other facilities. One in Maryland is next to a shopping mall. In the middle of their neighborhood is not an ideal location. She questioned how many single family homes could go on the empty lot. She was told it could be six or seven houses. She urged the Commission to deny this application.

**9. Kelly Winkler**, 5737 S. 25<sup>th</sup> Street, testified in opposition. This area needs to be kept as residential housing. They all bought their properties believing this area would be kept as residential. Lincoln is growing quickly. This needs to go into an area first where the neighbors who come later know exactly what they are building next to.

**10. John Elliott**, 2511 Cindy Drive, testified in opposition. He agreed with the concerns of the other people in the neighborhood. Once a commercial facility is opened, you never know what the next tenant might be. This introduces another unknown factor into the mix. What if there is another attempt to chip away at the neighborhood feel? This speaks to property values and quality of life.

Staff response

Taylor questioned how wide the streets are in this area. Dennis Bartels of Public Works responded that Cindy Drive and 27<sup>th</sup> Street are traditional street width of 27 feet. He believes that emergency vehicles could make it down the street with cars on both sides.

Strand wondered what is allowed in R-1 zoning. Eichorn replied that single family homes, duplexes, parks, playgrounds, libraries and schools are allowed by right. Some conditional uses would be churches, group homes and early childhood care facilities. This is an application for a special permit. Any future use other than this facility would have to meet the requirements or they would have to come before Planning Commission for a special permit.

Carroll questioned if Eichorn had seen the motion to amend from the applicant. Eichorn has and is in agreement with the proposed amendments.

Carlson wondered how many single family homes could be built on this site. Eichorn replied that seven single family houses could be built.

Taylor wondered how much traffic would be generated. Eichorn believes that seven houses with four people each would create the same amount of traffic as the proposed facility.

Cornelius wanted to know about the conditions for the maximum number of residents. Eichorn replied that the applicant has requested a facility for 33 residents. Without the density bonus, the maximum number of people allowed would be 26.

Response by the Applicant

Hunzeker stated that they do not have semi trucks deliver to these facilities. The delivery trucks would be UPS size trucks. He thinks that seven single family residences would be the minimum that could be put on this property. He expects possibly eight or nine could be built. He reminded the Commissioners that Lincoln only allows these facilities in residential zoning districts. With respect to traffic, he submitted a memo from a traffic engineer. He also suggested that eight houses would create about the same amount of traffic. Other locations for these types of facilities are in residential areas. Clark Jeary is the only house he can remember that was converted from one use to another. The proposed building height is under the limit.

Hunzeker also pointed out that the people who live in these facilities are protected under the Fair Housing Act. There are ordinance considerations, but the Fair Housing Act requires reasonable accommodation.

Taylor wondered what the chances are that the residents in this home would need emergency services. Hunzeker does not think there is concern. This application was routed to the Fire Dept. They did not have any concerns except for additional fire hydrants.

**ACTION BY PLANNING COMMISSION:**

August 1, 2007

Taylor moved to approve the staff recommendation of conditional approval, with amendments as proposed by the applicant, seconded by Cornelius.

Taylor listened to all the comments. He sees the neighbors concerns. He remembers another facility where the neighbors were concerned about emergency vehicles and their concerns were never realized. This looks like an exceptional facility. He does not hear a strong enough argument against this action. He does not see the delivery trucks as problematic. Delivery trucks are in his neighborhood every day. He feels this should be approved.

Carroll will vote in favor of this application. Neighborhoods need to be protected. The highest and best use could have nine to ten housing units. Someone could ask for a change of zone and build something here that would not be nearly as compatible with the neighborhood. He thinks this is the best outcome for this property. He understands they would like to see this as a park, but no one is going to dedicate this land to the city. He believes this will be an asset to the community.

Carlson thinks Carroll's analysis is correct. There is no way to know what someone could build on this piece of land. This is not an apartment house. Domiciliary is only allowed in residential areas. This is tough. It is hard to turn down a use that is properly applying and appears to be mitigating conditions around them.

Strand commented that she believes there was a previous application for a planned unit development with higher density on this property. Alltel came in and wanted their parking lot enlarged which she believes was approved.

Motion for conditional approval, with amendments, carried 8-0: Carlson, Carroll, Cornelius, Krieser, Larson, Strand, Sunderman and Taylor voting 'yes'; Esseks absent. This is final action, unless appealed to the City Council within 14 days.

**SPECIAL PERMIT NO. 07022**  
**FOR EXPANSION OF A NONSTANDARD DWELLING**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 4<sup>TH</sup> STREET AND C STREET (404 C STREET).**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 1, 2007

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

Staff recommendation: Approval

Ex Parte Communication: None

The Clerk stated that the applicant phoned yesterday and indicated he would not be able to attend the public hearing today.

Staff presentation: **Christy Eichorn of Planning staff** stated that the applicant would like to do an addition to their house. He does not meet the 25-foot setback along 4<sup>th</sup> St. No other departments had any concern with the approval of this request.

There was no testimony in support nor in opposition.

**ACTION BY PLANNING COMMISSION:**

August 1, 2007

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

There being no further business, the meeting was adjourned at 2:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on August 15, 2007.