MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, March 25, 2009, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska
MEMBERS IN ATTENDANCE:	Leirion Gaylor Baird, Gene Carroll, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jim Partington, Lynn Sunderman and Tommy Taylor. Steve Henrichsen, Mike DeKalb, Ed Zimmer, Brian Will, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

Chair Gene Carroll called the meeting to order and requested a motion approving the minutes for the regular meeting held March 11, 2009. Motion for approval made by Taylor, seconded by Cornelius and carried 6-0: Gaylor Baird, Carroll, Cornelius, Esseks, Sunderman and Taylor voting 'yes'; Francis, Larson and Partington abstained.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: March 25, 2009

Members present: Gaylor Baird, Carroll, Cornelius, Esseks, Francis, Larson, Partington, Sunderman and Taylor;

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 09002, ANNEXATION NO. 09002, SPECIAL PERMIT NO. 09003 and USE PERMIT NO. 105A.**

Ex Parte Communications: None

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

Note: This is final action on Special Permit No. 09003 and Use Permit No. 105A, 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.

CHANGE OF ZONE NO. 09002,
FROM AG AGRICULTURAL DISTRICT
TO AGR AGRICULTURAL RESIDENTIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED AT
S. 96TH STREET AND SALTILLO ROAD.
REQUEST FOR DEFERRAL. March 25, 2009

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

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

Cornelius moved to defer, with continued public hearing and action scheduled for Wednesday, April 22, 2009, seconded by Francis and carried 9-0: Taylor, Cornelius, Esseks, Gaylor Baird, Francis, Partington, Sunderman, Larson and Carroll voting 'yes'.

WAIVER NO. 09001
TO WAIVE THE REQUIREMENTS FOR
STREET PAVING, SIDEWALKS AND STREET TREE,
ON PROPERTY GENERALLY LOCATED AT
N. 36TH STREET AND Q STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 25, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval of the waiver of paving, and denial of the waiver of sidewalks and one street tree.

Staff presentation: **Brandon Garrett of Planning staff** discussed the history of this application going back to1996, when the first application for a final plat was submitted. It has since gone through a couple of waiver processes, i.e. a request to waive the paving of Q Street, sidewalks along Q Street and 36th Street, and the one street tree that would have been on 36th Street. These waivers were denied twice in 2002 and 2007. The same request is before the Planning Commission today.

The Spahn Addition was approved in September of 2008, and part of that approval included a paving district for Q Street. The applicant provided sureties for the sidewalk and the one street tree. Months after that final plat was approved and filed, the actual costs for the paving of Q Street were going to exceed the previous estimate by 25%. The paving district went back to the City Council for reconsideration and the City Council decided it was an unreasonable cost and they repealed that paving district.

What now happens to the final plat is that it has not met all of the requirements of the subdivision ordinance since the street paving district was repealed. The City Law Department gave the applicant three options: 1) install the paving for Q Street; 2) request a waiver of the paving; or 3) rescind or void the final plat.

Recognizing these rare and unique circumstances, City staff then recommended to the applicant that he request a waiver of the street paving and staff would support it. However, in addition to the waiver of street paving, the applicant has also requested the waivers of the sidewalks and the one street tree. Staff recommends denial of the waiver of sidewalks and street tree. According to the Comprehensive Plan, all areas of the community should have safe, secure and reasonably direct pedestrian connections. In this particular neighborhood, they are very fortunate in their sidewalk network between O and R, N. 33rd and Wyuka Cemetery. The waiver of the sidewalk is at the corner of 36th & Q. Garrett suggested that there is a very complete sidewalk network there today and this sidewalk would go towards completion of that network. There is a sidewalk to the north of this property. Garrett further suggested that since this segment of Q from N. 35th to N. 36th will not be paved in the near future, it is all that more important that we get a sidewalk built at this time to get the pedestrians off the street.

Esseks commented that it is a concern not to have a paved street in the middle of the city. He understands the reasons for recommending support of the waiver, but he wonders whether we have learned anything from this long development review process as to how we can avoid being in this situation again. Garrett responded, stating that the history of this goes back to 1996, when we did not have a formal process for these applications to come to an end. Now we have a one year expiration date and this plat was nearing expiration, thus the repeated request for the waivers. The City has given its best effort to get this completed. The platting process would have required the paving of one segment of Q Street but not the other segment, so there still would have been a paving gap. The paving district was approved, but then repealed by the City Council because of the under-estimate of the cost. Also in this case, there were no adjacent property owners across the street to share the costs. He is hopeful that this is a unique and rare circumstance of not paving the street. Because of the cost, the applicant requested the initial waiver; we pursued the low-to-moderate income route for a paving district and the City Council felt the cost was too high and did not want to burden the adjacent property owners with that kind of assessment for street paving.

