MEETING RECORD

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, September 19, 2012, 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:	Leirion Gaylor Baird, Greg Butcher, Michael Cornelius, Wendy Francis, Chris Hove, Lynn Sunderman and Ken Weber (Jeanelle Lust absent); Marvin Krout, Steve Henrichsen, Brian Will, Tom Cajka, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.
STATED PURPOSE OF MEETING:	Regular Planning Commission Meeting

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

Cornelius requested a motion approving the minutes for the regular meeting held September 5, 2012. Motion for approval made by Francis, seconded by Gaylor Baird and carried 7-0: Gaylor Baird, Butcher, Cornelius, Francis, Hove, Sunderman and Weber voting 'yes'; Lust absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION: **September 19, 2012**

Members present: Gaylor Baird, Butcher, Cornelius, Francis, Hove, Sunderman and Weber; Lust absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 12031.**

There were no ex parte communications disclosed.

Francis moved approval of the Consent Agenda, seconded by Weber and carried 7-0: Gaylor Baird, Butcher, Cornelius, Francis, Hove, Sunderman and Weber voting 'yes'; Lust absent.

Note: This is final action on Special Permit No. 12031, 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.

There were no requests for deferral.

CHANGE OF ZON3E NO. 12028
FROM R-2 RESIDENTIAL DISTRICT TO
R-4 RESIDENTIAL DISTRICT
and
SPECIAL PERMIT NO. 1733E,
AN AMENDMENT TO THE MUFF 3RD ADDITION
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT 720 WEST C STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 19, 2012

Members present: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius; Lust absent.

Staff recommendation: Approval of the change of zone and conditional approval of the special permit amendment.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** presented the two requests for change of zone from R-2 to R-4 and an amendment to the existing special permit for the Muff 3rd Addition community unit plan (CUP) located northwest of West C Street and S. Folsom Street. This represents about a 1.4 acre addition to the community unit plan, for the purpose of including an additional building as part of the CUP. The prior addition allowed three apartment buildings (72 units) to be constructed. The additional 24-unit building requires an additional parcel to be brought into the CUP. Staff is recommending approval.

Will advised that there are no issues of controversy; however, there is an issue related to the street extension to South Folsom. Staff is suggesting that that street extension has been part of the plan. It was a temporary condition for that street to dead-end with the three existing buildings, but with the fourth building being constructed now, the concern is that there may not be enough incentive to acquire the separate parcel to insure that the street connection is made. There are two conditions of approval dealing with this issue, one being that the building permit for this additional building not be approved until such time as the Executive Order for the construction of that street extension has been approved. With that many dwelling units adjacent to the street, the concern would be that a permanent dead-end condition would exceed what code otherwise would require relative to health, safety and fire rescue.

Will advised the Commission that the staff has been copied on a request from the applicant submitted to the City Clerk seeking the City's assistance in that street connection being accomplished by condemnation.

Proponents

1. Bob Stephens, 2829 Van Dorn, developer of record for the applicant, Park Ridge Apartments Too, agreed with the recommendation, short of the condition which does not allow the building permit until the Executive Order for the street extension is approved. He has submitted the request for the City's assistance in condemnation, following several months of trying to work something out with the owner of the property needed for the street extension.

Stephens suggested that the 24 units would have a lot less affect on the neighborhood even if the traffic did have to go back to SW 8th and C Street. He agrees that in the long run, however, it would be a positive effect to have the street connection. He is willing to pay for improvement for the street to be extended.

Hove sought clarification from the applicant as to whether he does not want to extend the street or wants to be able to proceed with the building permit without the street extension. Stephens stated that he wants to put the street in and he is willing to pay for it, but he does not believe it is fair to hold that up through the building permit process. Hove then inquired of the applicant as to what the appropriate triggering event might be for the street extension. Stephens did not know. He believes this development would function okay without the street extension; however, it would be a large improvement to the neighborhood with the street extension. He is willing to escrow the funds or whatever it takes to make sure the street is extended in time. He pointed out that the street extension would be beneficial to the entire neighborhood – not just his development.

It was clarified that the new building will allow 96 total units in the development.

There was no testimony in opposition.

