

FACTSHEET

TITLE: WAIVER NO. 09001, requested by the Director of Planning, to waive the requirements of the Land Subdivision Ordinance for street paving, sidewalks and one street tree, on property generally located at North 36th Street and Q Street (Spahn Addition).

STAFF RECOMMENDATION: Approval of the waiver of paving and denial of the waiver of sidewalks and street tree.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 03/25/09
Administrative Action: 03/25/09

RECOMMENDATION: Approval of the waiver of paving and **denial** of the waiver of sidewalks and one street tree (9-0: Gaylor Baird, Francis, Cornelius, Partington, Larson, Esseks, Taylor, Sunderman and Carroll voting 'yes').

FINDINGS OF FACT:

1. This is a request to waive the required street paving for Q Street and the intersection of Q Street and 36th Street; to waive the required sidewalk along the west side of N. 36th Street and the north side of Q Street, and to waive the required street tree along the west side of N. 36th Street pursuant to the Land Subdivision Ordinance. These improvements are associated with the Spahn Addition Final Plat.
2. The staff recommendation to **approve** the waiver of street paving and to **deny** the waiver of sidewalk and one street tree is based upon the "Analysis" as set forth on p.4-5, concluding that the subdivision ordinance requires minimum improvements including street paving, sidewalks and street tree. The paving district for Q Street was repealed by the City Council. There are no unusual circumstances or hardships to warrant waivers to the sidewalks or the one street tree. The staff presentation is found on p.6-7. These waiver requests are being sponsored by the Director of Planning.
3. Testimony by the property owner, Gerald Spahn, is found on p.7-9.
4. There was no testimony in opposition.
5. On March 25, 2009, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend **approval** of the waiver of paving for Q Street, and **denial** of the waiver of sidewalk and one street tree (See Minutes, p.10).

FACTSHEET PREPARED BY: Jean L. Preister

DATE: March 30, 2009

REVIEWED BY: _____

DATE: March 30, 2009

REFERENCE NUMBER: FS\CC\2009\WVR09001

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for MARCH 25, 2009 PLANNING COMMISSION MEETING

PROJECT #: Waiver of Subdivision Regulations #09001

PROPOSAL: Waive street paving for Q Street, sidewalks for Q Street and N. 36th Street, and street tree for N. 36th Street associated with Spahn Addition Final Plat #08040.

LOCATION: N. 36th Street and Q Street

LAND AREA: 14,992 Sq. Ft. (0.34 acres), more or less.

CONCLUSION: The subdivision regulations require minimum improvements including street paving, sidewalks, and street tree. The paving district for Q Street was repealed by City Council. There are no unusual circumstances or hardships to warrant waivers to sidewalks or street tree.

RECOMMENDATION:

26.27.010	Street Paving	Approval
26.27.020	Sidewalks	Denial
26.27.090	Street Tree	Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 1 and 2, Spahn Addition, located in the SE 1/4 of Section 19-10-7.

EXISTING ZONING: R-4

EXISTING LAND USE: Single-family detached dwelling and vacant lot.

SURROUNDING LAND USE AND ZONING:

North: R-4 Two family dwelling
South: P Wyuka Cemetery
East: P Wyuka Cemetery
West: R-4 Single family dwelling

HISTORY:

March 4, 1996: Administrative Final Plat #96016 was submitted. The requirements of the March 21, 1996 Planning Director's Letter were not met.

March 29, 2001: The applicant was sent a letter from the Planning Department explaining the process to request a waiver from City Council. This correspondence was a follow-up on an inquiry from the applicant.

- June 19, 2002: Thomas Spahn, of relation to Gerald Spahn (current applicant), submitted application for waivers.
- August 19, 2002: City Council denied Waiver #02010 to waive street trees and sidewalks on Q Street and N. 36th Street and to waive street paving on Q Street (same request as current application; first attempt).
- August 27, 2007: The Planning Department notified the applicant that Administrative Final Plat #96016 would expire on March 27, 2008 due to the passing of Ordinance #18897, which voids applications that have been pending for more than one year.
- March 17, 2008: City Council denied Waiver #07009 to waive street trees and sidewalks on Q Street and N. 36th Street and to waive street paving on Q Street (same request as current application; second attempt).
- March 27, 2008: Administrative Final Plat #96016 expired.
- August 13, 2008: Applicant submitted Final Plat #08040 for Spahn Addition. The plat was identical to Administrative Final Plat #96016. Sureties for the one required street tree and for the sidewalks were accepted by the City. Street paving for Q Street was guaranteed by paving district.
- Sept. 19, 2008: Final Plat #08040 for Spahn Addition was approved by the Planning Director.
- November 3, 2008: City Council repealed the paving district for Q Street.
- January 5, 2009: Notification letter was sent to Mr. Spahn regarding the status of the final plat paving requirement. The Law Department advised the Planning Department that since the paving district was repealed, the approved final plat had to either install the paving, waive the paving, or the plat must be rescinded.

