

**THE MINUTES OF THE REGULAR CITY COUNCIL MEETING HELD  
MONDAY, FEBRUARY 2, 2009 AT 1:30 P.M.**

The Meeting was called to order at 1:30 p.m. Present: Council Chair Eschliman; Council Members: Camp, Cook, Emery, Marvin, Svoboda; City Clerk, Joan E. Ross; Absent: Spatz.

Council Chair Eschliman asked all present to stand and recite the Pledge of Allegiance and observe a moment of silent meditation.

**READING OF THE MINUTES**

SVOBODA Having been appointed to read the minutes of the City Council proceedings of January 26, 2009 reported having done so, found same correct.

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Emery, Eschliman, Marvin, Svoboda; NAYS: None; ABSENT: Spatz.

**PUBLIC HEARING**

CHANGE OF ZONE NO. 08064 - AMENDING SECTION 27.11.080 OF THE LINCOLN MUNICIPAL CODE RELATING TO HEIGHT AND AREA REGULATIONS IN THE R-1 RESIDENTIAL DISTRICT TO REDUCE REQUIRED SIDE YARDS OF SINGLE-FAMILY DWELLING LOTS IN EXISTENCE ON NOVEMBER 2, 1953 TO A WIDTH OF NOT LESS THAN TEN PERCENT OF THE WIDTH OF THE LOT, BUT NOT LESS THAN FIVE FEET; AND REPEALING SECTION 27.11.080 OF THE LINCOLN MUNICIPAL CODE AS HITHERTO EXISTING - Bill Austin, Erickson & Sederstrom, 301 S. 13<sup>th</sup> St., Ste. 400, came forward in support of the zoning code amendment. He said an individual was interested in building an addition to a house at 3344 S. 30<sup>th</sup> Street but due to the discovery of a Code revision and deletion, the addition was not allowed.

Marvin Krout, Director of Planning, came forward to answer questions about 2006 language changes to non-standard and non-conforming uses. He said this particular provision was inadvertently deleted from the ordinance text. Mr. Krout said he would actively review the issue and report back to Council.

This matter was taken under advisement.

CHANGE OF ZONE NO. 08069 - APPLICATION OF THE PLANNING DIRECTOR TO REDUCE THE BUILDING LINE DISTRICT FROM 125 FEET TO 105 FEET ADJACENT TO THE RESIDENTIAL COMPONENT OF APPLE'S WAY PLANNED UNIT DEVELOPMENT GENERALLY LOCATED AT SOUTH 66TH STREET AND HIGHWAY 2;

CHANGE OF ZONE NO. 05026B - APPLICATION OF APPLE'S WAY, LLC, FOR EXPANSION OF APPLE'S WAY PUD TO INCLUDE OUTLOT E, ARTISAN MEADOWS ADDITION, AND TO ADJUST SETBACKS FOR A SUBDIVISION IDENTIFICATION SIGN ON PROPERTY GENERALLY LOCATED AT SOUTH 66TH STREET AND HIGHWAY 2 - Peter Katt, 600 Wells Fargo Center, 1248 O St., came forward representing the applicant to fix a problem identified in the residential component of the PUD. He said the ordinances address two issues: 1) create a technical change; and 2) adjust setbacks to make the lots buildable. Mr. Katt said investigation determined that the centerline of Highway 2 had been relocated from the original building line district ordinance in 1979. He said the normal front yard setback in the R-1 District would be 30 feet. He pointed out that significant investments had been made by the developer to put in roads, water and sewer in their current location.

Randy Hoskins, Public Works & Utilities Asst. Engineer, came forward respond to Council Member Cook's concern about the encroachment of housing development on highway right-of-way. Mr. Hoskins clarified that 140 feet would allow Highway 2 to expand to 6+1 lanes.

Marvin Krout, Director of Planning, came forward to answer questions and respond that Council deserves a clearer map to consider the right-of-way in question.

Mr. Katt came forward to state that the change of zones are a reasonable compromise to solve the problem of building site distance and to make productive use of the property. He responded to Council

questions by stating some lots have an existing tree line or an earth berm to provide a buffer to Highway 2, while two lots are problematic due to being at the same level as the highway near 66<sup>th</sup> Street.

