

APPROVING THE APPEAL FROM THE  
NEIGHBORING PROPERTY OWNERS BY  
REVERSING THE PLANNING COMMISSION'S  
APPROVAL OF SPECIAL PERMIT NO. 05015

(Appeal of Planning Commission Action)

RESOLUTION NO. A-\_\_\_\_\_

SPECIAL PERMIT NO. 05015

1                   WHEREAS, Hartland Homes, Inc. and John and Linda Hershberger have  
2 submitted an application designated as Special Permit No. 05015 for authority to develop  
3 Hartland's Garden Valley Community Unit Plan for 326 dwelling units, with requested waivers to  
4 waive the required preliminary plat process, to allow blocks to exceed maximum block lengths,  
5 to reduce average lot width, to reduce lot area, to allow double frontage lots, to eliminate  
6 pedestrian easements, to allow streets to be paved without curb and gutter and to allow sanitary  
7 sewer to flow opposite street grades, on property generally located west of N. 14th Street and  
8 north of Fletcher Avenue, and legally described as:

9                   Lots 1 through 4, Block 1, Lots 1 and 4, Block 2, and the north half  
10 of Lot 2, Block 2, and that part of North 11th Street which lies  
11 between Blocks 1 and 2, Garden Valley, located in the Southeast  
12 Quarter of Section 35, Township 11 North, Range 6 East of the  
13 6th P.M., Lincoln, Lancaster County, Nebraska, and more  
14 particularly described as follows:

15                   Beginning at the northeast corner of said Block 1; thence along  
16 the east line of said Block, said line also being the west right-of-  
17 way line of North 14th Street, south 00 degrees 12 minutes 41  
18 seconds west, a distance of 1267.75 feet to the southeast corner  
19 of said Block 1; thence along the north right-of-way line of  
20 Southwick Avenue, now known as Pennsylvania Avenue, north 89  
21 degrees 51 minutes 18 seconds west, a distance of 1946.44 feet  
22 to the southwest corner of said Lot 4, Block 2; thence along the  
23 west line of said Lots 4 and 1, north 00 degrees 21 minutes 42  
24 seconds east, a distance of 949.20 feet to a point on the west line  
25 of said Lot 1; thence north 89 degrees 54 minutes 10 seconds  
26 west, a distance of 626.06 feet to a point on the east line of said  
27 Lot 2; thence along said line, said line also being the east right-of-  
28 way line of North 7th Street, north 00 degrees 25 minutes 29

1 seconds east, a distance of 316.23 feet to the northwest corner of  
2 said Lot 2, Block 2; thence along the north line of said Blocks 2  
3 and 1, said line also being the south right-of-way line of Humphrey  
4 Avenue, south 89 degrees 55 minutes 07 seconds east, a  
5 distance of 2568.83 feet to the point of beginning, having an area  
6 of 2,661,359.87 square feet or 61.096 acres, more or less;

7 and

8 Lot 2 and Lot 3, except the south 7.0 feet, Block 4, and the east  
9 half of Lots 1 and 4, except the south 7.00 feet, Block 3, and that  
10 part of North 11th Street which lies between Blocks 3 and 4,  
11 Garden Valley, located in the Southeast Quarter of Section 35,  
12 Township 11 North, Range 6 East of the 6th P.M., Lincoln,  
13 Lancaster County, Nebraska, and more particularly described as  
14 follows:

15 Beginning at the intersection of the east line of said Lot 3, Block 4,  
16 and the north right-of-way line of Fletcher Avenue; thence along  
17 the north right-of-way line of Fletcher Avenue north 89 degrees 46  
18 minutes 39 seconds west, a distance of 1004.56 feet to a point on  
19 the north right-of-way line of Fletcher Avenue; thence north 00  
20 degrees 18 minutes 05 seconds east, a distance of 1255.54 feet  
21 to a point on the north line of said Lot 1, Block 3; thence along the  
22 north line of said Blocks 3 and 4, said line also being the south  
23 right-of-way line of Southwick Avenue south 89 degrees 51  
24 minutes 18 seconds east, a distance of 1003.83 feet to the  
25 northeast corner of said Lot 2, Block 4; thence along the east line  
26 of said Lots 2 and 3, Block 4 for the next three calls, south 00  
27 degrees 17 minutes 39 seconds west, a distance of 599.34 feet;  
28 thence south 00 degrees 21 minutes 07 seconds west, a distance  
29 of 374.41 feet; thence south 00 degrees 06 minutes 04 seconds  
30 west, a distance of 283.15 feet to the point of beginning, having an  
31 area of 1,261,076.4 square feet or 28.95 acres, more or less;

