

## **FACTSHEET**

**TITLE: WAIVER OF DESIGN STANDARDS NO. 01012**, requested by General Excavating on behalf of FHD 2, L.L.C., to extend the time for installation of sanitary sewer in Lot 9, Cornhusker Business Park, on property generally located at North 70<sup>th</sup> Street and Highway 6.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 07/25/01  
Administrative Action: 07/25/01

**STAFF RECOMMENDATION:** Denial.

**RECOMMENDATION:** Approval of extension of time for four years, with recalculation and posting of new bond (9-0: Krieser, Hunter, Steward, Newman, Carlson, Taylor, Duvall, Schwinn and Bayer voting 'yes').

### **FINDINGS OF FACT:**

1. The Planning staff recommendation to deny this waiver request is based upon the following analysis:
  - A. This is an after the fact request for a waiver of design standards to extend the time that minimum improvements be installed required by Sections 26.27.040 of the Land Subdivision Ordinance from 2 years to 20 years or until the land is developed, whichever first occurs.
  - B. This request is in response to the Law Departments investigation which found the subdivision failed to complete the minimum improvements. The waste water was to be completed by April 11, 1996.
  - C. The construction of public wastewater is required to be completed two years from the time of final platting, this requests a time extension ten times greater than would be required if the lots were platted at this time.
  - D. The Public Works and Utilities Department objects to the proposed waiver, and indicates that the sewer should be built or the lot replatted into a non-buildable outlot until the owner is ready to build.
  - E. The developer has not demonstrated a substantial hardship that would necessitate a time extension for public wastewater.
  - F. The developer has posted bonds for the construction of public wastewater and signed legal agreements declaring that the improvements would be constructed by April 11, 1999.
2. The applicant's testimony is found on p.4. The applicant has requested a 20-year extension; however, he would agree to something less and would also agree to post a new bond.
3. There was no testimony in opposition.
4. The Planning Commission discussion with staff is found on p.4-5.
5. On July 25, 2001, the Planning Commission disagreed with the staff recommendation and voted 9-0 to recommend approval of the waiver extending the time for installation of the sanitary sewer for four years, with a recalculation and posting of new bond. (See Minutes, p.6).

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

**DATE:** July 30, 2001

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

**DATE:** July 30, 2001

**REFERENCE NUMBER:** FS\CC\FSW01012



**ANALYSIS:**

1. This is an after the fact request for a waiver of design standards to extend the time that minimum improvements be installed required by Sections 26.27.040 of the Land Subdivision Ordinance from 2 years to 20 years or until the land is developed, whichever first occurs.
2. This request is in response to the Law Departments investigation which found the subdivision failed to complete the minimum improvements. The waste water was to be completed by April 11, 1996.
3. The construction of public wastewater is required to be completed two years from the time of final platting, this requests a time extension ten times greater than would be required if the lots were platted at this time.
4. The Public Works and Utilities Department objects to the proposed waiver, and indicates that the sewer should be built or the lot replatted into a non-buildable outlot until the owner is ready to build.
5. The developer has not demonstrated a substantial hardship that would necessitate a time extension for public wastewater.
6. The developer has posted bonds for the construction of public wastewater and signed legal agreements declaring that the improvements would be constructed by April 11, 1999.

**STAFF RECOMMENDATION:**

Waiver of Design Standards to allow a 20 year time extension

Denial

If, after a public hearing, the City Council approves this request, the following condition should apply:

1. The public wastewater shall be installed as the property is developed or within one year from the time of approval of this waiver of design standards, whichever first occurs.

Prepared by:

Becky Horner  
Planner

# WAIVER OF DESIGN STANDARDS NO. 01012

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

July 25, 2001

Members present: Krieser, Hunter, Steward, Taylor, Newman, Duvall, Carlson, Schwinn and Bayer.

Planning staff recommendation: Denial.

## Proponents

**1. Scott Fitzgerald**, partner of **FHD 2, L.L.C.** and President of General Excavating provided some background information. FHD 2, L.L.C. purchased this lot 3-4 years ago for future development and extension of their excavating business. At the time of purchase, the subject property was a dump site for Burlington Northern. After they purchased the property they cleaned it up voluntarily and graded it off to make it drain. At this point, they would like to hold the property for future expansion, which may include landscaping materials, aggregate rock, dirt storage, and parking of equipment.

Fitzgerald further advised that the minimum improvements were required to be installed by April 11, 1996. This is a request to extend the time for installation for 20 years, or until the property is developed. Fitzgerald acknowledged that he is flexible on the extension. However, there is no reason to extend a sewer to it because there is no immediate plan for building or developing the property.