COMPREHENSIVE PLAN SPECIFICATIONS:

Pg. 11 - Guiding Principles - Many activities of daily living should occur within walking distance. Neighborhoods should include homes, stores, workplaces, schools and places to recreate. Interconnected networks of streets, trails and sidewalks should be designed to encourage walking and bicycling, reduce the number and length of automobile trips, conserve energy and for the convenience of the residents.

Pg 90 - Continuity - The sidewalk system should be complete, without gaps, and maintained in good repair. The pedestrian network in shopping centers should be integrated with adjacent activities.

Pg 92 - Other Areas - All areas of the community should have safe, secure, and reasonably direct pedestrian connections. Activities of daily living should be available within walking distance. Neighborhoods should include homes, stores, workplaces, schools, and places to recreate. Interconnecting streets, trails, and sidewalks should be designed to encourage walking and bicycling, reduce the number and length of automobile trips, and conserve energy.

ANALYSIS:

1. The requested waivers are in association with Final Plat #08040 for Spahn Addition.
2. This is a request to waive the required sidewalk along the west side of N. 36th Street and the north side of Q Street per Lincoln Municipal Code (LMC) Section 26.27.020. LMC either requires sidewalks to be installed at the time a final plat is approved, or a surety be provided to guarantee their installation within four years of plat approval.

The Public Works and Utilities Department visited the site and does not see any obstacles to constructing the sidewalks. There is ample right of way to route the sidewalk around trees where necessary. A bond in the amount of \$1,024 was posted by the applicant with the final plat to meet this requirement.

Planning staff met on site with the applicant to walk the area of the required sidewalk. The site slopes down gently from the west to the east along Q Street and is very flat along N. 36th Street. The assumption is that very little grading would be required to build the sidewalk. The existing trees would not have to be cut down for the sidewalk.

3. This is a request to waive the required street tree along the west side of N. 36th Street per Lincoln Municipal Code (LMC) Section 26.27.090. LMC either requires street trees to be installed at the time a final plat is approved, or a surety be provided to guarantee their installation within four years of plat approval. Alternatively, the final plat has ten or fewer lots, so the applicant was allowed to pay the sum to the City of Lincoln for the planting of the street tree. Due to existing trees along Q Street, the Parks Department only required one tree for the subdivision; located along N. 36th Street. A check for \$220 was submitted with the final plat to meet this requirement.
4. This is a request to waive the required street paving for Q Street and the intersection of Q Street and 36th Street per Lincoln Municipal Code (LMC) Section 26.27.010. The LMC either requires street paving to be installed at the time a final plat is approved, or an executive order must be approved guaranteeing the completion of the paving within two years of plat approval. In this case, a paving district for Q Street was established and then repealed by City Council. The City Council was required to take action on this item a second time due to the construction bid being over 25% of the estimated cost. That left the final plat without completing the requirements of the subdivision regulations for paving. The City Attorney advised the Planning Department that there were three options to satisfy the requirements of the subdivision ordinance: a) build the street; b) waive the paving for Q Street; OR c) the final plat must be rescinded (voided and withdrawn from the Register of Deeds).
5. City staff twice opposed the waiver to street paving for Q Street. City staff supports the waiver request for paving at this time since the applicant made a good faith effort to meet the paving requirement and should not be penalized for the repealing of the paving district.