Staff questions

Cornelius inquired whether there are other ways to facilitate this without holding up the project moving forward, such as escrow. Will explained that the real dilemma is getting the right-of-way. Even if the applicant were to give adequate security to guarantee construction, it does not get the city closer to getting that street connection built. The hold-up or dilemma is acquiring the right-of-way to build the street. One way would be for the developer to buy the property and dedicate the right-of-way or the city could acquire the right-of-way by eminent domain. Will does not see that the option of posting surety gets us much closer to acquiring the right-of-way. Without the connection, there are 72 units on the dead-end street and there will be 96 with the new building. The standard is no more than 40 units off of a permanent dead-end street. Without some provision to get that right-

of-way to get that street connection, it could be an indefinite period of time. There is not another way in and out of the development in the event of an emergency such as water main break, etc.

Weber inquired whether eminent domain can be utilized for a private development project. **Dennis Bartels of Public Works** advised that acquiring the right-of-way is not an administrative decision. The City Council has the right to determine whether it is in the public benefit to acquire that street right-of-way. Condemnation isn't the first step if the City Council would authorize the City's Real Estate Division to acquire the property. They would have to go through good faith negotiations with the owner, with the ultimate step being condemnation. It is a Council decision. The City Council has the discretion to determine whether it is or is not in the public interest to extend that street.

Bartels acknowledged that such a request has been made by the developer. Public Works will send that request forward to the City Council and they will have to make the decision whether or not it is in the public benefit. Someone could make the argument it is for private development, but that is a determination the City Council would have to make.

Francis inquired whether there is a structure on the parcel that is needed for the street extension. Bartels explained that it is a large lot. There is at least one outbuilding that is close to it; however, it may not need to be removed. The existing house will be able to stay in place with more than adequate yards if the right-of-way is purchased from that property.

Francis inquired how much land is needed to be purchased to complete the road. Bartels stated that the standard right-of-way for the local street would be 60' wide by 100' deep, plus or minus. The City Council may have to approve the acquisition of some easements so that the grading could be done properly. Bartels agreed that 6,000 sq. ft. would be the size of a typical R-2 lot. The north side of the right-of-way would be in the floodplain. The new proposed building is not in the floodplain, and the existing buildings received the appropriate floodplain permits. The building on the south side of the existing street is on the fringe of the floodplain.

Rick Peo, City Law Department, suggested that the Planning Commission could delay action so that the condition of approval on the special permit regarding the street extension could be revised in some way. Typically, the City Council needs to grant authority to condemn right-of-way. We also want to consider that the developer of the site agrees as part of the street construction to pay the cost of any proceeding or damages that might be imposed. The last thing you want is an apartment complex built and then the cost of condemnation is too high to go through with the street. The condition for the street extension needs to be approved as is, or deferred to the next meeting so that the applicant and staff can come up with some type of alternative language that might satisfy everyone.

Response by the Applicant:

Stephens believes he has exhausted his efforts with the owner of the property needed for the street extension at this point, so he is seeking this method as an alternative.

Cornelius asked Stephens whether he would be open to a delay for two weeks. Stephens did not object, but he is not sure what they might come up with. Stephens agreed that it could be approved as is.

CHANGE OF ZONE NO. 12028
ACTION BY PLANNING COMMISSION: September 19, 2012

Gaylor Baird moved approval, seconded by Sunderman.

Francis stated that she is uncomfortable approving this without the acquisition for the right-of-way because that bottlenecks 96 residents in with one way out of the subdivision.

Gaylor Baird suggested that to be why it is important to approve it with the condition in place, given the applicant does not object to moving forward with that condition in place.

Rick Peo of Law Department re-approached to advise that the Executive Order would require that the right-of-way be acquired before the Executive Order could be issued.

Weber thinks this puts the cart before the horse. There is no guarantee of an agreement with the landowner; the costs of condemnation could be high; and it might be difficult because the right-of-way is for a private development. He believes it would be easier to have some sort of deal where that ground is purchased or some other alternative before a decision is made.

Hove pointed out that the Commission is voting on this with the understanding that they have to have the right-of-way before they can get a building permit for the associated special permit.

Motion for approval carried 7-0: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius voting 'yes'; Lust absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1733E
ACTION BY PLANNING COMMISSION: September 19, 2012

Hove moved to approve the staff recommendation of conditional approval, seconded by Sunderman and carried 7-0: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius voting 'yes'; Lust absent. This is final action unless appealed to the City Council within 14 days.

