

**CITY OF LA VISTA  
PLANNING COMMISSION MINUTES  
NOVEMBER 19, 2009**

**DRAFT**

The Planning Commission meeting of the City of La Vista was convened at 7 p.m. on Thursday, November 19, 2009, at the La Vista City Hall, 8116 Park View Boulevard. Members present were: Malmquist, Andsager, Kramolisch, Hewitt, Circo, Gahan, and Nielsen. Absent: Horihan, Alexander and Krzywicki. Also in attendance was Ann Birch, Community Development Director and John Kottmann, City Engineer.

Legal notice of the public meeting and hearing was posted, distributed and published according to Nebraska law. Notice was simultaneously given to all members of the Planning Commission and a copy of the acknowledgement of the receipt of notice is attached to the minutes. All proceedings shown were taken while the convened meeting was open to the attendance of the public.

**1. Call to Order**

The meeting was called to order by Vice Chairperson Circo at 7:02 p.m. Copies of the agenda and staff report were made available to the public. Alternate Jason Nielsen will be a voting member tonight.

**2. Approval of Meeting Minutes – October 15 and 22, 2009**

A. Approval of Meeting Minutes – October 15, 2009

Malmquist motioned to approve the October 15, 2009 minutes as presented. Nielsen seconded. Ayes: All. Nays: None. Motion approved.

B. Approval of Meeting Minutes – October 22, 2009

Gahan motioned to approve the October 22, 2009 minutes as read. Andsager seconded. Ayes: All. Nays: None. Motion approved.

**3. Old Business**

None

**4. New Business**

A. **Public Hearing for Cimarron Terrace Final Planned Unit Development (PUD) located at Lot 380, Cimarron Woods a subdivision in the N ½ of Section 16, Township 14N, Range 12E of the 6<sup>th</sup> P.M., Sarpy County, NE.**

i. Staff Report: This is a request for final PUD plan approval, final plat and the conditional use permit approval for the multi-family use. There were some outstanding issues in the staff report and comments.

On page 3 of the staff report under analysis, Traffic Access and Trail, #5, there are plans to signalize 99<sup>th</sup> Street, however, traffic volumes do not warrant it at this time. Some modifications to that intersection will be made in the initial stage of the development. Signals would not be installed until traffic volumes warrant. This information would be included in a subdivision agreement prior to going to council.

Page 4, # 6 & 7, the trail is proposed to be connected to the trail that is in Cimarron Woods, however, there is a maximum slope issue that needs to be corrected.

In the Utilities section there is an issue with installing an additional line valve north of Josephine Avenue which needs to be resolved before moving forward to City Council.

There are a variety of issues with regard to the grading plan. The primary issue is the signed agreement for the offsite wetlands mitigation area which has just been signed and submitted tonight and is therefore corrected.

The landscaping that is in the median of 99<sup>th</sup> Street will be relocated. The applicant has a proposed plan to do that. There is substantial modification to that roadway median.

There are a number of issues that the applicant will need to address. One particular, is the preparation of a subdivision agreement that identifies all of the various public improvements and how they are going to be financed.

There were some amendments made to the text of the final PUD plan that need updating. Noted conditional uses have been incorporated into the conditional use permit.

Staff recommends approval of the Final Plat, Final Planned Unit Development (PUD) Plan and Conditional Use Permit with the contingencies noted regarding all of the items noted in the staff report.

ii. Public Hearing: Malmquist motioned to open public hearing. Kramolisch seconded. Ayes: Malmquist, Andsager, Kramolisch, Gahan, Circo, Nielsen and Hewitt. Nays: None. Hearing opened at 7:11 pm.

Larry Jobeun appeared on behalf of the applicant and also, Mark Westergard the consulting engineer on the project. They find the recommendation report generally acceptable. They feel the outstanding items can be complied with between now and City Council. The final PUD is in substantial conformance with the preliminary PUD approved and recommended. Only minor changes have been made with respect to the site plan itself.

Jobeun recalled the original subdivision agreement for Cimarron Woods called for a traffic signal when warranted at 99<sup>th</sup> and Harrison, and they believe that would be the case with respect to this project. There were originally 419 units, but when the density was dropped down to 276 units the warrants for a traffic signal went away.