32 WHEREAS, the Lincoln City-Lancaster County Planning Commission held a public  
33 hearing on April 27, 2005 and approved Special Permit No. 05015 upon condition that  
34 construction of said dwelling units be in strict compliance with said application, the site plan, and  
35 the following additional express terms, conditions, and requirements:

- 36 1. This approval permits:
- 37 a. 326 single-family dwelling units.
  - 38 b. A reduction of the required average lot width in the R-3 Residential District  
39 from 50 feet to 41 feet.

- 1 c. A reduction of the required lot area in the R-3 Residential District from 6,000  
2 sq. ft. to 4,500 sq. ft.
- 3 d. A waiver of Section 26.23.140(e) of the Lincoln Municipal Code prohibiting  
4 double frontage lots.
- 5 e. A waiver of Section 26.23.130 prohibiting block lengths to exceed 1,320 feet  
6 in order to allow Blocks 2 and 7 to exceed the maximum block length.
- 7 f. A waiver of the preliminary plat process provided that if any final plat on all or  
8 a portion of the approved community unit plan is submitted five (5) years or  
9 more after the approval of the community unit plan, the city may require that a  
10 new community unit plan be submitted, pursuant to all the provisions of  
11 section 26.31.015. A new community unit plan may be required if the  
12 subdivision ordinance, the design standards, or the required improvements  
13 have been amended by the city; and as a result, the community unit plan as  
14 originally approved does not comply with the amended rules and regulations.
- 15 g. A waiver of Section 26.27.010 of the Lincoln Municipal Code requiring streets  
16 to be paved with curb and gutter; provided that the lots taking access to  
17 Fletcher Avenue are graded to match future property line grades for a  
18 standard local street; that the grading plan is revised to show that the lots can  
19 be graded and driveways and culverts constructed and that the existing rural  
20 paving is retained.
- 21 h. A waiver of Section 26.23.125 of the Lincoln Municipal Code requiring a  
22 pedestrian way when a block exceeds 1000 feet in length in order to  
23 eliminate the pedestrian way easement in Block 7 and 15.

24 2. Before the approval of a final plat, a bond, escrow or security agreement must be  
25 provided and approved by the City Law Department to guarantee the proportionate share of the  
26 Water Distribution, Water System, Wastewater, Neighborhood Park and Trail, and Arterial  
27 Street Impact Fee Facility contribution established in the Hartland's Garden Valley Conditional  
28 Annexation and Zoning Agreement attributable to full development of the lots within each final  
29 plat compared to the approved full development of the Property under this Special Permit.

30 3. Before the approval of a final plat, the public streets, sidewalks, sanitary sewer  
31 system, water system, drainage facilities, land preparation and grading, sediment and erosions  
32 control measures, storm water detention/retention facilities, drainageway improvements, street  
33 lights, landscaping screens, street trees, temporary turnaround and barricades, and street name  
34 signs, must be completed or provisions (bond, escrow or security agreement) to guarantee

1 completion must be provided to the City and approved by the City Law Department. The  
2 improvements must be completed in conformance with adopted design standards and within the  
3 time period specified in the Land Subdivision Ordinance.

