

## **FACTSHEET**

**TITLE: MISCELLANEOUS NO. 09009-2**, requested by the Director of Planning, to amend Section 26.31.010 of the Land Subdivision Ordinance.

**STAFF RECOMMENDATION:** Approval.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 10/21/09  
Administrative Action: 10/21/09

**RECOMMENDATION:** Approval (7-0: Gaylor Baird, Cornelius, Esseks, Francis, Lust, Partington and Sunderman voting 'yes'; Larson and Taylor absent).

### **FINDINGS OF FACT:**

1. The requests to amend Section 26.23.140 and Section 26.31.010 of the Lincoln Municipal Code (Land Subdivision Ordinance) were heard at the same time before the Planning Commission.
2. The amendment to Section 26.31.010 will allow an extension of time to install improvements by administrative action.
3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-3, concluding that allowing an extension of time to install improvements administratively would streamline the process for approving the extension. The criteria to determine when the waiver should be approved or denied is found on p.6-7. The staff presentation is found on p.4.
4. Testimony in support is found on p.4-5.
5. There was no testimony in opposition.
6. On October 21, 2009, the Planning Commission agreed with the staff recommendation and voted 7-0 to recommend approval (Larson and Taylor absent).

**FACTSHEET PREPARED BY:** Jean L. Preister

**DATE:** October 26, 2009

**REVIEWED BY:** \_\_\_\_\_

**DATE:** October 26, 2009

**REFERENCE NUMBER:** FS\CC\2009\MISC.09009-2 text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for OCTOBER 7, 2009 PLANNING COMMISSION MEETING

**PROJECT #:** Miscellaneous No.09009

**PROPOSAL:** **Amend Section 26.31.010 of the Land Subdivision Ordinance to allow an extension of time to install improvements by administrative action.**  
Amend Section 26.23.140(g) of the Land Subdivision Ordinance to allow commercial and industrial lots within an approved special permit for Planned Service Commercial to take access to a public street or private roadway with a public or private access easement dedicated on the final plat.

**CONCLUSION:** **Allowing an extension of time to install improvements by administrative action would streamline the process for approving the extension.** Not requiring lots within a Planned Service Commercial special permit to have frontage to a street should aid the processing of final plats.

**RECOMMENDATION:**

Approval

**GENERAL INFORMATION:**

**ANALYSIS:**

1. This application contains two completely unrelated amendments to the subdivision ordinance. **The first amendment is in regards to the timing of installing improvements after a final plat is approved. The Land Subdivision Ordinance requires that all improvements be completed within 2 years after the final plat is approved, except for sidewalks and street trees.**
2. **Sidewalks and street trees are required to be installed within 4 years after the final plat is approved. If the sidewalk and street trees are along an unimproved major street, the developer is required to pay the City to install the improvements when the street is improved.**
3. **There are times when a development may take more than 4 years to be built out due to economic conditions. The purpose of this text change is to allow developers who are requesting more time to install improvements to be reviewed administratively. Currently, a waiver to extend time to install improvements must have a public hearing at Planning Commission. Since the developer is not asking to waive the improvement but only more time to complete them, the public hearing seems excessive.**
4. **Due to the most economic downturn in housing over the past several years, there are several subdivisions in Lincoln that have been slow to develop and are past the required completion date for installation of improvements. To avoid having multiple**

applications for waivers at Planning Commission, the Planning Department is proposing that extension of time to install improvements be approved or denied administratively. If the request is denied, the applicant would have the option of having a public hearing at Planning Commission.

5. Although each waiver will be reviewed individually, the appropriate City departments will use established criteria in helping to determine if the waiver should be granted. The criteria establishes when the waiver generally should be approved or denied. See attached for the criteria.
6. The second proposed amendment is in regards to a March 2008 text amendment approved by the City Council to allow lots within a community unit plan, planned unit development or use permit without frontage and access to a street. The lots would be required to have access to a street through an access easement.
7. The proposed amendment would add that lots within a Planned Service Commercial special permit would not be required to have access and frontage to a street, but would be required to have access to a street through an access easement.
8. The Planned Service Commercial is allowed by special permit in the H-4 district only. This special permit is similar to a Use Permit and therefore should be added to Section 26.23.140(g)(3).

Prepared by:

Tom Cajka  
Planner

**DATE:** October 2, 2009

**APPLICANT:** Marvin Krout, Planning Director  
Lincoln-Lancaster County Planning Department

**CONTACT:** Tom Cajka, Planner  
Lincoln-Lancaster County Planning Department  
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## MISCELLANEOUS NO. 09009

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 7, 2009

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

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Tom Cajka of Planning staff** stated that this application is for two unrelated amendments to the land subdivision ordinance.

One change is for a waiver to extend time to install improvements administratively. Currently, in most cases, you have two years to install improvements after the final plat is improved, with the exception of sidewalks and street trees, which is four years. Staff has found that most subdivisions have reached the end of the time line and due to the current economic situation, the lots have still not sold and they do not want to install the improvements. Planning has talked with Public Works and staff feels that the extension of two years would be appropriate. The developer would be required to submit a new bond. This would account for any rise in prices and keep the developer up to date in city records.

In March of 2008, a text amendment was approved by City Council that allows lots in a planned unit development without frontage on a public street. A lot of these developments have outlots surrounding them. The subdivision ordinance requires that all lots front a public street.

Cornelius noted that there is already a waiver process today. He questioned how staff characterizes the likelihood that if a developer fails to meet the deadline, that we are not opening the door to unlimited extensions. Cajka responded that it is possible. There is no limit to the number of extensions that can be requested.