The City of Omaha controls that intersection and numerous conversations took place to convince them to put the traffic signal in. It was determined it was not warranted and there were no safety issues with respect to that intersection and the City of Omaha would not approve it. The reasons cited were #1) from a liability standpoint if the signal was installed that was not warranted and someone could show that an accident was caused by the unwarranted signal the City of Omaha, City of La Vista and the SID could be liable; and, #2) if a traffic control device is installed that is not warranted, you could risk not receiving federal funds in street improvement projects because you put in something that was not warranted. These items are federally

audited.

Mark Westergard with E & A Consulting, highlighted the drainage situation and how the apartments will affect the overall drainage of the Cimarron Woods development. A study on the Cimarron Terrace apartment grounds has been completed. The amount of storage that is available on site and that has been utilized actually has a significant decrease in the peak flow conditions. Putting the apartments in and the detention associated with those will improve substantially the downstream conditions for the rest of the residents in Cimarron Woods.

The SID also authorized a more comprehensive drainage study of all of Cimarron Woods due to a concern downstream, especially where the drainage goes beneath the railroad tracks. That has been initiated and some preliminary work has been done. Some of the preliminary numbers show that just the apartment's impact on the downstream drainage will reduce the water surface elevation for the 100 year storm by about one and a half feet. It is going to have a major impact. Final studies will be submitted to City Engineer, John Kottman for review.

Westergard commented that there are some slopes on the trail that approaches the 10% grade currently. The total grade difference between the southerly end of the trail and where it hooks into 99<sup>th</sup> Street is about 5.7%. They should be able to meet the ADA requirements but will probably have some short sections of 8% trail with landing areas.

Westergard said the Corps of Engineers 404 permit on the site and the water quality certification had been received, and the landscaping exhibits and median alignment for viewing. The water quality certification is also available.

Gahan asked about the issue with the MUD valve. Westergard said this is not an issue, it just did not get drafted onto the plans.

Circo asked how severe is the grading where it is only going to be a 10 foot wide section where it abuts to the property along the fence line. Is it going to be severe there or is that a flatter section of the trail. Westergard said some of those portions right there are some of the steeper portions. They will need to do a good on-the-ground survey there and see what they have.

Jackie Hill, Southwind resident, brought up concerns at the last meeting about a fence around the railroad track area. She asked to be shown what fencing was going to be put around the track. She said her concern is the bridge area and could the fence be extended to prevent access of the children.

Jobeun stated his client would put in whatever the city would require but felt the area was probably covered as well as it can be with their proposal.

Birch pointed out that the park area in Cimarron Woods which runs along the railroad isn't fenced. A fence is shown on this developer's plans in the area of Ms. Hill's concern.

Chaz Williamson, Cimarron Woods resident, has the following three concerns:

1) Regarding the traffic study decision that a traffic light was not necessary on 99<sup>th</sup> Street. The concern is that the traffic from the apartment complex is going to go through the Cimarron Woods neighborhood. The traffic study was done when school was not in session. There was an understanding previously that there would be a traffic light there to alleviate that traffic concern.

2) The development plan that has been presented shows a 25 foot setback for the apartment complex. It is zoned as R-3 and he understands that an R-3 requires a 30 foot setback and also a concern that the Gateway Corridor remain consistent with adjacent developments. A 25 ft. setback will be significantly closer to Harrison than any of the developments there now and will significantly change the character of the neighborhood.

3) The clear areas required on either side of the walking trail are not present on the submittals. He believes to maintain the character of the neighborhood that the visual buffer be maintained between the residential properties and the apartments. He is concerned that the trail is immediately adjacent to properties to this development.

Jobeun responded that as far as the traffic study, the City of Omaha sent a letter to the City of La Vista expressing concern and that the signal is not warranted. But, upon the developers request the City of Omaha would look at it from time to time and would allow a traffic signal if ever warranted. Westergard thinks upon full build out of the second phase, it might be warranted. Their subdivision agreement will take care of this item.

With respect to the concern on the trails, Jobeun stated that the trail is where the city wanted it to be. Regarding the traffic on Josephine, maybe there is something that could be done as far as a speed table to slow traffic down in the interim.