WAIVER NO. 12016
TO WAIVE THE SIDEWALK REQUIREMENT
ON PROPERTY GENERALLY LOCATED AT
NORTH 48TH STREET AND DORIS BAIR CIRCLE.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 19, 2012

Members present: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius; Lust absent.

Staff recommendation: Approval, provided that the sidewalk be installed at the owner's expense when North 48th Street is improved by the City.

There were no ex parte communications disclosed.

Staff presentation: **Tom Cajka of Planning staff** explained that this application is a request to waive the sidewalk associated with the final plat of Doris Bair Park 2nd Addition located on North 48th Street with the old city landfill to the north. The staff is recommending approval of this waiver based on the street being unimproved with open ditches, and the Public Works comments indicate that the grading of the street is such that it would not be feasible for sidewalks to be constructed at this time. The area to the south was granted a waiver back in 2004 based on the same conditions about the street being unimproved. The staff is recommending that the sidewalk be waived until North 48th Street is improved to City standards. Then it would be the property owner's responsibility to pay for the sidewalk at that time.

Cornelius confirmed that granting this waiver now would not create a situation where sidewalks would not be built in the future if North 48th Street is improved. Sidewalks would be built as part of the street improvement. Cajka concurred.

Sunderman noted that the property to the south which has already been granted the same waiver is the exact same condition as this request as far as topography with it not being possible to build the sidewalk.

The applicant was not present.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 19, 2012

Francis moved approval, seconded by Weber.

Francis stated that she drove past 48th & Superior and down 48th up to the Doris Bair ballparks and there is only one sidewalk on that entire strip in front of Diamond Oil on the

other side of the street. The lay of the land makes it impractical for any sidewalk to be on the east side of 48th from Superior to the end where it turns off, so she will support this application.

Cornelius believes the important consideration is that this does not close the door on sidewalks in the future. We have a set of conditions where sidewalks are not appropriate in this case; however, if conditions change, that triggers the building of the sidewalk.

Motion for approval carried 7-0: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius voting 'yes'; Lust absent. This is final action unless appealed to the City Council within 14 days.

WAIVER NO. 12017
TO WAIVE THE SIDEWALK REQUIREMENT
ON PROPERTY GENERALLY LOCATED
AT NORTH 48TH STREET AND SUPERIOR STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION: September 19, 2012

Members present: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius; Lust absent.

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Staff presentation: **Tom Cajka of Planning staff** presented this waiver which is associated with the 48th and Superior Addition Final Plat. It is closer to Superior Street than the previous waiver – just one lot to the north. There are existing sidewalks on Superior Street. The lot to the south has not installed sidewalks but they did do a cash buyout with the City and paid the city the amount required to install the sidewalks, so they will be constructed.

Cajka pointed out that Public Works has determined that the grading issues are not severe in this situation; that it would be possible to install sidewalks at this location and meet the ADA requirements. There are sidewalks on the west side of the street which were installed within the last year. Although this will not be a continuous sidewalk system all the way to the ballfields to the north, it would get a partial sidewalk system put in place. Cajka also pointed out that there is a continuous sidewalk trail system along Superior Street and there are residential lots to the south and west from the ballpark. If someone wanted to ride a bike they would have a continuous sidewalk system up to 48th and part of the way to the ballfield.

Based on attempting to get in somewhat of a continuous sidewalk system and with the grading issue not being a problem, Cajka stated that staff is recommending denial of this waiver.

Francis indicated that she is having a hard time understanding why a sidewalk for a lot length on the east side of the street and then another sidewalk on the west side of the street makes continuous sidewalks. She does not see that anyone would ride a bike on one part of the street and then cross back and forth to use sidewalks. Cajka agreed, stating that he did not mean to imply that they would cross over the street. He meant that from Superior up a ways on the east side of the street there would be a continuous sidewalk system, and then you would be forced to go out into the street. The corner lot does not have sidewalks because it is an Irregular Tract which has never had a subdivision. Until the owner would want to subdivide that corner lot, there is no requirement to install a sidewalk. The City would have to order in the sidewalk. Although it may be some time before 48th Street is improved, at least we would have part of a sidewalk system that the city would not have to build later on.