4 4. The Planning Director may approve final plats after the Permittee has signed an  
5 agreement that binds the Permittee and Permittee's successors and assigns:

- 6 a. To complete the street paving of public streets, and temporary turnarounds  
7 and barricades located at the temporary dead-end of the streets shown on  
8 the final plat within two (2) years following the approval of the final plat.
- 9 b. To complete the installation of sidewalks along both sides of the internal  
10 streets and along the south side of Humphrey, north side of Fletcher, west  
11 side of N. 14<sup>th</sup> and east side of N. 7<sup>th</sup> Streets as shown on the final plat within  
12 four (4) years following the approval of the final plat.
- 13 c. To construct the sidewalk in the pedestrian way easements in Lots 7 and 30,  
14 Block 2 at the same time as Garden Valley Road is paved and to agree that  
15 no building permit shall be issued for construction on Lots 7-8, 29-30, Block 2  
16 until such time as the sidewalk in the pedestrian way easement is  
17 constructed.
- 18 d. To complete the public water distribution system to serve this plat within two  
19 (2) years following the approval of the final plat.
- 20 e. To complete the public wastewater collection system to serve this plat within  
21 two (2) years following the approval of the final plat.
- 22 f. To complete the enclosed public drainage facilities shown on the approved  
23 drainage study to serve this plat within two (2) years following the approval of  
24 the final plat.
- 25 g. To complete the enclosed private drainage facilities shown on the approved  
26 drainage study to serve this plat within two (2) years following the approval of  
27 the final plat.
- 28 h. To complete land preparation including storm water detention/retention  
29 facilities and open drainageway improvements to serve this plat prior to the  
30 installation of utilities and improvements but not more than two (2) years  
31 following the approval of the final plat
- 32 i. To complete the installation of public street lights along all streets within this  
33 plat within two (2) years following the approval of the final plat.
- 34 j. To complete the planting of the street trees along all streets within this plat  
35 within four (4) years following the approval of the final plat.

- 1 k. To complete the planting of the landscape screen within this plat within two  
2 (2) years following the approval of the final plat.
- 3 l. To complete the installation of the street name signs within two (2) years  
4 following the approval of the final plat.
- 5 m. To timely complete any other public or private improvement or facility  
6 required by Chapter 26.23 (Development Standards) of the Land Subdivision  
7 Ordinance which has not been waived but which inadvertently may have  
8 been omitted from the above list of required improvements.
- 9 n. To complete the public and private improvements shown on the Community  
10 Unit Plan.
- 11 o. To retain ownership of and the right of entry to the outlots in order to perform  
12 the above-described maintenance of the outlots and private improvements on  
13 a permanent and continuous basis. However, Permittee as subdivider may  
14 be relieved and discharged of such maintenance obligations upon creating in  
15 writing a permanent and continuous association of property owners who  
16 would be responsible for said permanent and continuous maintenance  
17 subject to the following conditions:
- 18 i. Subdivider shall not be relieved of Subdivider's maintenance obligation  
19 for each specific private improvement until a registered professional  
20 engineer or nurseryman who supervised the installation of said private  
21 improvement has certified to the City that the improvement has been  
22 installed in accordance with approved plans.
- 23 ii. The maintenance agreements are incorporated into covenants and  
24 restrictions in deeds to the subdivided property and the documents  
25 creating the association and the restrictive covenants have been  
26 reviewed and approved by the City Attorney and filed of record with the  
27 Register of Deeds.
- 28
- 29 p. To properly and continuously maintain and supervise the private facilities  
30 which have common use or benefit, and to recognize that there may be  
31 additional maintenance issues or costs associated with providing for the  
32 proper functioning of storm water detention/retention facilities as they were  
33 designed and constructed within the development, and that these are the  
34 responsibility of the land owner.
- 35 q. To perpetually maintain the sidewalks in the pedestrian way easements on  
36 Lots 7 and 30, Block 2 at their own cost and expense.
- 37 r. To protect the trees that are indicated to remain during construction and  
38 development.
- 39 s. To continuously and regularly maintain the street trees along the private  
40 roadways and landscape screens.