6. The main west gated entrance into Wyuka Cemetery is R Street at N. 36th Street. This is often used as a pedestrian entrance to the cemetery. Another gated service entrance is located south of the intersection of N. 36th Street and Q Street.
7. This segment of Q Street is paved from N. 33rd Street to N. 35th Street. N. 35th Street to N. 36th Street is not paved. A paving district was established to pave the segment from N. 35th Street to N. 36th Street, but was later repealed.
8. N. 36th Street is paved from Q Street to R Street, but does not include the intersection of N. 36th and Q Street.
9. There are no sidewalks on either side of Q Street from N. 35th Street to N. 36th Street. Wyuka Cemetery owns all the property south of the unpaved portion of Q Street from N. 35th to N. 36th Street. There are continuous lengths of sidewalks on both sides of Q Street from N. 33rd Street to N. 35th Street. A sidewalk on the south side of the Spahn property would help to facilitate a continuous length of sidewalk for pedestrians.
10. There are no sidewalks on the east side of N. 36th Street. Wyuka Cemetery owns all the property east of N. 36th Street. There are sidewalks on the west side of N. 36th Street north of the property, but not all the way to R Street. There are no sidewalks along N. 36th Street north of R Street. N. 36th Street ends at S Street and does not continue through to Vine Street. A sidewalk on the east side of the Spahn property would continue the existing sidewalk system to the north.
11. A surety has already been provided and approved with the final plat to guarantee the sidewalks and street tree. The improvements must be installed by September 19, 2012 (four years after the approval of the final plat).

Prepared by:

Brandon M. Garrett, AICP
Planner

DATE: March 19, 2009
OWNER: Gerald Spahn
3528 Q Street
Lincoln, NE 68503

WAIVER NO. 09001

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 25, 2009

Members present: Taylor, Cornelius, Esseks, Gaylor Baird, Francis, Partington, Sunderman, Larson and Carroll.

Ex Parte Communications: None.

Staff recommendation: Approval of the waiver of paving, and denial of the waiver of sidewalks and one street tree.

Staff presentation: **Brandon Garrett of Planning staff** discussed the history of this application going back to 1996, when the first application for a final plat was submitted. It has since gone through a couple of waiver processes, i.e. a request to waive the paving of Q Street, sidewalks along Q Street and 36th Street, and the one street tree that would have been on 36th Street. These waivers were denied twice in 2002 and 2007. The same request is before the Planning Commission today.

The Spahn Addition was approved in September of 2008, and part of that approval included a paving district for Q Street. The applicant provided sureties for the sidewalk and the one street tree. Months after that final plat was approved and filed, the actual costs for the paving of Q Street were going to exceed the previous estimate by 25%. The paving district went back to the City Council for reconsideration and the City Council decided it was an unreasonable cost and they repealed that paving district.

What now happens to the final plat is that it has not met all of the requirements of the subdivision ordinance since the street paving district was repealed. The City Law Department gave the applicant three options: 1) install the paving for Q Street; 2) request a waiver of the paving; or 3) rescind or void the final plat.

Recognizing these rare and unique circumstances, City staff then recommended to the applicant that he request a waiver of the street paving and staff would support it. However, in addition to the waiver of street paving, the applicant has also requested the waivers of the sidewalks and the one street tree. Staff recommends denial of the waiver of sidewalks and street tree. According to the Comprehensive Plan, all areas of the community should have safe, secure and reasonably direct pedestrian connections. In this particular neighborhood, they are very fortunate in their sidewalk network between O and R, N. 33rd and Wyuka Cemetery. The waiver of the sidewalk is at the corner of 36th & Q. Garrett suggested that there is a very complete sidewalk network there today and this sidewalk would go towards completion of that network. There is a sidewalk to the north of this property. Garrett further suggested that since this segment of Q from N. 35th to N. 36th will not be paved in the near future, it is all that more important that we get a sidewalk built at this time to get the pedestrians off the street.

Esseks commented that it is a concern not to have a paved street in the middle of the city. He understands the reasons for recommending support of the waiver, but he wonders whether we have

learned anything from this long development review process as to how we can avoid being in this situation again. Garrett responded, stating that the history of this goes back to 1996, when we did not have a formal process for these applications to come to an end. Now we have a one year expiration date and this plat was nearing expiration, thus the repeated request for the waivers. The City has given its best effort to get this completed. The platting process would have required the paving of one segment of Q Street but not the other segment, so there still would have been a paving gap. The paving district was approved, but then repealed by the City Council because of the under-estimate of the cost. Also in this case, there were no adjacent property owners across the street to share the costs. He is hopeful that this is a unique and rare circumstance of not paving the street. Because of the cost, the applicant requested the initial waiver; we pursued the low-to-moderate income route for a paving district and the City Council felt the cost was too high and did not want to burden the adjacent property owners with that kind of assessment for street paving.