Eileen Williamson, Cimarron Woods resident, pointed out that in the zoning action that took place in January 2008 it says that in the rezoning of Lot 380 "a traffic signal shall be provided at 99<sup>th</sup> Street when the apartments are constructed regardless of warrants". She states that in her mind the Planning Commission voted and pushed to the City Council as a recommendation to rezone that lot as R-3 contingent upon a light being constructed at that intersection. So, not just in finalizing this planning application, but going all the way back to the zoning of that lot as R-3, it is contingent upon being a light there. If there is not going to be a light there that lot needs to be evaluated for the number of families that development can sustain without a light, expecting that traffic will be diverted back into the Cimarron Woods neighborhood. The zoning was contingent upon there being a light.

Jobeun was not sure that this was true in regard to the traffic signal, as pointed out. This property was already zoned, already platted, and the land use decision was made. When the original subdivision came through and there was a discussion about the traffic signal in the subdivision agreement, it was based upon 419 units. This developer has followed every direction the city has wanted it to take by reducing density, making the project nicer, making more green space, attaching garages, improving the overall architectural feel of the project and has thereby lost a significant amount of density. The developer is committed to doing a signal when it is warranted. Science, in the form of a traffic study, has dictated that a traffic signal

is not warranted at this current time.

Regarding setbacks, Birch read from the staff report on page 6, under the final PUD plan: The setbacks were approved as part of the preliminary plan and were noted on the preliminary plan as frontyard 25', sideyard, 10', street sideyard 25' and rear yard 10 ft. and were established at the time of zoning and preliminary PUD plan approval. This action is final PUD plan approval and evaluation of the final approval is whether it substantially conforms with the preliminary approval. At this time, the submittal is to be evaluated against conformance with what was approved under the preliminary plan.

Jobeun stated with respect to the traffic study and signal, that this is an ongoing thing. The developer can request an update of the traffic study from time to time. If a traffic signal is ever warranted, the developer will put it in. At some point, it is hoped that a signal is warranted and they will continue to check and update.

Gahan asked who does traffic studies. Jobeun said E & A did this one. It was reviewed by the city engineer, John Kottman and the City of Omaha. And, there was an independent review done as well. Ultimately, Omaha has this decision.

Kottman commented that traffic volume is estimated on full build out of the area, not just the traffic on that day of the study. The study was reviewed by La Vista, also, the city's traffic engineering specialist who concurred with the study and conclusions drawn for not warranting a signal. In 2002-03 when the original subdivision agreement was drafted it included the clause about installing a signal at 99<sup>th</sup> Street and Harrison at a point in time when there was an estimate of 419 apartments and the practice locally was to allow traffic signals on a discretionary basis throughout the metro area. Since, cases have led to the condition that the City of Omaha now says they will not expose themselves to the liability anymore and will follow the Manual on Uniform Traffic Control Devices. At the end of phase two, it is not terribly far from meeting the warrants for a signal.

Kottman explained that liability occurs when a traffic signal may create a higher potential for rear-end collisions because drivers don't all respond to a yellow signal; some break hard, some speed to get through. Cities must comply with federal regulations in terms of federal funding having to do with maintaining the capacity of arterial streets. Traffic signals tend to reduce the capacity of arterial streets by introducing the additional stopping of traffic.

Eileen Williamson said that originally the PUD indicated a 25 ft. frontyard setback, but it also listed Lot 380 as undetermined. A vote was made in January 2008 to zone this as R-3. When that vote was made there was no specific language stating that zoning as R-3 would continue to apply to the PUD and give it a 25 ft. setback. She feels it should have said that the setback would be 30 ft., or the setback would be 25 ft. She felt there was a potential, depending upon who is reviewing it, that it is zoned R-3 and that all requirements of R-3 should be applied to that lot. She asks if consistencies are with the Gateway Corridor or what Pedcor wants.

Birch explained that the difference is that this is an R-3 PUD and not just R-3 on its own. Jobeun, too, points out that the PUD ordinance and zoning code allows 25 ft.

setbacks. This is a final PUD to determine whether it is in general or substantial conformance with the preliminary PUD, which it is.

Malmquist motioned to close the public hearing. Nielsen seconded. Ayes: Malmquist, Andsager, Kramolisch, Gahan, Circo, Nielsen and Hewitt. Nays: None. Hearing closed at 7:55 pm.