This matter was taken under advisement.

APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY AND LANCASTER COUNTY FOR A PAVING PROJECT ALONG ALVO ROAD FROM N. 14TH STREET TO N.W. 12TH STREET AND WIDENING OF N. 1ST STREET TO ALLOW A LEFT TURN LANE - Randy Hoskins, Public Works & Utilities Asst. Engineer, came forward stating this project is to be paid for from a combination of Fallbrook Development, County and City. He said while the County is responsible for the construction of the project, the City is involved and will largely pay for the portion of the project which is not adjacent to the Fallbrook Subdivision and a share of the project that is adjacent to the subdivision.

This matter was taken under advisement.

HEARING ON KATIE HALPERIN'S NOTICE OF APPEAL APPEALING FROM THE DETERMINATION OF IMPACT FEES IMPOSED FOR THE WASHINGTON SQUARE REDEVELOPMENT PROJECT LOCATED AT 1525 S. 19TH STREET AND 1537 S. 19TH STREET AND REQUESTING A WAIVER AND REFUND OF SAID FEES - Katie Halperin, Washington Square, LLC, 9025 Turnberry Circle, came forward as appellant requesting that the burden of impact fees be reduced from \$6,282 to zero. She stated that the project decreases current capacity and as a benefit, increases off street parking. She said this redevelopment area is just as important as Antelope Valley or other projects that do not include impact fees.

Matt Carlson, 3300 Crown Point Rd., came forward as the builder stating that most fees were waived, namely parks & trails due to no impact. He said impact fees for water alone would have amounted to around \$42,000 for a 3" meter so they opted for two 1½" meters. He discussed various sizes of water lines to feed the properties.

Michaela Dugan, Public Works & Utilities Impact Fee Administrator, came forward to answer questions, provide facts about the appeal process and explain the calculation of fees. She clarified that impact fees are always paid from some source. In response to questioning, Ms. Dugan said out of five past appeals, only one was successful for the appellant.

Rick Peo, Asst. City Attorney, came forward to answer questions and stated impact fees are based on capacity loss. He said an independent study would have to show maximum usage.

Peter Katt, 600 Wells Fargo Center, 1248 O St., came forward as a concerned citizen in support of Ms. Halperin's appeal stating this has been a 3-year project for redevelopment in the core of the City without increase in usage. Mr. Katt said the project reduces 18 rental units to 16 single-family, owner-occupied, modern units. He said it is unfair to recapture impact fees through capitalized cost contributions.

Mr. Peo came forward to answer questions about the filing deadline stating that following the calculation made in June, Ms. Halperin paid the impact fee in October. He clarified that an independent study was not done and the appeal was filed 100+ days after the deadline. Mr. Peo said the Council has a broader discretion to look at unusual circumstances and the uniqueness of the situation to make a decision.

Ms. Halperin came forward in rebuttal questioning the practicality of paying additional funds for an independent study regarding a \$6,000 impact fee. She emphasized that her project is a redevelopment in the Near South Neighborhood and asked if the City wanted a solid core or to keep pushing people out to the fringe? She feels there is a larger issue at hand but basically people want to live in the City and in good homes.

This matter was taken under advisement.

**\*\* END OF PUBLIC HEARING \*\***

## COUNCIL ACTION

### REPORTS OF CITY OFFICERS - NONE

### PETITIONS & COMMUNICATIONS

THE FOLLOWING HAVE BEEN REFERRED TO THE PLANNING DEPARTMENT:

Change of Zone No. 09002 - App. of LD1 BAE, LLC from AG Agricultural District to AGR Agricultural Residential District on property generally located at S. 96th Street and Saltillo Road.

Change of Zone No. 09003 - App. of Olsson Associates, Yankee Hill Apartments Planned Unit Development from R-3 Residential District to R-4 Residential District PUD with a development plan which proposes to modify standards of the underlying zoning district, subdivision ordinance and Design Standards on property generally located at S. 84th Street and Yankee Hill Road.

