

## **AGENDA ITEM 4 B**

**ORCHARDS AT WILDWOOD  
CONDITIONAL USE PERMIT  
PLANNING COMMISSION MEETING  
AUGUST 19, 2010**



**CITY OF LA VISTA  
PLANNING DIVISION**

**RECOMMENDATION REPORT**

CASE NUMBER:

FOR HEARING OF: August 19, 2010

Report Prepared on: August 3, 2010

**I. GENERAL INFORMATION**

- A. APPLICANT:** The Orchard at Wildwood
- B. PROPERTY OWNER:** The Orchard at Wildwood
- C. LOCATION:** Generally located at South 75<sup>th</sup> and Gertrude Streets
- D. LEGAL DESCRIPTION:** Lot 5, Harrison Heights Subdivision
- E. REQUESTED ACTION(S):** Conditional Use Permit for Lot 5, Harrison Heights, for multi-family senior housing
- F. EXISTING ZONING AND LAND USE:** R-3 – High Density Residential
- G. PURPOSE OF REQUEST:** Development of a 48-unit affordable senior housing complex.
- H. SIZE OF SITE:** 4.224 acres

**II. BACKGROUND INFORMATION**

- A. EXISTING CONDITION OF SITE:** The site has been graded for development; mature pine trees and deciduous trees have been preserved on the southern perimeter of the property.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
  - 1. North:** City of Ralston, Residential Subdivision
  - 2. East:** R-3 – High Density Residential, Crestview Village
  - 3. South:** R-1 – Single-Family Residential
  - 4. West:** R-3 – High Density Residential, Undeveloped
- C. RELEVANT CASE HISTORY:** On September 4, 2008, the property was sold by the Metropolitan Utilities District to the Empire Group. Prior to the sale, the property had remained undeveloped and was being farmed.

On August 4, 2009 the City Council approved an amendment to the Future Land Use Plan of the City's Comprehensive Plan and a rezoning from T-A, Transitional Agriculture, to R-3 PUD, High Density Residential

Planned Unit Development, and C-2 – PUD, General Commercial Planned Unit Development. The Preliminary PUD Plan was approved with 112 units of senior market rate housing, with 55 garages and 48 units of affordable senior housing with all surface parking. Three commercial buildings were also approved with a total of 20,500 square feet of commercial flex space.

On January 19, 2010 a Conditional Use Permit was approved for Lot 4 that allowed for 112 units of senior market rate housing, with 55 garages.

**D. APPLICABLE REGULATIONS:**

1. Section 5.08, Zoning Ordinance, regarding the R-3 High Density Residential District
2. Section 5.15, Zoning Ordinance, regarding the PUD Planned Unit Development Overlay District
3. Article 6, Zoning Ordinance, regarding Conditional Use Permits

**III. ANALYSIS**

**A. COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan identifies this site for high density residential and commercial development. The Comprehensive Plan also identifies one of the General Community Goals as “Provide all residents with access to a variety of safe, decent, sanitary housing types, including elderly and persons with disabilities.” The Housing Policies also state “Promote development of residential options for La Vista’s residents of all income levels” and “Actively access affordable housing programs available from local, state and federal agencies/departments.”

**B. OTHER PLANS:** Traffic Impact Analysis, Harrison Heights PUD.

**C. TRAFFIC AND ACCESS:**

1. Access to Gertrude Street from the site is identified at two locations.
2. A traffic impact analysis was prepared by the subdivider’s engineer and reviewed by the City’s consulting traffic engineer when the application for the subdivision was reviewed in November 2009. The takes into consideration the possible development of a 48-unit affordable senior housing complex on Lot 5, as applied for, it identifies the Level of Service (LOS) on the surrounding roads and intersections are within acceptable ranges with the addition of the development.

**D. UTILITIES:** All utilities are available to the site.

**IV. REVIEW COMMENTS:**

1. Item B(11) on Page 4 of the application states that 48 covered and 26 uncovered parking stalls will be provided. This is different from the 60 uncovered parking spaces depicted within the Final PUD site plan. The applicant has since clarified that there will not be any covered parking in the development.