Larson pointed out that there are still gaps even if this sidewalk is built. Is there anything that could be done to require that the rest of the sidewalk be constructed? There is no paved street and there is no sidewalk in that area so it really doesn't connect to anything. Garrett agreed that there will still be a 150' gap in the sidewalks. The remainder of the sidewalks would be built by platting, such as this situation; another mechanism is that the City Council could create a sidewalk district and assess the adjacent property owners; and the third situation is just being a good neighbor and putting sidewalk on your property.

Carroll inquired whether the city can come back with a special assessment district even if the waiver of paving is approved. Garrett acknowledged that when the City Council decides it is appropriate, they could establish a paving district and require the street to be paved.

Gaylor Baird wonders how we will avoid another situation like this. She does not want to create a precedent by supporting this. Garrett does not believe this sets a precedent because this is a rare and unique circumstance. The subdivision ordinance requires paved streets and the staff will continue to enforce and advocate for paved streets. Waiving of the paving in this situation should not be considered a precedent for future projects.

Taylor wondered why the costs exceeded the estimate by so much in this case. Garrett was not sure why the initial cost estimate came in well under the bids. He speculated that maybe there were grading costs or other things such as storm sewer costs that were not factored into the estimate. Maybe just the cost of doing work is much higher than what was expected when it was estimated.

Proponents

1. Gerald Spahn, the property owner, stated that he has been trying to subdivide this property for 13 years. Is this waiver legal? He has been lied to, he has been threatened and he has been stonewalled by the City. He tried to do everything according to the law, but here he is again. He believes the voiding of this plat is a threat to take his property. He received a response from the City Attorney and after much discussion he has not received an answer to his question about rescinding his final plat. He thinks the city is going to sue him.

Spahn stated that he called the Mayor's office, and he was told that the city will process the waiver at no charge. He called the County Assessor about how the city can rescind a subdivision, and the County Assessor did not have an answer. He then called Olsson Associates who drew up his final plat, and Olsson told him that the City cannot rescind his final plat. It is going to cost him nearly \$10,000 to install the sidewalk.

Spahn acknowledged that he met with the Director of Planning and Brandon Garrett at the property, but Spahn contends that this is a sidewalk to nowhere. There is half a block before you get to this sidewalk, and then when you get on the other side of the new sidewalk, there would be another half a block of no sidewalk.

Spahn believes that he has been stonewalled because he went to the City Engineer's office to get the specifications to install the sidewalk. The sidewalk inspector told him to get it staked and he would have it inspected. He walked out of that office without being given any specs on building the sidewalk.

Spahn suggested that this could have been settled a long time ago. He believes that the ordinance provides that the Planning Director may waive the minimum improvements when no additional lots are created in a subdivision. The Director of Planning takes the position that the Spahn Addition creates an additional buildable lot. Spahn explained that he is only wanting to change the property around just a little bit to make it more usable.

Gaylor Baird suggested to Spahn that the plat is more a map of the intention of what you plan to do with the property. No one is going to take away your property.

Rick Peo of City Law Department advised that the issue is that the final plat cannot be approved and filed of record unless there is provision made for installation of the required improvements, either by installing or providing the bond or escrow to guarantee them, or a special assessment district for the paving. The problem here is that technically, the Planning Director jumped the gun by signing the final plat and making it of record before the City Council approved the paving district. He would argue that the plat as recorded is void, and in order to ratify that plat and make it valid, we need to either get a waiver of the requirements or acknowledge that the plat is void and that it should be rescinded. We would file a notice with the Register of Deeds that it was erroneously signed by the Planning Director. The city would like to avoid this type of record and creating any title problems. Therefore, it was determined that the best solution was to go back and reconsider the waivers. Sidewalks, even if waived, can be ordered in by the City Council at any point in time. We are not trying to take Mr. Spahn's property – if he does not meet the requirements of the subdivision ordinance, “you go back to where you were when you filed the application.” He hasn't lost any money through the process.