Nielsen felt that there was a lot still to do before this is moved on. Malmquist felt that most of the issues have been addressed; those that haven't are the responsibility of the applicant to address so that it is complied with before it gets to City Council. The burden falls on them. It is the job of the Planning Commission to review to assure that it is essentially consistent with the original PUD. And, it does appear to be consistent with the PUD as presented and pass forward to City Council. There are some things that needed to be added to the final plat. This is pretty usual at the point of the review.

Circo added that he lives off of 104<sup>th</sup> Street and it is tough to contend with the traffic issues.

Nielsen asked how close the study was. Kottman replied that based on the traffic study interpretation knowing that right turning vehicles don't count, the required number is 84 for left turning vehicles through peak hours. The study showed that at the end of build out of phase two the estimated number is 70 vs. 84 required.

Malmquist motioned to recommend approval of the final plat as well as the final PUD because it is consistent with the preliminary plan that was reviewed; and the conditional use permit subject to the resolution of the items noted in the staff report. Hewitt seconded. Ayes: Gahan, Andsager, Hewitt, Malmquist, and Kramolisch. Nays: Circo and Nielsen. Motion carried.

This item is scheduled for the City Council meeting on December 15, 2009.

**B. Public Hearing for Val Vista Replat Six Preliminary Planned Unit Development (PUD) and Preliminary Plat for property located at Lots 6 and 7, Val Vista Replat One, a subdivision on the SW ¼ of Section 16, Township 14N, Range 12E, of the 6<sup>th</sup> P.M., Sarpy County, NE.**

i. Staff Report: This request is for a preliminary planned unit development and a final plat for a property consisting of two lots. The proposal is to replat into three lots for three 2-story office buildings and adding a PUD overlay zoning to the existing general commercial that is already there so that the site can be developed with shared parking, access and shared drives as a unified project.

A traffic impact analysis was compared by the consultant and has been sent to the city's consulting traffic engineer for review.

Larry Jobeun appeared on behalf of the applicant and indicated that the developer is acceptable to all of the layovers as outlined.

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There are a variety of issues in the staff report that needs compliance. A draft subdivision agreement will be needed to identify how all of the utilities and drainage will be maintained.

Staff recommends continuance, pending further information from the applicant regarding the proposed development schedule and items noted in the staff report.

Gahan motioned to open the public hearing. Malmquist seconded. Ayes: All. Nays: None. Hearing was opened at 8:02 p.m.

Mark Westergard with E & A Consulting, also on behalf of the developer, accepts the recommendation for layover.

Debbie Maillaard, Val Vista Villas resident, asks who is developing the property and what company will be managing the property. She asks for future information and will be added to the mailing list for this case. She was shown plans of the project.

She asked if there would be berms, trees, etc. to protect them visually for the villas along 107<sup>th</sup> Street.

Upon inquiry she was told that there would be 604 parking stalls planned for that area. Zoning allows a variety of office and retail uses, but no specific tenants as yet. She was told that certain uses would need conditional use permits if they were not within the allowance of the zoning district. Her concern was with the lighting issue. If there would be any type of 24 hours services, she wondered if there were anything that could be done. There is nothing that restricts parking lot lights being on 24 hours a day.

She was invited to attend the next Planning Commission meeting on December 10<sup>th</sup> when this subject would be continued and she would have an opportunity to speak.

Mallaard said her concern is for a safe environment in this proposed area, that it would be patrolled and visually appealing to her neighborhood.

Jobeun responded that the developer is KVI.

Jennie Welna asked if single story buildings were considered on that site rather than the two-story and if these would be offices. Would they have any open all night tenants.

Circo said it would be commercial spaces. Tenants would have to go through a conditional use permit through the city in order to have such as a bar or the like and those neighbors within a certain radius would be notified.

Gahan motioned to continue the public hearing. Nielsen seconded. Ayes: Malmquist, Andsager, Kramolisch, Gahan, Circo, Nielsen and Hewitt. Nays: None.

This item is scheduled for the Planning Commission meeting on December 10, 2009.

**C. Amendment of the Portal Ridge Planned Unit Development (PUD) to allow for 5' sideway setbacks.**

i. Staff Report: This is a request by the Portal Ridge developer, Boyer Young Development, to amend the 7-foot setback which is currently required to a 5-foot side yard setback. This would accommodate builders who desire to build a 3-car garage, ranch-style home, requested by their home buyers, on some of the remaining vacant lots.