Schwinn inquired whether the obligation to install the improvements was transferred from Burlington Northern to the new owner. Fitzgerald believes that somewhere in the purchase agreement they agreed to go ahead and complete the improvements. It was supposed to have been done by 1996, but whoever had it previously didn't do it and they passed it on to the future property owner. General Excavating was not involved in the administrative final plat in 1995.

Steward noted that this is obviously a site that is largely surrounded by industrial uses and zoned industrial. He inquired as to why staff is opposed to the extension of time. Becky Horner of Planning staff advised that the subdivision ordinance requires that if property has reasonable access to wastewater, it should be connected. Since they platted it as a lot it should be connected and they did bond to do the installation. Steward also noted that the property is surrounded on three sides by railroad use. Would the city's purposes be served by a shorter extension? Horner suggested that it is possible to replat the property as part of another lot that is already served or plat it as an outlot. Then when they are ready to develop, they could come back and replat it. This has not been discussed with the owner.

Bayer asked who platted this lot. Horner did not know who the applicant was at that time. Bayer observed that the sewer was a requirement but it was not done. The city is holding a \$4,800 bond.

Carlson wondered whether the liability transfers as the ownership transfers. Rick Peo of the City Law Department opined that contractually, that obligation might have transferred with ownership. Under the plat requirements, the original developer was responsible. There was a bond and the city has inquired whether to pull the bond to install the sewer main at this time. The only option would be to extend the time for that improvement to be installed. That is why we're here. The four year timeline has expired so the city should pull the bond if the time for installation is not extended. However, the bond is not going to be sufficient to cover the cost of installation. If the city pulls the bond, the city would install the sewer and attempt to recover any excess cost the bond didn't cover.

Schwinn believes we're talking about extending sewer down North 70<sup>th</sup> to get in front of this lot. The city could go ahead and do that by Executive Order and then charge the property owner. Peo's response was that for violation of the responsibility of the plat, the city would pull the bond, do the work, and sue for the deficiency. We could not assess the cost to the property owner. The question is, should it be in now or not? If the Commission finds the waiver to be appropriate, maybe it could be extended for four years. It should have to come back in a reasonable length of time to be considered and a new bond amount established to cover the cost. The previous owner posted the bond, but the better route now would be for the new owner to take out the bond and re-establish a new bond amount.

Carlson inquired as to the modern bond amount. Dennis Bartels of Public Works stated that he has not recalculated the bond amount. The Public Works recommendation is that the sewer be installed in accordance with the subdivision requirements. It is a lot that could be sold and after a period of time, if we have to call the bond, then the lot would lose its protection. It is a saleable lot and the future buyer would have a problem if we don't pursue getting the sewer installed.

Steward suggested resetting the clock for four years--will that automatically cause Public Works to recalculate the bond, or do we need to take some action? Bartels suggested that it would be better for the Planning Commission to ask Public Works to reset a bond appropriate to today's costs.

Taylor asked what would be required to make the area an outlot. Horner advised that it would require an administrative final plat to redefine the lots. If the owner did an administrative final plat, this particular minimum improvement would be required within 2 years.

