

INTER-DEPARTMENT COMMUNICATION

| | | | |
|-------------------|---|-------------------|------------------------|
| TO | City Council | DATE | April 1, 2009 |
| DEPARTMENT | | FROM | Rick Peo |
| ATTENTION | | DEPARTMENT | City Law |
| COPIES TO | Joan Ross Mayor Beutler Brandon Garrett | SUBJECT | 09R-53 Waiver 09001 |

Lincoln Municipal Code § 26.11.070 provides that, "No plat shall be filed for record or recorded in the office of the Register of Deeds of Lancaster County, and no lot shall be sold from such plat unless and until . . . (b) provisions for the installation and construction of all required minimum improvements provided in § 26.11.039 have been fulfilled. With respect to the final plat of Spahn Addition, three improvements were required to be installed: 1) paving of Q Street abutting the boundaries of the final plat; 2) installation of sidewalks along the north side of Q Street and along the west side of N. 36th Street; and 3) planting a street tree abutting the final plat. Mr. Spahn guaranteed the installation of the sidewalks and planting of the street tree by providing the City with an agreement for escrow of security fund and cash payment, respectively. In order to satisfy the paving requirement, Mr. Spahn requested that a paving unit be created to pave Q Street, 35th to 36th Streets. By Resolution No. A-84781 the City Council designated Q Street, 36th to 36th Streets as Paving Unit No. 141 and ordered it to be paved. Following the adoption of this resolution, the Planning Director approved the final plat and filed it of record with the Register of Deeds for Lancaster County, Nebraska. However, subsequently, the lowest bid received to pave Paving Unit. No. 141 exceeded the preliminary cost estimate by more than 25%. Therefore, according to Resolution No. A-66194 (adopted May 14, 1979) the Department of Public Works was required to obtain City Council approval to accept the low bid obtained for Paving Unit No. 141. This request was denied by the City Council on November 3, 2008 (Resolution No. 38-4581).

The City Council denial then raised the question as to the validity of the final plat for Spahn Addition as the plat was filed for record without provision for the installation and construction of Q Street, 35th to 36th Streets. It is the opinion of this office that the final plat of Spahn Addition was filed prematurely as the Planning Director should have waited until after the bids for construction of the Paving Unit No. 141 had been obtained and verified that they did not exceed 25% of the preliminary cost estimate or, if so exceeding, the City Council authorized the low bid to be accepted. Therefore, it is the opinion of this office that the action of the Planning Director in approving the final plat prior to confirmation that Paving Unit No. 141 would be paved was beyond the scope of his authority and the final plat as filed in the office of the Register of Deeds of Lancaster County is null and void unless the requirement for paving Q Street is waived by the City Council and the plat is ratified.

Mr. Spahn has questioned the fact that the Planning Director, rather than Mr. Spahn, filed the application for the waivers as Section 26.31.010 states the, "Subdivider may request a modification of such requirements, . . ." It is the opinion of this office that Section 26.31.010 does not preclude the Planning Director from making the request. In addition, Section 26.27.005 granted the Planning Director discretionary authority to waive the minimum improvement in this instance if he so desired. However, the Director elected to process a formal request due to the fact that the City Council had previously denied the waiver request.

ERP/tb