Special Permit No. 1762D - App. of Mike Anderson for an amendment to the Vintage Heights Community Unit Plan to adjust setbacks on property generally located at S. 98th Street and Vine Cliff Drive.

Special Permit No. 09001 - App. of St. Monica's Home for a health care facility on property generally located at N. 64th Street and Colby Street.

### MISCELLANEOUS REFERRALS - NONE

### LIQUOR RESOLUTIONS - NONE

### ORDINANCES - 2<sup>ND</sup> READING & RELATED RESOLUTIONS (as required) - NONE

CHANGE OF ZONE NO. 08064 - AMENDING SECTION 27.11.080 OF THE LINCOLN MUNICIPAL CODE RELATING TO HEIGHT AND AREA REGULATIONS IN THE R-1 RESIDENTIAL DISTRICT TO REDUCE REQUIRED SIDE YARDS OF SINGLE-FAMILY DWELLING LOTS IN EXISTENCE ON NOVEMBER 2, 1953 TO A WIDTH OF NOT LESS THAN TEN PERCENT OF THE WIDTH OF THE LOT, BUT NOT LESS THAN FIVE FEET; AND REPEALING SECTION 27.11.080 OF THE LINCOLN MUNICIPAL CODE AS HITHERTO EXISTING - CLERK read an ordinance, introduced by Ken Svoboda, amending Section 27.11.080 of the Lincoln Municipal Code relating to height and area regulations in the R-1 Residential District to reduce required side yards of single-family dwelling lots in existence on November 2, 1953 to a width of not less than ten percent of the width of the lot, but not less than five feet; and repealing Section 27.11.080 of the Lincoln Municipal Code as hitherto existing, the second time.

CHANGE OF ZONE NO. 08069 - APPLICATION OF THE PLANNING DIRECTOR TO REDUCE THE BUILDING LINE DISTRICT FROM 125 FEET TO 105 FEET ADJACENT TO THE RESIDENTIAL COMPONENT OF APPLE'S WAY PLANNED UNIT DEVELOPMENT GENERALLY LOCATED AT SOUTH 66TH STREET AND HIGHWAY 2. (RELATED ITEMS 09-8, 09-9) - CLERK read an ordinance, introduced by Ken Svoboda, to amend the Building Line District Map attached to and made part of Title 27 of the Lincoln Municipal Code by reducing the Building Line District on the south side of Highway 2 from 125 feet to 105 feet adjacent to Lots 9-16, Block 2, Artisan Meadows Addition, generally located at South 66<sup>th</sup> Street and Highway 2, the second time.

CHANGE OF ZONE NO. 05026B - APPLICATION OF APPLE'S WAY, LLC, FOR EXPANSION OF APPLE'S WAY PUD TO INCLUDE OUTLOT E, ARTISAN MEADOWS ADDITION, AND TO ADJUST SETBACKS FOR A SUBDIVISION IDENTIFICATION SIGN ON PROPERTY GENERALLY LOCATED AT SOUTH 66TH STREET AND HIGHWAY 2. (RELATED ITEMS 09-8, 09-9) - CLERK read an ordinance, introduced by Ken Svoboda, amending the Lincoln Zoning District Maps attached to and made a part of Title 27

of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon to expand the boundary of the Apple's Way Planned Unit Development District to include additional land for a subdivision identification sign and amending the development plan for the Apple's Way Planned Unit Development to include adjustments to setbacks, on property generally located at S. 66<sup>th</sup> Street and Highway 2, the second time.

ADOPTING THE SUPPLEMENTS TO THE LINCOLN MUNICIPAL CODE DATED JUNE, 2008 AND DECEMBER, 2008 AS PART OF THE OFFICIAL LINCOLN MUNICIPAL CODE - CLERK read an ordinance, introduced by Ken Svoboda, adopting the supplements to the Lincoln Municipal Code dated June 2008 and December 2008 as part of the official Lincoln Municipal Code, the second time.