The applicant has submitted a draft amendment to the Subdivision Agreement which establishes the modification to the side yard setback, and also identifies a minimum square footage for the houses to be constructed in the subdivision. The amendment should be revised to identify which lots it will apply to.

Staff recommends approval of the amendment to the final PUD plan to allow for 5-foot side yard setbacks, and approval the amendment to the Subdivision Agreement with revision as noted in staff report.

ii. Public Hearing: Hewitt motioned to open public hearing. Malmquist seconded. Ayes: Malmquist, Andsager, Kramolisch, Gahan, Circo, Nielsen and Hewitt. Nays: None. Hearing opened at 8:20 pm.

Mark Westergard with E & A Consulting appeared on behalf of the client to explain this amendment would allow for consistency with the other subdivisions in the La Vista area.

Mark Boyer, Boyer-Young Development Co. developers of Portal Ridge, explained that the market has changed and they have significant requests now for 3-car attached garages with their homes which are only possible by reducing the 7-foot sideway setbacks to 5 feet. This would be consistent with other La Vista neighborhoods.

Hewitt motioned to close public hearing. Kramolisch seconded. Ayes: Malmquist, Andsager, Kramolisch, Gahan, Circo, Nielsen and Hewitt. Nays: None. Hearing closed at 8:22 pm.

Malmquist asked what the average width of a lot is at the moment. Westergard thought they were 74-foot lots.

Gahan recalled that the Portal Ridge developer had requested a sideway setback amendment when the development was originally introduced. Birch stated that when the new Zoning Ordinance was adopted, which would have been before the Portal Ridge consideration, it changed the sideway setbacks on all future developments to 10 feet.

Malmquist inquired as to which lots would have the proposed 5-foot yardside setbacks. Westergard said it would be on the balance of the lots still controlled by Boyer-Young Development and they would provide a list to the city.

Gahan felt that, if approved, the commissioners would be taking a step backwards from their original approval of the 7 feet, which should have been 10 feet, and now the developer wants a sideway setback of 5 feet for 60% of the lots remaining which are vacant.

Boyer said they want bigger homes on these vacant sites, they just won't fit. The proposed change would allow 4 feet on the existing vacant lots.

Malmquist inquired about the minimum square footage amendment in the subdivision agreement. Boyer said it is for minimum suggestions for their builders. A notice was sent to their existing Portal Ridge homeowners and they had not had any opposition.

iii. Recommendation: Staff recommends approval of the amendment to the final PUD plan to allow for 5-foot side yard setbacks, and approval the amendment to the Subdivision Agreement with revision as noted in staff report.

Malmquist motioned for approval of the amendment to the final PUD plan to allow for the 5-foot sideway setbacks and approval of the amendment to the Subdivision Agreement with revisions as noted in the staff report. Kramolisch seconded. Ayes: Malmquist, Andsager, Kramolisch, Circo, Nielsen and Hewitt. Nays: Gahan. Motion carried.

This item is scheduled for the City Council meeting on December 15, 2009.

## **5. Comments from the Floor**

None.

## **6. Comments from the Planning Commission**

Birch announced that the next Planning Commission is December 10, instead of the third Thursday of the month in order to beat the holiday rush.

Birch has proposed that in 2010, the same situation may happen and the Planning Commission could meet on December 9 in 2010.

Circo, Gahan and Horihan should have received letters from Mayor Kindig regarding re-appointment to the Planning Commission and she hoped that they are interested in continuing to serve.

Birch has received approximately 50 applications for the open Planner position and hopes to interview three or four soon.

Birch updated the commissioners on the progress of the 84<sup>th</sup> Street Vision Workshops. Now that a vision concept plan has been approved, the next stage will be implementation. The city golf course will become an open community park space with a lake. A developer will be sought and there may be some financing tools as incentives for property owners to willingly participate in the vision plan.

**7. Adjournment**

Nielsen motioned to adjourn. Hewitt seconded. Ayes: Malmquist, Andsager, Kramolisch, Gahan, Nielsen, Circo and Hewitt. Nay: None. Motioned carried. Meeting was adjourned at 8:44 p.m.

Reviewed by Planning Commission: John Gahan

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Recorder

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Planning Commission Chair

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Approval Date