Peo also pointed out that it is in the Planning Director's discretion whether or not to waive the minimum improvements. In this case, it appears that the Planning Director determined that those improvements should be made. Esseks suggested that the record needs to indicate why the Planning Director made that choice.

Garrett explained that the reason the Director did not administratively grant a waiver in this case was because 1) staff believes strongly that the sidewalk should be there and that the one street tree

should be there; and 2) this very application has been before the public two other times and it seemed proper that we not do anything administratively because of that.

Esseks inquired whether the number of lots has changed. This is not just a property line adjustment. He is just switching the orientation of the lot so that he has a new frontage. Garrett agreed. The way the properties were platted initially, they fronted to 36th Street. The final plat flipped that around and the lot for his existing house would front to Q Street and the remainder of that lot would be a corner lot large enough for a duplex or single family. He did not have two buildable lots when he started. In this case, the Director felt strongly that he should not administratively waive the sidewalks or street tree.

Francis inquired as to the recent history of waiving sidewalks in a subdivision like this. Garrett believes that waivers to sidewalks are requested from time to time, but it is more typical in commercial and industrial areas, and most typical in industrial types of areas. He could not comment on the success rate.

Esseks inquired whether the Department believes the sidewalk gaps will be filled in the future if this sidewalk is installed. Garrett suggested that in some cases we have to move incrementally to get these sidewalks established in our neighborhoods by platting, sidewalk district by City Council, or just going out on free will as a good neighbor and build the sidewalk. Maybe that will be the case in some of the adjacent properties.

Gaylor Baird inquired about building the sidewalk around the existing tree so that he would not have to pay to have the tree removed. Garrett indicated that he did confirm with Public Works that there is ample room (80' of right-of-way in this case) and he would be able to maneuver around the existing trees, which would cut the cost of installing the sidewalk. Public Works has offered to stake the sidewalk for Mr. Spahn and there is no grading required.

Response by the Applicant

Spahn pointed out that he did not sign the waiver request and he did not give anyone permission to sign the request for him. Therefore, he does not believe there is a valid waiver being requested.

Steve Henrichsen of Planning staff stated that he signed the application on behalf of the Director of Planning. The City is the applicant for the paving waiver, and Mr. Spahn sent a letter requesting that the other two waivers also be included. There was no filing fee requested of Mr. Spahn. After Mr. Spahn stated that he never received a copy of the application before it was submitted without his signature, Henrichsen advised that the Director of Planning is the applicant for all three waivers.

Partington observed that it is not clear whether Mr. Spahn wants the waiver. Spahn stated that he does not care, although he would like to have the whole thing waived. It is ridiculous to spend the money on the sidewalk.

Carroll clarified that the application by the City is agreeing to waive the paving but that the sidewalks and the street tree are still required in order to get the final plat. If this final plat cannot be completed, then it goes back to where it was initially. The Planning Commission is voting whether or not to allow the waivers based upon the information provided today.

ACTION BY PLANNING COMMISSION:

March 25, 2009

Cornelius moved to approve the staff recommendation to approve the waiver of paving and deny the waiver of sidewalks and street tree, seconded by Sunderman.

Cornelius confirmed that this vote does not take any property away from the applicant. As far as the sidewalk is concerned, Cornelius observed that if the Planning Commission takes the positions of approving waivers of a sidewalk to nowhere, the first sidewalk would have never been built. We are talking about the connection of sidewalks in the future according to the subdivision ordinance.

Sunderman observed that the residents to the north of this house have put in sidewalks and we are treating this applicant in the same way that they were treated.

Esseks stated that he will vote for the waiver of paving, and he is sorry the applicant had to go through this long process.

Taylor stated that he sympathizes with the applicant. He really wanted to vote in favor because he is familiar with the area, but we need to look to the future.

Gaylor Baird extended an apology on behalf of Planning for any jargon that may have been confusing to Mr. Spahn. She clarified that no one is interested in taking the applicant's property. She also complimented Planning staff because it is rare for the Director to actually visit the applicant personally to resolve the issues. She believes the Department was trying to make a full faith effort to assist.