#### PUBLIC HEARING RESOLUTIONS

ACCEPTING THE REPORT OF NEW AND PENDING CLAIMS AGAINST THE CITY AND APPROVING DISPOSITION OF CLAIMS SET FORTH FOR THE PERIOD OF JANUARY 1 - 15, 2009 - CLERK read the following resolution, introduced by Ken Svoboda, who moved its adoption:

A-85214 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the claims listed in the attached report, marked as Exhibit "A", dated January 16, 2009, of various new and pending tort claims filed against the City of Lincoln with the Office of the City Attorney or the Office of the City Clerk, as well as claims which have been disposed of, are hereby received as required by Neb. Rev. Stat. § 13-905 (Reissue 1997). The dispositions of claims by the Office of the City Attorney, as shown by the attached report, are hereby approved:

<u>DENIED</u>		<u>ALLOWED/SETTLED</u>	
Lois Schuster	\$ 500.00	General Casualty	
Shawn Hegemann	468.00	(Claim No. 090-07-56528)	\$6,898.33
Jack Martin	1,265.00	James B. Howat	459.81
Kelly Hansen	1,021.92	Lucas R. Proffitt	1,507.16

The City Attorney is hereby directed to mail to the various claimants listed herein a copy of this resolution which shows the final disposition of their claim.

Introduced by Ken Svoboda

Seconded by Emery & carried by the following vote: AYES: Camp, Cook, Emery, Eschliman, Marvin, Svoboda; NAYS: None; ABSENT: Spatz.

APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY AND LANCASTER COUNTY FOR A PAVING PROJECT ALONG ALVO ROAD FROM N. 14TH STREET TO N.W. 12TH STREET AND WIDENING OF N. 1ST STREET TO ALLOW A LEFT TURN LANE - CLERK read the following resolution, introduced by Ken Svoboda, who moved its adoption:

A-85215 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the attached Interlocal Agreement between the City of Lincoln and Lancaster County, to provide for widening and reconstruction of North 1st Street at Alvo Road to allow for a left turn lane, including the acquisition of needed right-of-way and the establishment of maintenance responsibilities thereafter, upon the terms and conditions set forth in said Agreement, which is attached hereto marked as Attachment "A", is hereby approved and the Mayor is authorized to execute the same on behalf of the City of Lincoln.

The City Clerk is directed to transmit one fully executed original of said Agreement to Susan Starcher for filing with Lancaster County.

Introduced by Ken Svoboda

Seconded by Emery & carried by the following vote: AYES: Camp, Cook, Emery, Eschliman, Marvin, Svoboda; NAYS: None; ABSENT: Spatz.

HEARING ON KATIE HALPERIN'S NOTICE OF APPEAL APPEALING FROM THE DETERMINATION OF IMPACT FEES IMPOSED FOR THE WASHINGTON SQUARE REDEVELOPMENT PROJECT LOCATED AT 1525 S. 19TH STREET AND 1537 S. 19TH STREET AND REQUESTING A WAIVER AND REFUND OF SAID FEES - CLERK read the following resolution, introduced by Ken Svoboda, who moved its adoption:

A-85216 WHEREAS, on June 13, 2008 Katie Halperin, on behalf of Washington Square, LLC, filed Impact Fee Application Nos. IF080600, IF080601, IF080602 and IF080603 to construct 16 single-family dwelling units as part of the Washington Square Redevelopment Project on properties located at 1537 S. 19th Street, 1525 S. 19th Street, 1533 S. 19th Street, and 1529 S. 19th Street, respectively; and

WHEREAS, two apartment buildings had previously been located upon said properties and were provided water service through a 1 inch water meter in each apartment building; and

WHEREAS, the new 16 dwelling units will be provided water service through two 1.5 inch water meters located at 1537 S. 19th Street and 1525 S. 19th Street; and

WHEREAS, on July 10, 2008 the Impact Fee Administrator calculated and determined the Impact Fees for the new dwelling units using the Impact Fee Schedules beginning January 1, 2007 and gave the Applicant credit for the prior use; and

WHEREAS, the total water/wastewater Impact Fee based upon the two 1.5 inch water meters was \$12,562.00; and