#### Response by the Applicant

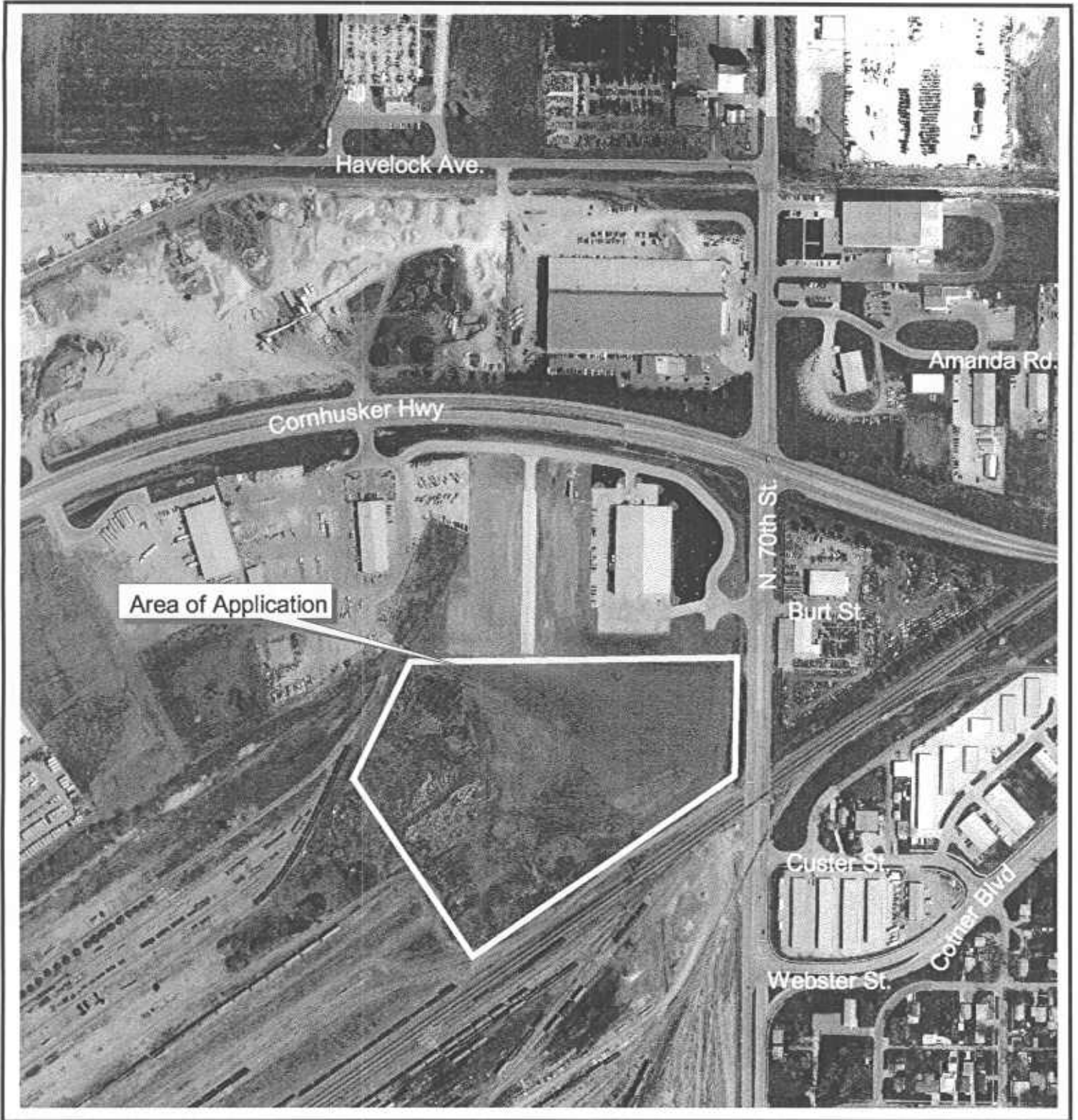
Fitzgerald reiterated that they do not have any intention to build on the property at this time. They did look into the outlot option but there would be engineering costs of \$3,000-\$5,000. He would agree to four years and take out a new bond under the new ownership.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