Motion to approve the waiver of paving and deny the waiver of sidewalks and street tree carried 9-0: Taylor, Cornelius, Esseks, Gaylor Baird, Francis, Partington, Sunderman, Larson and Carroll voting 'yes'. This is a recommendation to the City Council.



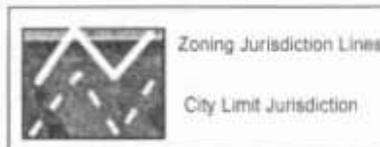
**Waiver #09001
N 36th & Q St.**

2007 aerial

Zoning:

One Square Mile
Sec. 19 T10N R07E

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential 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





Status of Review: Active

Reviewed By: Law Department

ANY

Comments:

Status of Review: Active

Reviewed By: Planning Department

PLANNER

Comments:

Status of Review: Routed

Reviewed By: Planning Department

BRANDON GARRETT

Comments:

Status of Review: Complete

02/24/2009 3:07:48 PM

Reviewed By: Public Works - Development Services

SIETDQ

Comments: Memorandum

To: Brandon Garrett, Planning Department
From: Charles W. Baker, Public Works and Utilities
Subject: Street Paving Waiver for Spahn Addition Waiver #09001
Date: February 24, 2009
cc: Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the Street Paving Waiver for Spahn Addition Waiver #09001 as request by the Planning Director on behalf of the Final Plat applicant. Public Works has no objection.

Comments: Memorandum□□

□

To:□Brandon Garrett, Planning Department
From:□Charles W. Baker, Public Works and Utilities
Subject:□Street Paving Waiver for Spahn Addition Waiver #09001 Revised Report
Date:□March 5, 2009
cc:□Randy Hoskins
Dennis Bartels
Roger Figard
Harry Kroos
Barnie Blum

□

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the Street Paving Waiver for Spahn Addition Waiver #09001.

The final plat Applicant is now the requestor of the proposed waiver. With the City Council's denial of the paving district, Public Works will not object to the waiver for the street paving.

The sidewalk can be installed in the normal location within the right-of-way with minimal grading, and diverted to miss the existing tree which will allow for the paving to be installed in the future preserving the sidewalk. Therefore, Public Works will not support the waiver to the required sidewalk construction for this final plat and recommends City Council deny the waiver.

Brandon M. Garrett

From: Harry B. Kroos
Sent: Thursday, February 12, 2009 8:52 AM
To: Brandon M. Garrett; Charles Baker; Dennis D. Bartels
Subject: RE: Spahn's sidewalk

Brandon:

I took a look at the property. Mr. Spahn is not required to complete the sidewalk construction for at least 4 years. This will allow him time to construct a house on the vacant lot. If he builds the sidewalk with the house construction, the cost for the sidewalk will likely be less when it is in association with this other work. We would not recommend that the sidewalk be completed before the house is completed, since the construction vehicles will be driving onto the property over the sidewalk.

Should he choose to construct the sidewalk now, we will allow the sidewalk to curve around the tree, we will stake the alignment of the sidewalk so he will not have to pay Olsson's for this work and the sidewalk can match the existing grade which will eliminate the cost he has for grading. Since there is no curb and gutter we also will not require any curb ramps or detectable warning panels at the corner of 36th & 'Q' Street.

We will require that the contractor obtain a \$60.00 sidewalk permit if he chooses to do the work before he constructs the house with a new curb cut.

Harry Kroos



John F. Hendry, City Attorney
575 South 10th Street
Suite 4201
Lincoln, Nebraska 68508

Civil fax: 402-441-8812
Pros. fax: 402-441-8813

Civil Division
Steven J. Huggenberger Connor L. Reuter
Margaret M. Blatchford Tonya L. Skinner
Joe J. Rupp Miki Esposito

Prosecution Division
Patrick A. Campbell Christine A. Loseke
Rob E. Caples Marcee A. Brownlee
Jessica Kerkhofs



MAYOR CHRIS BEUTLER

lincoln.ne.gov

January 27, 2009

RECEIVED

JAN 28 2009

Lincoln/Lancaster Co.
Planning Department

Mr. Gerald Spahn
3528 "Q" Street
Lincoln, NE 68503

RE: Spahn Addition Final Plat

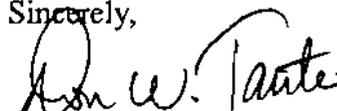
Dear Mr. Spahn:

After we talked on the telephone last week, I obtained a copy of the January 5, 2009, letter sent to you by Planning Director, Marvin S. Krout, and also discussed the matter with the attorney in this office who handles planning and zoning matters, and Brandon Garrett in Planning. In reviewing the January 5th letter to you, I note that it states that the Planning staff will recommend approval of the waiver for the street paving regarding your plat due to the unusual circumstances which have occurred with respect to the paving.