WHEREAS, the total credit for prior two 1 inch meters was \$6,280.00 leaving a net difference of \$6,282.00 which was paid on October 14, 2008 by the Appellant (IF080600 and IF080601); and

WHEREAS, the Appellant's Notice of Appeal was filed on January 2, 2009 (176 days after the July 10, 2008 Impact Fee determination); and

WHEREAS, the Appellant is requesting that the Impact Fees be waived or reduced as Washington Square LLC is redeveloping the land to a lesser density than its prior use, that Washington Square is not adding more customers to the system, that the Washington Square development is being built to current Code standards with low-flow water fixtures which relieves the burden on the City's systems even though the number of explicit bathrooms has increased and that the 1.5 inch meters instead of 1 inch meters were used to ensure appropriate water pressure for all the dwelling units and that under these circumstances strict application of the Impact Fee Ordinance calculation would work an unjust and undue burden on the Appellant; and

WHEREAS, Lincoln Municipal Code § 27.82.110(i) provides that a Notice of Appeal shall be filed within 10 days after the Impact Fee Determination; and

WHEREAS, the City Council finds that Impact Fee Notice of Appeal was not timely filed; and

WHEREAS, the City Council finds that the Impact Fee was correctly calculated and that there are no unusual circumstances for the development which demonstrate that the application of the fee to the development would be unfair or unjust as the requested waiver/reduction does not meet any of the stipulations or conditions required for reduction and/or exemption from Water and Wastewater Impact Fees.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the Impact Fee Appeal filed by Katie Halperin on behalf of Washington Square, LLC on January 2, 2009 is hereby denied for the following reasons:

1. The January 2, 2009 Notice of Appeal was not filed within 10 days after the July 10, 2008 Impact Fee Determination from which appeal is being filed as required by Lincoln Municipal Code § 27.82.110(i).

2. The requested exemption does not meet any of the stipulations or conditions required for reduction or exemption from Water and Wastewater Impact Fees.

Introduced by Ken Svoboda

Seconded by Emery & carried by the following vote: AYES: Camp, Cook, Emery, Marvin; NAYS: Eschliman, Svoboda; ABSENT: Spatz.

**ORDINANCE - 1<sup>ST</sup> READING & RELATED RESOLUTIONS (AS REQUIRED)**

APPROVING A FOUR YEAR/5,000 HOUR LEASE AGREEMENT WITH A BUY OUT OPTION BETWEEN THE CITY AND 1ST SOURCE BANK FOR THE LEASE OF ONE FOUR-WHEEL STREET SWEEPER FOR SWEEPING OF RESIDENTIAL AND ARTERIAL STREETS - CLERK read an ordinance, introduced by Jon Camp, accepting and approving a three-year lease agreement with option to purchase between the City of Lincoln, Nebraska and 1<sup>st</sup> Source Bank for a 2009 Elgin Eagle "F" Dual Driver Sweeper for use by the Department of Public Works & Utilities, the first time.

COMP. PLAN CONFORMITY 08028 - APPROVING AND ADOPTING PROPOSED AMENDMENTS TO THE ANTELOPE VALLEY REDEVELOPMENT PLAN TO ADD THE "ANTELOPE VILLAGE PROJECT" FOR REDEVELOPMENT OF THE BLOCK BETWEEN 23RD AND 24TH STREETS, P AND Q STREETS, FOR AN OFFICE/CONDOMINIUM BUILDING TO INCLUDE OFFICE SPACE, A COMMUNITY ROOM, WORKOUT FACILITIES, 8 TO 10 CONDO UNITS ON THE SECOND AND THIRD FLOORS AND 18 TOWNHOUSES FOR HOME OWNERSHIP. (RELATED ITEMS: 09R-17, 09-12) (ACTION DATE: 2/23/09)