- 1 t. To submit to the Director of Public Works a plan showing proposed measures  
2 to control sedimentation and erosion and the proposed method to temporarily  
3 stabilize all graded land for approval.
- 4 u. To submit to the lot buyers and home builders a copy of the soil analysis.
- 5 v. To comply with the provisions of the Land Preparation and Grading  
6 requirements of the Land Subdivision Ordinance.
- 7 w. To relinquish the right of direct vehicular access from 47-51, Block 7 and  
8 Outlot C to N. 14<sup>th</sup> Street and Lots 1-12, Block 1 from Humphrey Avenue.
- 9 5. Before receiving building permits:
- 10 a. The Permittee shall complete the following instructions and submit the  
11 documents and plans to the Planning Department office for review and  
12 approval.
- 13 i. A permanent final plan with 7 copies as revised as follows:
- 14 (1) Revise street pattern to comply with block length (except Block 7)  
15 and street projections to comply with the Subdivision Ordinance.
- 16 (2) Revise the site plan to the satisfaction of the Public Works and  
17 Utilities Department.
- 18 (3) Revise street names to not approximate nor duplicate existing street  
19 names.
- 20 (4) Revise the plan to the satisfaction of the Parks Department:
- 21 (a) All outlot areas to be maintained by the developer and/or  
22 future homeowner's association.
- 23 (b) The Comprehensive Plan indicates an east-west trail  
24 connection between N.W. 1st and N. 14th Streets. The  
25 alignment is on Alvo Road.
- 26 (c) A visible and accessible neighborhood park needs to be  
27 located on Outlot A, Lots 36 and 37, Block 4, containing a total  
28 of approximately 2.85 acres.
- 29 (d) All landscaped boulevards and medians must be maintained  
30 by the City of Lincoln.
- 31 (e) The playground should be located in conjunction with the  
32 neighborhood park referenced in item (c).
- 33 (f) Street trees need to be assigned by the Forestry Department.
- 34 (5) Provide utility easements as requested by LES.

1                   ii. The associated Annexation #05006, Street and Alley Vacation #05002  
2                   and Change of Zone #05024 must be approved by City Council.

3                   b. Ornamental street lights for private roadways and pedestrian way easements  
4                   are approved by L.E.S.

5                   c. The construction plans comply with the approved plans.

6                   d. Final plats are approved by the City.

7                   e. The required easements as shown on the site plan are recorded with the  
8                   Register of Deeds.

9                   6. Before occupying this community unit plan all development and construction is to  
10                  comply with the approved plans.

11                  7. All privately-owned improvements, including landscaping and recreational facilities,  
12                  are to be permanently maintained by the owner or an appropriately established homeowners  
13                  association approved by the City.

14                  8. The site plan approved by this permit shall be the basis for all interpretations of  
15                  setbacks, yards, locations of buildings, location of parking and circulation elements, and similar  
16                  matters.

17                  9. This resolution's terms, conditions, and requirements bind and obligate the  
18                  Permittee, its successors and assigns.

19                  10. The Permittee shall sign and return the letter of acceptance to the City Clerk within  
20                  30 days following the approval of the special permit, provided, however, said 30-day period may  
21                  be extended up to six months by administrative amendment. The clerk shall file the attached  
22                  Notice of Development and Use Restriction pertaining to the special permit and the letter of  
23                  acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the  
24                  Permittee.; and

25                  WHEREAS, Keith Spilker, Donald Spilker, Larry Ogden, Bruce A. Spilker,  
26                  Annabelle Neemann, Melinda Kramer, Betty King, Kahleen Zimmer and Charley Vogel have

1 appealed from the Lincoln City-Lancaster County Planning Commission's approval of Special  
2 Permit No. 05015; and

3 WHEREAS, the community as a whole, the surrounding neighborhood, and the  
4 real property adjacent to the area included within the site plan for this community unit plan will  
5 be adversely affected by granting such a permit; and

6 WHEREAS, said site plan together with the terms and conditions set forth above  
7 are not consistent with the comprehensive plan of the City of Lincoln and with the intent and  
8 purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and  
9 general welfare.

10 NOW, THEREFORE, BE IT RESOLVED by the Lincoln City-Lancaster County  
11 Planning Commission of Lincoln, Nebraska:

12 That the final action of the Lincoln City-Lancaster County Planning Commission  
13 approving Special Permit No. 05015 be and the same is hereby reversed.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this ___ day of _____, 2005:  _____ Mayor
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