Larson pointed out that there are still gaps even if this sidewalk is built. Is there anything that could be done to require that the rest of the sidewalk be constructed? There is no paved street and there is no sidewalk in that area so it really doesn't connect to anything. Garrett agreed that there will still be a 150' gap in the sidewalks. The remainder of the sidewalks would be built by platting, such as this situation; another mechanism is that the City Council could create a sidewalk district and assess the adjacent property owners; and the third situation is just being a good neighbor and putting sidewalk on your property.

Carroll inquired whether the city can come back with a special assessment district even if the waiver of paving is approved. Garrett acknowledged that when the City Council

decides it is appropriate, they could establish a paving district and require the street to be paved.

Gaylor Baird wonders how we will avoid another situation like this. She does not want to create a precedent by supporting this. Garrett does not believe this sets a precedent because this is a rare and unique circumstance. The subdivision ordinance requires paved streets and the staff will continue to enforce and advocate for paved streets. Waiving of the paving in this situation should not be considered a precedent for future projects.

Taylor wondered why the costs exceeded the estimate by so much in this case. Garrett was not sure why the initial cost estimate came in well under the bids. He speculated that maybe there were grading costs or other things such as storm sewer costs that were not factored into the estimate. Maybe just the cost of doing work is much higher than what was expected when it was estimated.

Proponents

1. Gerald Spahn, the property owner, stated that he has been trying to subdivide this property for 13 years. Is this waiver legal? He has been lied to, he has been threatened and he has been stonewalled by the City. He tried to do everything according to the law, but here he is again. He believes the voiding of this plat is a threat to take his property. He received a response from the City Attorney and after much discussion he has not received an answer to his question about rescinding his final plat. He thinks the city is going to sue him.

Spahn stated that he called the Mayor's office, and he was told that the city will process the waiver at no charge. He called the County Assessor about how the city can rescind a subdivision, and the County Assessor did not have an answer. He then called Olsson Associates who drew up his final plat, and Olsson told him that the City cannot rescind his final plat. It is going to cost him nearly $10,000 to install the sidewalk.

Spahn acknowledged that he met with the Director of Planning and Brandon Garrett at the property, but Spahn contends that this is a sidewalk to nowhere. There is half a block before you get to this sidewalk, and then when you get on the other side of the new sidewalk, there would be another half a block of no sidewalk.

Spahn believes that he has been stonewalled because he went to the City Engineer's office to get the specifications to install the sidewalk. The sidewalk inspector told him to get it staked and he would have it inspected. He walked out of that office without being given any specs on building the sidewalk.

Spahn suggested that this could have been settled a long time ago. He believes that the ordinance provides that the Planning Director may waive the minimum improvements when no additional lots are created in a subdivision. The Director of Planning takes the position that the Spahn Addition creates an additional buildable lot. Spahn explained that he is only wanting to change the property around just a little bit to make it more usable.

Gaylor Baird suggested to Spahn that the plat is more a map of the intention of what you plan to do with the property. No one is going to take away your property.

Rick Peo of City Law Department advised that the issue is that the final plat cannot be approved and filed of record unless there is provision made for installation of the required improvements, either by installing or providing the bond or escrow to guarantee them, or a special assessment district for the paving. The problem here is that technically, the Planning Director jumped the gun by signing the final plat and making it of record before the City Council approved the paving district. He would argue that the plat as recorded is void, and in order to ratify that plat and make it valid, we need to either get a waiver of the requirements or acknowledge that the plat is void and that it should be rescinded. We would file a notice with the Register of Deeds that it was erroneously signed by the Planning Director. The city would like to avoid this type of record and creating any title problems. Therefore, it was determined that the best solution was to go back and reconsider the waivers. Sidewalks, even if waived, can be ordered in by the City Council at any point in time. We are not trying to take Mr. Spahn's property – if he does not meet the requirements of the subdivision ordinance, "you go back to where you were when you filed the application." He hasn't lost any money through the process.

Peo also pointed out that it is in the Planning Director's discretion whether or not to waive the minimum improvements. In this case, it appears that the Planning Director determined that those improvements should be made. Esseks suggested that the record needs to indicate why the Planning Director made that choice.

Garrett explained that the reason the Director did not administratively grant a waiver in this case was because 1) staff believes strongly that the sidewalk should be there and that the one street tree should be there; and 2) this very application has been before the public two other times and it seemed proper that we not do anything administratively because of that.

Esseks inquired whether the number of lots has changed. This is not just a property line adjustment. He is just switching the orientation of the lot so that he has a new frontage. Garrett agreed. The way the properties were platted initially, they fronted to 36th Street. The final plat flipped that around and the lot for his existing house would front to Q Street and the remainder of that lot would be a corner lot large enough for a duplex or single family. He did not have two buildable lots when he started. In this case, the Director felt strongly that he should not administratively waive the sidewalks or street tree.

Francis inquired as to the recent history of waiving sidewalks in a subdivision like this. Garrett believes that waivers to sidewalks are requested from time to time, but it is more typical in commercial and industrial areas, and most typical in industrial types of areas. He could not comment on the success rate.

