

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, November 3, 2010, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Leirion Gaylor Baird, Michael Cornelius, Dick Esseks, Wendy Francis, Roger Larson, Jeanelle Lust, Jim Partington, Lynn Sunderman and Tommy Taylor; Marvin Krout, Steve Henrichsen, Mike DeKalb, Tom Cajka, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

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

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

Sunderman then requested a motion approving the minutes for the regular meeting held October 20, 2010. Motion for approval made by Taylor, seconded by Francis and carried 8-0: Gaylor Baird, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'; Cornelius abstained.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:**

**November 3, 2010**

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

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 10032 and WAIVER NO. 10020.**

Ex Parte Communications: None

**Item No. 1.2, Waiver No. 10020**, was removed from the Consent Agenda at the request of Commissioner Taylor and scheduled for separate public hearing.

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

Note: This is final action on Special Permit No. 10032, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

**WAIVER NO. 10020**  
**TO WAIVE THE REQUIRED PEDESTRIAN EASEMENT**  
**ON PROPERTY GENERALLY LOCATED AT**  
**NORTH 15<sup>TH</sup> STREET AND ALVO ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

November 3, 2010

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

Ex Parte Communications: None.

Staff recommendation: Approval.

This application was removed from the Consent Agenda at the request of Commissioner Taylor.

Staff presentation: **Tom Cajka of Planning staff** explained that this is a request to waive the requirement to install the sidewalk and to release the pedestrian easement in Stone Bridge Creek 2<sup>nd</sup> between North 15<sup>th</sup> Street and Silverthorn Drive.

Staff is recommending approval of the waiver based on several factors. First of all, there was a change in the location of the pedestrian easement between the preliminary plat and the final plat. Originally, in the preliminary plat, the pedestrian easement was more in the center of the block instead of all the way to one end. Cajka did not know why the location was changed. Secondly, the intent of the pedestrian easement is to lessen block length and to make it easier for pedestrians to walk from one block to the other. This pedestrian easement does not serve that purpose being located only two lots away from the end of the street. Thirdly, the houses were built in the wrong place. When there is a pedestrian easement, there is a requirement that the house is to be located 10' away from the easement, but the photographs show that they built the house right up to the easement. There is only 5' between the house and the fence, and with the air conditioning unit where it is located, it would be impossible to construct the sidewalk at this location.

Taylor inquired how the location was decided upon. Was it because of how the lot lines were originally set, or did the developer make a mistake – how did this happen? Cajka stated that the final plat shows the pedestrian easement on Lots 13 and 16. Originally, it should have been located more near Lot 7. In the original addition final plat, they did not show the pedestrian easement. That may be why they relocated it. There had to have been an error in issuing the building permit for the house. The houses are supposed to be

10' away from the easement. With the pedestrian easement the setback should have been 15' from the lot line, which did not occur in this situation. Taylor seemed satisfied that there was a human error/mistake.

Lust inquired whether the source of the mistake has been isolated, i.e. developer, building permit issuance? Cajka suggested that based on the history, it looks like the error occurred between the preliminary plat and the final plat in the location of the easement in that it did not get put on the original final plat. The second mistake was in issuing the building permit for the house in the wrong location.

Taylor contemplated that it seems like something needed to be done because the easement needed to be someplace. And now the Commission is basically compelled to agree with the staff recommendation. He does not want this type of mistake to continue.

Gaylor Baird inquired whether there is any change that needs to be made such that this does not happen again. Marvin Krout, Director of Planning, suggested that the Planning Commission in 2001-2002 could share the blame with the Planning Department because at that time the Planning Commission did review and approve final plats; however, since that time, the responsibility for processing final plats has been changed from one planner handling all final plats to the planner responsible for the specific geographic area. In other words, the project planner is now following the development from beginning to end, so that planner is now more attuned to what was originally required and would be much more likely to make sure that an error like this doesn't happen. Krout assured that the Department does look at errors and determines what can be done to correct them.

Proponents

**1. Luke Summers, Engineering Design Consultants, 1021 D Street,** appeared on behalf of the applicant. He stated that the developer does regret not being able to construct this sidewalk in the pedestrian easement, but because of where the house was placed and the fence, they cannot construct the sidewalk in that space. That is the reason for this waiver request. He does not know why the pedestrian easement was moved. Lots of times the developer decides they want larger or smaller lots and plat in different phases. That could be why the easement was moved.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

November 3, 2010

Larson moved approval, seconded by Taylor and carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'. This is final action unless appealed to the City Council within 14 days.

**CHANGE OF ZONE NO. 10021**  
**FROM AG AGRICULTURAL TO AGR AGRICULTURAL RESIDENTIAL**  
**ON PROPERTY GENERALLY LOCATED AT**  
**SW 56<sup>TH</sup> STREET AND W. VAN DORN STREET.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** November 3, 2010

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

Ex Parte Communications: None.

Staff recommendation: Approval, subject to a zoning agreement.

Staff presentation: **Mike DeKalb of Planning staff** explained that this is request on 130.76 acres for change of zone from AG to AGR, located at SW 56<sup>th</sup> and W Van Dorn. The subject property is surrounded to the north and east by existing acreages, but it is not designated as yellow on the Future Land Use Map in the Comprehensive Plan. West Van Dorn is a paved County road, with Pioneer Park to the south. The CUP immediately to the east is zoned AGR, and there are other acreages zoned AGR to the north.

Staff has recommended to add the parcel which contains a lagoon to this change of zone request so that there is not a left-over pocket of AG zoning.