There is not a sidewalk in front of the building to the south at this time. Cajka clarified that the cash buyout only pertains to the one lot to the south. Over the last 2-3 years, the city has been working on past due and expired improvements. For example, this final plat was approved in 1997, so the sidewalk should have been built by 2001. About three years ago, the city started investigating all the past due improvements and has been working with the developers. One option is to pay the city the escrow amount and then the city is responsible for installing the sidewalk. The buyout has not occurred on this sidewalk. Instead, they are wanting a waiver of the responsibility to build the sidewalk.

Butcher wondered whether the ballpark is public or private. Cajka believes it is public. Butcher explained that he is trying to anticipate who would cross through an industrial district to traverse to a ballpark.

Hove wondered when the sidewalk will be installed on the property on the corner to the south. Cajka did not know, but the money has been paid to the city.

Gaylor Baird suggested that it would be inconsistent to waive the sidewalk requirement for the building to the north after having arranged for a cash buyout for the property to the south. Cajka agreed.

Butcher inquired whether any of the cash buyout money was used to install the sidewalk on Superior Street. Cajka believes the sidewalk on Superior was already built.

Rick Peo of City Law Department explained that the city has taken the position that the time of final plat is the most simplest and easiest way to get sidewalks installed. The developer puts them in up front. The city has other options, i.e., the City Council has authority to order in sidewalks if they find an actual need. That is not a power that can be

defeated by protest. In addition, the Mayor has the right to order in sidewalks on a particular block frontage if over two-thirds of the face of that street has sidewalks. There might be a third option, i.e. that it be a requirement of building permit for sidewalks to be constructed before issuing the certificate of occupancy. With the final plat, the subdivider pays the cost of the sidewalk.

Weber wondered whether it would be possible to offer the area of application a cash buyout and then when the street improvements are ready to go forward, you could do it all at once. Peo stated that it would not be impossible.

Cajka commented that the applicant is aware of the cash buyout remedy and could have done that instead of requesting this waiver.

Sunderman confirmed that the applicant can still can do a cash buyout even if the waiver is denied. Cajka concurred.

Hove inquired about the plan for the property to the north. Cajka stated that there was a waiver granted on the property to the north of the Irregular Tract.

Francis wondered about conditions if the Planning Commission voted to approve the waiver. Cajka advised that the condition would be the same as on the previous waiver, i.e. the sidewalk requirement would be waived, provided that the sidewalk be installed at the owner's expense when North 48th Street is improved by the City.

The applicant was not present.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION: September 19, 2012

Francis moved to approve the waiver request, seconded by Cornelius for purposes of discussion.

Francis does not believe it makes sense to waive one property owner's right to hold off until 48th Street is improved and make this property owner put in a sidewalk just because the property to the south has had a buyout. There is only one stretch of sidewalk on the road, which is on the other side of the street.

Weber stated that he will vote against the waiver because this applicant had the cash buyout option like the property to the south.

Cornelius clarified that the cash buyout comes from the property owner to the City.

Sunderman pointed out that this sidewalk eventually connects with the city's built sidewalk to the south to Superior Street and the sidewalk system that is there. It also goes back to the policy of being fair to all those people whose applications for waivers were denied because it was against the policy and those that put in the sidewalk without applying for a waiver.

Gaylor Baird commented that whenever the Planning Commission looks at sidewalks, we have to take a long term view. We do not get all of our sidewalks at the same time, so we have to accept a degree of incremental change that has a long term good. While the property to the north does not have the topography to support the sidewalk, the thought is that they will at some point in the future and at that point they will connect to this sidewalk. We have to take these opportunities one at a time in supporting pedestrian access and connectivity. It is good for multi-modal transportation; it is good for the city; and it is consistent with what we have asked the neighbors to do to the south.

Cornelius agreed with Gaylor Baird. It is the case that you don't get a continuous sidewalk network all at once. There is a difference in that we have heard that it is feasible to build a sidewalk on this parcel as opposed to the parcel to the north where it is not feasible.

Motion to approve failed 1-6: Francis voting 'yes'; Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius voting 'no'; Lust absent.

Sunderman moved denial, seconded by Weber and carried 6-1: Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius voting 'yes'; Francis voting 'no'; Lust absent. This is final action unless appealed to the City Council within 14 days.

There being no further business, the meeting was adjourned at 1:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 3, 2012.

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