**V. PLANNING COMMISSION RECOMMENDATION:**

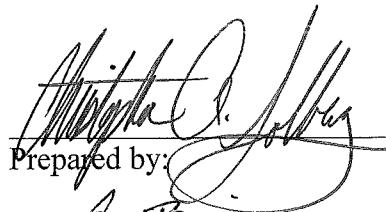
APPROVE a Conditional Use Permit for Lot 5, Harrison Heights, for multi-family senior housing.

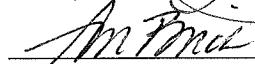
**VI. ATTACHMENTS TO REPORT:**

1. Vicinity Map
2. Draft Conditional Use Permit
3. City Engineer's Report

**VII. COPIES OF REPORT SENT TO:**

1. Chris Collett, The Orchard at Wildwood
2. Matt Huffield, AIA, Nexus Architecture
3. Morgan Sykes, E&A Consulting Group
4. Victor Pelster, Empire Group, LLC
5. Public Upon Request

  
Prepared by:

  
Anna P. Mol

8-10-10

Community Development Director

Date



**Vicinity Map**

## The Orchard at Wildwood CUP

August 4, 2010  
CAS



## **City of La Vista Conditional Use Permit**

### **Conditional Use Permit for Multi-family Housing, Lot 5 Harrison Heights**

This Conditional Use Permit issued this 21<sup>st</sup> day of September, 2010, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, The Orchard at Wildwood, LP. ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct a multiple family dwelling complex to be known as The Orchard at Wildwood upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 5 of Harrison Heights Subdivision, within the NE  $\frac{1}{4}$  of Section 14, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of the construction and continuing operation of a multiple family dwelling complex; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the premises designated on Exhibit "A" hereto for a multiple family dwelling complex, said use hereinafter being referred to as "Permitted Use or Use".

#### **Conditions of Permit**

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
  - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives has been provided to the City and is attached to the permit as Exhibit "A".
  - b. The premises shall be developed and maintained in accordance with the site plan (Exhibit "A") as approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.
  - c. These apartments are intended for senior independent living. Apartments shall be exclusively operated for, marketed and leased to, and occupied by persons age 55 and older, except for units occupied by an on-site manager or other employee of the Owner who is under the age of 55 and performs substantial duties related to management or maintenance of the facility (and said manager's or other employee's family members residing in the same unit); or as otherwise required to provide reasonable accommodations to disabled residents under applicable laws, rules or regulations. To carry out this requirement, Owner shall:

- (i) From time to time during this permit, adopt, publish and adhere to written rules, policies and procedures to implement and carry out said requirement in accordance with 24 CFR Section 100.36, as adopted, amended or superseded from time to time, subject to review and approval of the City Administrator, which approval shall not be withheld or refused so long as the rules, policies and procedures satisfy the requirements of "b" above and 24 CFR Section 100.36; and
- (ii) Take all other actions during this permit as may be required from time to time under the Federal Fair Housing Act, Housing for Older Persons Act of 1995, Nebraska Fair Housing Act, or any other applicable laws, rules or regulations, as adopted, amended or superseded from time to time, to carry out this subparagraph "b" in accordance with all applicable requirements, and specifically to qualify and continue the qualification of the facility as senior housing exempt from any applicable familial status protections.

- d. All parking for residents and visitors is to remain on-site; no on-street parking is allowed on Gertrude Street.
- e. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles and those approved in writing by the City.
- f. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete. Trash dumpsters shall be placed with a trash enclosure of six feet in height and screened accordingly.
- g. Landscaping requirements from Section 7.17 of the City of La Vista Zoning Ordinance shall be satisfied and maintained by the property owner.
- h. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, and ADA.
- i. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
- j. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.

- 3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
  - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
  - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
  - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
- 4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
  - a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months

shall constitute a presumption of abandonment.

- b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
- c. Owner's construction or placement of a storage tank, structure or other improvement on the premises not specified in this permit. This shall not apply to storm water detention or retention tanks, as required by the City Engineer, to comply with storm water management regulations.
- d. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.

5. If the permitted use is not commenced within one (1) year from **June 15th, 2010**, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.

6. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.

7. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

#### **Miscellaneous**

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

- 1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
- 2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
- 3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

**Contact Name and Address:** Chris Collett  
4110 Eaton Avenue, Suite A  
Caldwell, ID 83607  
(208) 459-8522

**Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pamela A Buethe, CMC  
Deputy City Clerk

**CONSENT AND AGREEMENT**

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

\_\_\_\_\_  
Owner: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_