DeKalb pointed out that there is an existing house on the property and some existing lots, so there is ultimately the potential for eight total lots. Although not shown as acreages in the Future Land Use Plan, but given the circumstances of being surrounding by AGR, with existing lots and paved roads, staff has determined that the change of zone is appropriate and meets the criteria for AGR zoning. The property is not a subdivision and there is no subdivision related to this change of zone, so a water study is not required; however, the staff did get a groundwater report on the adjacent parcel showing adequate water quality and quantity in the area.

Esseks wondered whether a future groundwater problem could be caught so that the properties would not be sold with that problem. DeKalb was not sure, but he reiterated that the groundwater report indicated adequate quality and quantity for development in the area and for the existing lots that were proposed. It is not marginal. It is not on the edge. There is no indication of failure in the near future. It is in Tier II. The city does not intend to annex in the near term, but if the water did fail, annexation would be the alternative.

Esseks inquired whether the streets to this development will be public or private. DeKalb reminded that this is a change of zone. At the time of subdivision in the future, if the developer applied for a community unit plan, they would have the choice of proposing either public or private streets.

Esseks asked whether there are design standards for private streets, if that is the option chosen by the developer. DeKalb responded, "yes, they are slightly less than the city standards." The right-of-way is the same but the thickness of the asphalt is slightly less. For an AGR subdivision, the developer has the choice of putting in paving or rock. They cross the threshold of county standards and paving is required if they do a community unit plan with one-acre lots.

Esseks noted that the staff recommendation requires a 150' buffer on each side of the pipeline. DeKalb responded that there is a pressurized petroleum line and the Health Department is recommending a 150' setback from that line. He believes the applicant is going to suggest a modification to that condition such that it can be less if approved by the Health Department.

Esseks also noted that the Southwest Rural Fire District is recommending a pond to provide supply for fire suppression. Is that in the design standards? DeKalb stated that it is not in the design standards, but it has been required on occasion. Some of the rural fire districts have requested storage tanks, and on others we have required a pond with a live well under the premise of public health, safety and welfare to provide better fire protection. It would not be a provision for a change of zone, but would come in with the subdivision approval and would be addressed at that time.

Esseks wondered why the additional parcel on the northeast corner is not contained in the conditions of approval. DeKalb pointed out that the additional parcel is small enough and this applicant does not own it.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Gary Busboom**, the trustee of the trust which owns this property. The staff report does a thorough job of analyzing the application. The trustee is agreeable to the conditions of approval; however, he requested that the Planning Commission consider an amendment to Condition No. 1.b, as follows:

b. provide a 150' buffer on each side of the pipeline, or such lesser distance as may be acceptable to the Health Department.

In asking the Health Department where they came up with the 150' distance, the Health Department referred the applicant to the Department of Transportation Emergency Response Guide Book, dated 2000. Hunzeker pointed out that there is now at least a 2008 version and, in addition, his client has done a considerable amount of research on the issue. There seems to be a lot of published material on the safety of pipelines and the setbacks, some very specifically geared toward land use issues related to existing pipelines. Hunzeker believes that there is some pretty good support for a lesser separation in this situation than is suggested by the Health Department. He would like the opportunity to meet with Health and share the research and ask them whether they would consider

something less. It does set a precedent and is one of those things which, in a better world, you would already have the study and some standards adopted in the ordinance with respect to such separation.

Hunzeker suggested that the groundwater issue is something that has been remarkably consistent in this part of the county. This is not an area where there is concern about the water situation. He had one call from Longview Estates, suggesting that it might be possible to consider working with them and sharing responsibility for their sewer lagoon. This might be beneficial and certainly would be helpful to Longview Estates to have more contributors to the costs of maintaining that lagoon. They are pumping water into it now to make it function properly.

Lust asked Hunzeker whether there are any different standards set forth in the 2008 guide than the 2000 guide. Hunzeker stated that he has not researched into it far enough yet. There is a lot of other research that has been done and his client has not had time to do as much research as he would like. Lust noted that at least two members on the Planning Commission served on a committee that did a lot of study on the spacing from pipelines, etc. Do you know of any recommended standards that have been published? Hunzeker did not know. The guide book indicates that the book is primarily designed for use for a dangerous goods incident occurring on a highway or railroad. So there may be limited value on its application at other locations, and they did not necessarily intend for these guidelines to be applied in this kind of land use setting. Hunzeker does not know what the standard should be, but he would like the opportunity to have the discussion with the Health Department.

With regard to the guidelines for pipelines, Francis knows that a lot depends on the size of the pipe, pressure of the gas, etc. She does not like the fact that the Health Department is relying on a 10-year old report and she will support Hunzeker's request.

Taylor asked whether the applicant would be willing to defer this application until they have met with the Health Department. Hunzeker's response was "no".

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

November 3, 2010

Lust moved approval, subject to a zoning agreement, with the amendment to Condition #1.b., as requested by the applicant, seconded by Larson.

Sunderman believes the zoning change seems appropriate, being surrounded on two sides by AGR zoning, and it fits in nicely with what is already there. The 150' spacing seems appropriate, but he believes it is very reasonable for the applicant and the Health

Department to meet to see if they can agree on a lesser amount. Sunderman served on the committee, but the issue was more of a notification process than setting forth the spacing.

Francis thinks this is a great opportunity for the conversation with the Health Department about old guidelines.

Motion for approval, subject to a zoning agreement, as amended, carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Sunderman and Taylor voting 'yes'. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 1:35 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 17, 2010.