CHANGE OF ZONE 08066 - APPLICATION OF THE PLANNING DIRECTOR FOR A PLANNED UNIT DEVELOPMENT DISTRICT DESIGNATION FOR THE ANTELOPE VILLAGE PUD AND MODIFICATIONS TO THE STANDARDS OF THE UNDERLYING ZONING DISTRICT, SUBDIVISION ORDINANCE AND DESIGN STANDARDS, FOR DWELLINGS ON THE FIRST FLOOR IN THE B-3 DISTRICT, REDUCTION OF FRONT AND REAR SETBACKS, INCREASE IN HEIGHT LIMIT FOR THE R-6 DISTRICT, REDUCTION OF LOT AREA FOR TWO-FAMILY, TOWNHOUSES AND MULTIPLE DWELLINGS, REDUCTION OF PARKING REQUIREMENTS IN THE R-6 DISTRICT, PORCHES IN THE REQUIRED FRONT YARD, PROHIBIT OFF PREMISES SIGNS, PROHIBIT POLE SIGNS AND ALLOW INCREASED AREA FOR GROUND SIGNS, OVER A FOUR-BLOCK AREA FROM N. 22ND STREET TO N. 24TH STREET AND FROM P STREET TO R STREET. (RELATED ITEMS: 09R-17, 09-12 - CLERK read an ordinance, introduced by Jon Camp, amending the Lincoln Zoning District Maps attached to and made a part of Title 27 of the Lincoln Municipal Code, as provided by Section 27.05.020 of the Lincoln Municipal Code, by changing the boundaries of the districts established and shown thereon, the first time.

COMP. PLAN CONFORMITY 08026 - APPROVING AND ADOPTING A PROPOSED AMENDMENT TO THE NORTH 27TH STREET CORRIDOR AND ENVIRONS REDEVELOPMENT PLAN TO ADD THE "LITTLE SAIGON COMMERCIAL DEVELOPMENT PROJECT" FOR AN APPROXIMATELY 8,400 SQ. FT. COMMERCIAL/RETAIL BUILDING, ON PROPERTY GENERALLY LOCATED AT NORTH 26TH STREET AND W STREET. (RELATED ITEMS: 09R-19, 09-13) (ACTION DATE: 2/23/09)

CHANGE OF ZONE 08067 - APPLICATION OF THE URBAN DEVELOPMENT DEPARTMENT FOR A CHANGE OF ZONE FROM I-1 INDUSTRIAL DISTRICT AND R-6 RESIDENTIAL DISTRICT TO B-3 COMMERCIAL DISTRICT ON PROPERTY OWNED BY T. NGUYEN HUNG, GENERALLY LOCATED BETWEEN N. 26TH STREET AND N. 27TH ST., NORTH OF W STREET. (RELATED ITEMS: 09R-19, 09-13) - CLERK read an ordinance, introduced by Jon Camp, amending the Lincoln Zoning District Maps adopted by reference and made a part of Title 27 of the Lincoln Municipal Code, pursuant to Section 27.05.020 of the Lincoln Municipal Code by changing the boundaries of the districts established and shown thereon, the first time.

**ORDINANCES - 3<sup>RD</sup> READING & RELATED RESOLUTIONS (as required) - NONE**

**REGISTERED TO SPEAK SESSION - NONE**

**OPEN MICROPHONE SESSION - NONE**

MISCELLANEOUS BUSINESS

PENDING -

CAMP Moved to extend the Pending List to February 9, 2009.  
Seconded by Emery & carried by the following vote: AYES: Camp,  
Cook, Emery, Eschliman, Marvin, Svoboda; NAYS: None; ABSENT: Spatz.

UPCOMING RESOLUTIONS

CAMP Moved to approve the resolutions to have Public Hearing on  
February 9, 2009.  
Seconded by Emery & carried by the following vote: AYES: Camp,  
Cook, Emery, Eschliman, Marvin, Svoboda; NAYS: None; ABSENT: Spatz.

ADJOURNMENT 3:31 P.M.

CAMP Moved to adjourn the City Council meeting of February 2, 2009.  
Seconded by Emery & carried by the following vote: AYES: Camp,  
Cook, Emery, Eschliman, Marvin, Svoboda; NAYS: None; ABSENT: Spatz.  
So ordered.

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Joan E. Ross, City Clerk

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Sandy L. Dubas, Senior Office Assistant

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