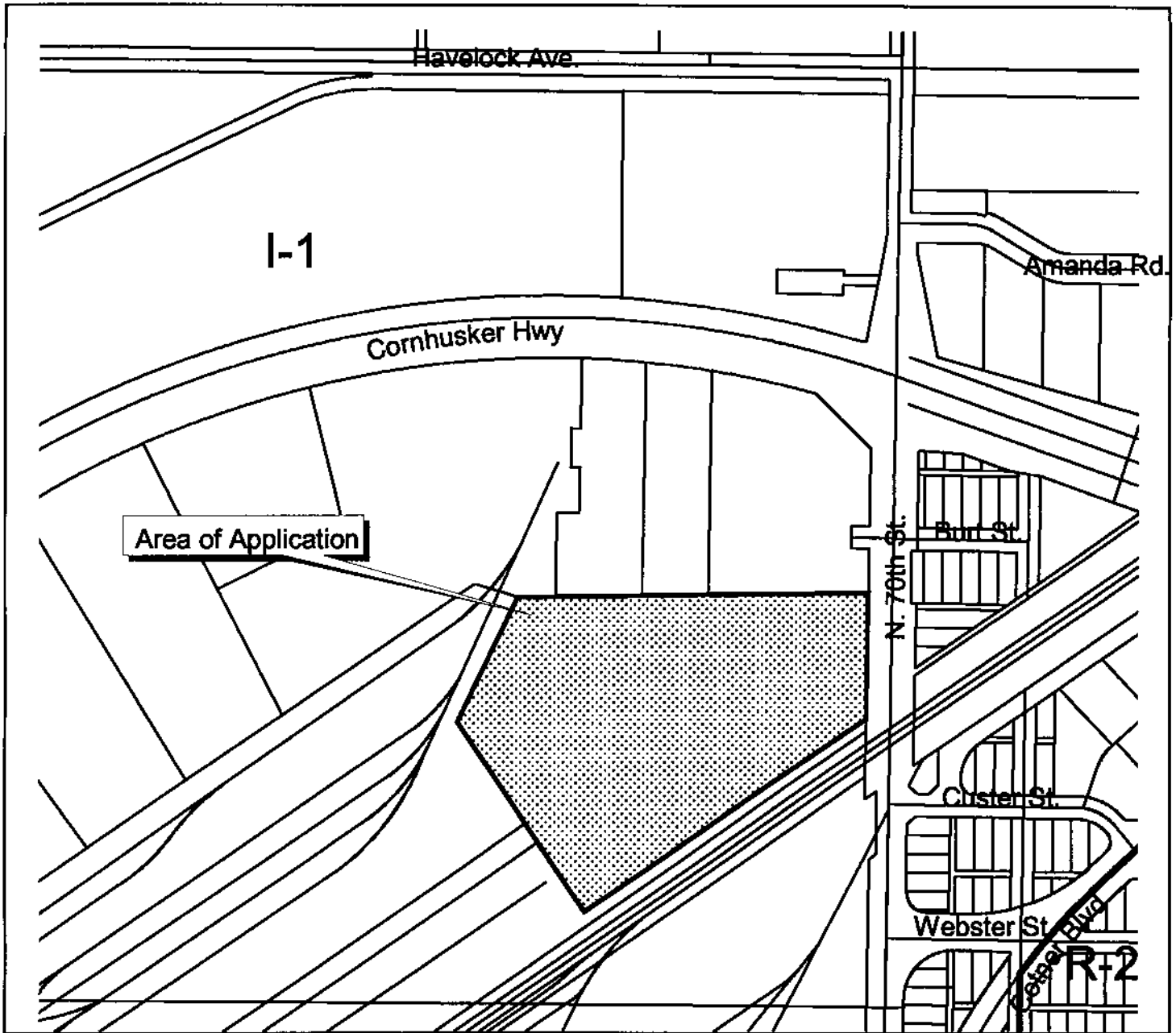
July 25, 2001

Hunter moved to approve the waiver with a four year extension, with the bond to be recalculated to cover the cost, seconded by Newman and carried 9-0: Krieser, Hunter, Steward, Taylor, Newman, Duvall, Carlson, Schwinn and Bayer voting 'yes'.



**Waiver of Design Standards #01012  
N. 70th & Hwy #6**



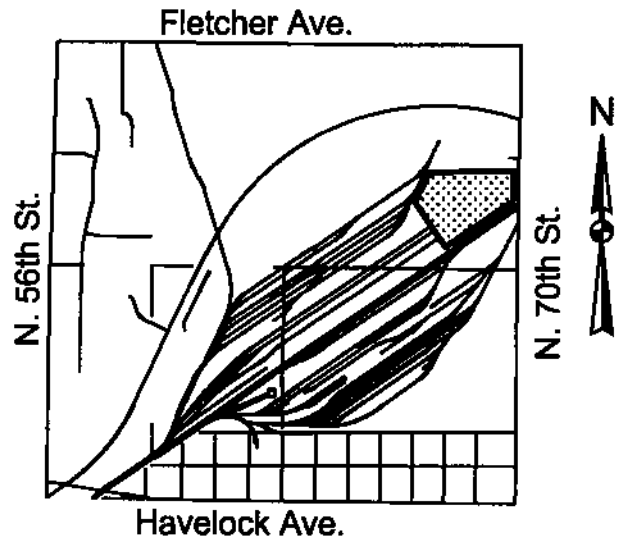
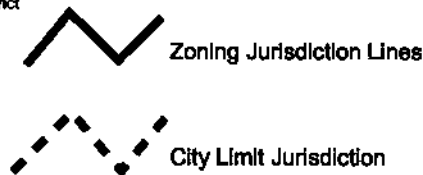