Esseks inquired whether the Department believes the sidewalk gaps will be filled in the future if this sidewalk is installed. Garrett suggested that in some cases we have to move incrementally to get these sidewalks established in our neighborhoods by platting, sidewalk

district by City Council, or just going out on free will as a good neighbor and build the sidewalk. Maybe that will be the case in some of the adjacent properties.

Gaylor Baird inquired about building the sidewalk around the existing tree so that he would not have to pay to have the tree removed. Garrett indicated that he did confirm with Public Works that there is ample room (80' of right-of-way in this case) and he would be able to maneuver around the existing trees, which would cut the cost of installing the sidewalk. Public Works has offered to stake the sidewalk for Mr. Spahn and there is no grading required.

Response by the Applicant

Spahn pointed out that he did not sign the waiver request and he did not give anyone permission to sign the request for him. Therefore, he does not believe there is a valid waiver being requested.

Steve Henrichsen of Planning staff stated that he signed the application on behalf of the Director of Planning. The City is the applicant for the paving waiver, and Mr. Spahn sent a letter requesting that the other two waivers also be included. There was no filing fee requested of Mr. Spahn. After Mr. Spahn stated that he never received a copy of the application before it was submitted without his signature, Henrichsen advised that the Director of Planning is the applicant for all three waivers.

Partington observed that it is not clear whether Mr. Spahn wants the waiver. Spahn stated that he does not care, although he would like to have the whole thing waived. It is ridiculous to spend the money on the sidewalk.

Carroll clarified that the application by the City is agreeing to waive the paving but that the sidewalks and the street tree are still required in order to get the final plat. If this final plat cannot be completed, then it goes back to where it was initially. The Planning Commission is voting whether or not to allow the waivers based upon the information provided today.

ACTION BY PLANNING COMMISSION: March 25, 2009

Cornelius moved to approve the staff recommendation to approve the waiver of paving and deny the waiver of sidewalks and street tree, seconded by Sunderman.

Cornelius confirmed that this vote does not take any property away from the applicant. As far as the sidewalk is concerned, Cornelius observed that if the Planning Commission takes the positions of approving waivers of a sidewalk to nowhere, the first sidewalk would have never been built. We are talking about the connection of sidewalks in the future according to the subdivision ordinance.

Sunderman observed that the residents to the north of this house have put in sidewalks and we are treating this applicant in the same way that they were treated.

Esseks stated that he will vote for the waiver of paving, and he is sorry the applicant had to go through this long process.

Taylor stated that he sympathizes with the applicant. He really wanted to vote in favor because he is familiar with the area, but we need to look to the future.

Gaylor Baird extended an apology on behalf of Planning for any jargon that may have been confusing to Mr. Spahn. She clarified that no one is interested in taking the applicant's property. She also complimented Planning staff because it is rare for the Director to actually visit the applicant personally to resolve the issues. She believes the Department was trying to make a full faith effort to assist.

Motion to approve the waiver of paving and deny the waiver of sidewalks and street tree carried 9-0: Taylor, Cornelius, Esseks, Gaylor Baird, Francis, Partington, Sunderman, Larson and Carroll voting 'yes'. This is a recommendation to the City Council.

MISCELLANEOUS NO. 09003,
TEXT AMENDMENT TO TITLE 26,
THE LAND SUBDIVISION ORDINANCE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: March 25, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Tom Cajka of Planning staff** submitted three proposed text changes to the subdivision ordinance:

1. Add a definition for "access road" and when it shall apply. Currently, the ordinance requires that every lot have access and front upon a private or public street, which has caused some problems along major arterials, especially in older parts of town. We want to do away with additional driveways onto a major street but the ordinance requires that each lot have its own access. Instead of a formal waiver process, this text amendment creates language to consolidate those driveways.

2. Delete the 14-day appeal period after approval of a final plat. Currently, when the Director signs a final plat, the subdivision ordinance allows an appeal within 14 days, requiring that it be held for 14 days before filing with Register of Deeds. This has created problems for owners, realtors and developers with their closing dates, etc. This text amendment would do away with the appeal period, except for the subdivider.

3. Modify the requirements for granting a waiver by allowing final action by Planning Commission, even though the staff is recommending denial. Today, if there is a waiver

being processed and the staff is recommending denial, the Planning Commission makes a recommendation and it is automatically scheduled on the City Council agenda. This amendment would make the Planning Commission final action unless the applicant appeals to City Council.

Carroll stated that the Planning Commission did have a briefing on this legislation on March 11, 2009.

There was no other public testimony.

ACTION BY PLANNING COMMISSION: March 25, 2009

Taylor moved approval, seconded by Larson and carried 9-0: Taylor, Cornelius, Esseks, Gaylor Baird, Francis, Partington, Sunderman, Larson and Carroll voting 'yes'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:05 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 8, 2009.

F:\FILES\PLANNING\PC\MINUTES\2009\pcm032509.wpd