Cornelius wondered if there is language to enforce a developed lot to force them to install the improvements. Cajka replied that an applicant has four years after the plat is approved. When you build a house, Building and Safety requires the sidewalk be built before the occupancy permit is issued. There is no such requirement for the street trees. If the developer doesn't make improvements, there is the option of the bond being released to the city and the city installing the improvements.

Esseks questioned who can appeal an application and who is considered aggrieved. Cajka believes an abutting property owner would be considered aggrieved.

### Proponents

**1. Mark Palmer, Olsson Associates**, testified in support and stated that he agrees with the proposed ordinance. He believes it will deal with the matter of extending escrows. He believes there could be a better way to deal with sidewalk escrows. Releasing a lot of escrows and making

this process easier would seem to be the end goal. Street trees and sidewalks are the big issues that seem to drag on for years after everything is built. He thinks there is a good mechanism for street trees, working with the landscaping companies to obtain the escrow dollars. The issue is regarding sidewalks. The builders are the ultimate people responsible for the sidewalk. You don't want to build a sidewalk early. There are maintenance issues. They can get destroyed during construction. He believes there is a better way to deal with sidewalk issues and would like to see this looked at in more detail.

Lust would like to hear his proposal. Palmer stated that at the moment, the bond is 25 percent of the sidewalk installation cost. You have to construct at least 75 percent of the sidewalks before some funds can be released. There are issues with getting the money released. There are straggling sidewalks or some sidewalks with cracks. The sidewalk might be three years old and the developer or builder is required to fix the walk. They can't build it ahead of time or it would get destroyed. He could foresee instead of posting a bond now, you wait the four years, then the city requires the bond at that time. This would address the issue of a slow moving subdivision and this would address the issues of the developer selling off lots to a builder. The builder could then post the bond for the lots that he owns. The city could always use a special assessment district. It seems to him that there could be an easier way. It would free up credit for developers.

Cornelius questioned if Palmer has shared any of these thoughts with Planning staff. Palmer stated that he has informally talked over ideas for many years. He has bounced these ideas off clients and banks.

There was no testimony in opposition.

#### Staff questions

Sunderman wondered if it is possible for the escrow amount to be changed depending on how many sidewalks have or have not been installed. Cajka believes that there is a possibility for the escrows to be redone. Staff would be willing to meet with the development community to discuss these issues.

Cornelius noted that Planning Commission heard testimony about other ideas. He wondered if this should be deferred. Cajka believes that the issues discussed by Mr. Palmer would be a different text amendment. This application is a step forward, but there are other issues to be discussed.

#### **ACTION BY PLANNING COMMISSION:**

October 21, 2009

Cornelius moved approval, seconded by Francis.

Cornelius stated that it looks to him that this is tying up loose ends.

Sunderman believes this helps to simplify the code.

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

## CRITERIA FOR GRANTING EXTENSION

The subdivision ordinance requires improvements such as paving, water, sewer, sidewalks and street trees, to be installed within 2 or 4 years, depending on the improvement, after the final plat is approved. Often times a subdivision will take more than 4 years to be completely developed. Although the ordinance requires all improvements to be installed, it may not be logical to install sidewalks and street trees or other infrastructure on empty lots. The sidewalk and street tree may get destroyed when a building is constructed. Without knowing the location of the driveway the tree could be planted in the wrong location.

Today, the only recourse is for the developer to ask for a waiver to the subdivision ordinance to allow more time to install improvements. The waiver can only be approved by the Planning Commission and this can take four to six weeks to go through the process. In an effort to streamline the process, a text change is being proposed to allow the Planning Director to approve request for an extension of time to install improvements.

The applicant/developer would submit an application to the Planning Department. Planning would rout the application to other City departments who are responsible for the improvement. After review by other City departments, the Planning Director shall approve or deny the request. If denied, the applicant may appeal to the Planning Commission.

Below are criteria that City departments shall use in deciding if an extension of time should be granted. In most cases the extension will apply to sidewalks and street trees. Items such as street signs, street lights, utilities, drainage facilities and paving should generally be completed within their required time frames, even if lot development is lagging.

Decisions on extending time can be made on a block by block basis. For example, in a subdivision with three new streets, the extension might be granted along both sides of one street where almost all the lots are vacant, but denied along both sides on the other two streets where only a few lots are vacant.

An extension of time **generally should be approved** for the following:

1. When there is an arterial street that has not been built to an urban cross section.
2. When there are several vacant lots in a row. This would depend on the width of the lots and the distance of the gap in the sidewalk system.
3. Where lots on an entire block or block face are mostly vacant.
4. For street trees along local streets, the preference is to plant the trees after

construction, However, rather than an extension, when only 10 or fewer lots are left to plant, the Parks and recreation Department prefers to receive cash for the remaining lots and then give the future owner a voucher for planting the trees after the lot construction is done.

An extension of time **generally should not be approved** for the following

1. For Outlots that are not for future development. This could include Outlots for open space, drainage or detention.
2. Along an arterial street that has been built to an urban cross section. In most cases, access to the arterial street has been relinquished. There is no concern of where a driveway will be located or the sidewalk being destroyed by construction vehicles.
3. When vacant lots form a saw-tooth pattern with developed lots the remaining sidewalks should be built. Particularly on blocks where the majority of the lots are developed and just a few scattered lots are vacant, the sidewalks are necessary for pedestrians. Even though the sidewalks may need to be replaced during future construction on the lot, the residents of the block should not have to indefinitely live with an incomplete pedestrian sidewalk.