## Waiver of Design Standards #01012 N. 70th & Hwy #6

### Zoning:

- |            |  |
|------------|--|
| R-1 to R-3 | Residential District                   |
| AG         | Agricultural District                  |
| AGR        | Agricultural Residential District      |
| R-C        | Residential Conservation District      |
| O-1        | Office District                        |
| O-2        | Suburban Office District               |
| O-3        | Office Park District                   |
| R-T        | Residential Transition District        |
| B-1        | Local Business District                |
| B-2        | Planned Neighborhood Business District |
| B-3        | Commercial District                    |
| B-4        | Lincoln Center Business District       |
| B-5        | Planned Regional Business District     |
| H-1        | Interstate Commercial District         |
| H-2        | Highway Business District              |
| H-3        | Highway Commercial District            |
| H-4        | General Commercial District            |
| I-1        | Industrial District                    |
| I-2        | Industrial Park District               |
| I-3        | Employment Center District             |
| P          | Public Use District                    |

One Square Mile  
Sec. 4 T10N R7E



7/5/01 008



June 14, 2001

Ms. Kathleen Sellman  
Director of Planning  
County-City Building  
555 So. 10<sup>th</sup> Street  
Lincoln, NE 68508

Re: Cornhusker Business Center


Dear Ms. Sellman:

The purpose of this letter is to request an extension of time in which to install the sewer at the Cornhusker Business Center. We understand that sewer for Lot 9 is a condition of approval for the Administrative Plat, but do not want to complete the sewer until the lot is developed.

*Therefore, we formally request an extension to construct sewer on Lot 9 for 20 years or until such time that the lot is developed – whichever is first.*

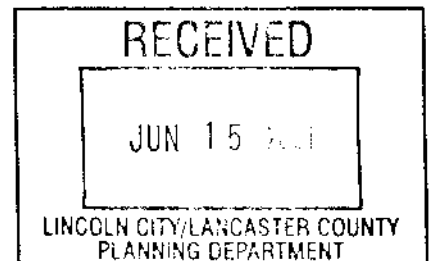
Respectfully,

FHD 2, LLC

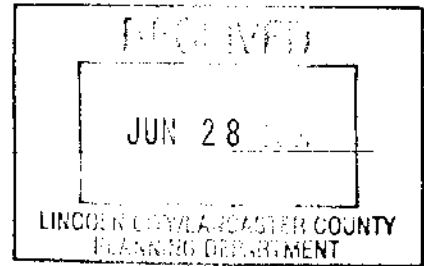


Scott Fitzgerald

Cc: Rick Peo, Assistant City Attorney



# M e m o r a n d u m



**To:** Becky Horner, Planning Department

**From:** *Dennis Bartels*, Public Works & Utilities

**Subject:** Waiver for Cornhusker Business Center Final Plat

**Date:** June 27, 2001

**cc:** Roger Figard, Nicole Fleck-Tooze

Public Works objects to the proposed waiver for allowing up to 20 years to complete construction of the sanitary sewer in Cornhusker Business Center. The sewer should be built or the lot replatted into a nonbuildable outlot until the owner is ready to build.

Lancaster

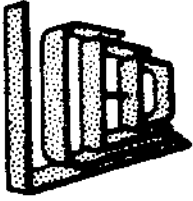
DON R. THOMAS - COUNTY ENGINEER

County

Engineering

Department

DEPUTY- LARRY V. WORRELL  
COUNTY SURVEYOR



**DATE:** June 21, 2001

**TO:** Becky Horner  
Planning Department

**FROM:** Larry V. Worrell *Larry V. Worrell*  
County Surveyor

**SUBJECT:** WAIVER FOR TIME EXTENSION, CORNHUSKER BUSINESS CENTER



Upon review, this office has no direct objections to this submittal.

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT  
INTER-DEPARTMENT COMMUNICATION**

|                    |   |                    |  |
|--------------------|---|--------------------|--|
| <b>TO:</b>         | Becky Horner                              | <b>DATE:</b>       | June 25, 2001  |
| <b>DEPARTMENT:</b> | Planning                                  | <b>FROM:</b>       | Jerrold C. Hood, R.E.H.S.  |
| <b>ATTENTION:</b>  |   | <b>DEPARTMENT:</b> | Lincoln-Lancaster County Health  |
| <b>CARBONS TO:</b> | Administration<br>Scott E. Holmes<br>File | <b>SUBJECT:</b>    | WDS. 01012 Waiver for time<br>Extension to build sewer<br>Cornhusker Business Center |

The Lincoln-Lancaster County Health Department (LLCHD) has no objection to the time extension to build a sewer to Lot 9 in the Cornhusker Business Center as long as there is no development on the lot.

If there are any questions, please contact me at 441-8029.

*Jerrold C. Hood*