I further note, however, that Mr. Krout states that waivers for the one new street tree, as well as the sidewalks, would need to be reprocessed. Mr. Krout's letter does advise you that a waiver application is enclosed with the letter and asked that you advise Planning of your plan of action as soon as possible. Given the present circumstances, you would need to complete the application requesting the waivers for paving, street tree, and the sidewalks again, however, the waiver application for the paving would not be subject to the fee which is usually charged. The waiver request for the street tree and the sidewalks would once again have to be presented through the appropriate channels to be considered for a waiver. It further appears from the letter that you have already posted a surety which has been approved to guarantee the sidewalks and street tree, and as such, you could merely proceed with the construction of the sidewalks and installation of the tree rather than proceed with the waiver request again. The waiver request for street paving will be recommended for approval.

At this juncture, the Planning Department merely needs to have you advise them of your plan of action with respect to the waiver request for the street tree and the sidewalks or whether you will proceed with completing those improvements.

Sincerely,


Don W. Taute
Assistant City Attorney

DWT/skb

c: Brandon Garrett, Planning
Dennis Bartels, Public Works

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FILE COPY

Lincoln-Lancaster County 555 South 10th Street / Suite 213 Eugene W. Carroll, Chair
Planning Department Lincoln, Nebraska 68508 City-County
Marvin S. Krout, Director 402-441-7491 / fax: 402-441-6377 Planning Commission



MAYOR CHRIS BEUTLER

lincoln.ne.gov

January 5, 2009

Gerald Spahn
3528 Q Street
Lincoln, NE 68503

RE: Spahn Addition Final Plat #08040
Generally located at N. 36th Street and Q Street

Dear Mr. Spahn:

As I think you are aware, on Monday, November 3rd, 2008 the City Council voted to repeal the paving district for Q Street. The City Council was required to take action on this item a second time due to the construction bid being over 25% of the estimated cost. That has left your final plat without completing the requirements of the subdivision regulations for paving. The City Attorney has advised the Planning Department that you as the subdivider have two options: a) request a waiver to the paving for Q Street; OR b) the final plat must be rescinded (voided and withdrawn from the Register of Deeds).

We recognize that you have requested this waiver twice before over the years and it has been denied both times. However, given the unusual circumstances you have found yourself in and the best efforts you have put forward to meeting the paving requirement, staff will recommend approval of the waiver to street paving so that your plat requirements will be satisfied.

Your previous waiver applications included requests to waive street trees and sidewalks. The Subdivision Ordinance requires one new tree along N. 36th Street and the Public Works Department agrees that a sidewalk can be constructed without the street paving along Q Street. Since the street tree and sidewalks can be installed, City staff will not recommend approval of those waivers. A surety has already been provided and approved to guarantee these improvements.

Please advise us of your plan of action at your earliest convenience and we will assist you in your application. An application has been enclosed for you, and I have agreed to waive the application fee for waiving the street paving.

Should you have questions please contact Brandon Garrett at 441-6373 or bgarrett@lincoln.ne.gov.

Sincerely,

Marvin S. Krout
Director of Planning

cc: Dennis Bartels, Public Works
file

encl: Application form

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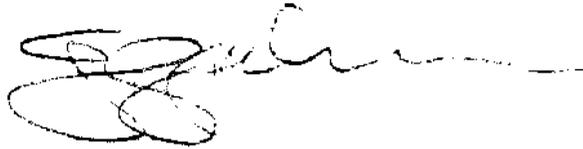
2/24/09

BRANDON:

I DID RECEIVE YOUR PHONE REQUEST
ON MY ANSWERING MACHINE.

PLEASE SEND THE WAIVER WE
DISCUSSED.

THANKS

A handwritten signature in cursive script, appearing to read "John", written in black ink.

RECEIVED

FEB 26 2009

Lincoln/Lancaster Co.
Planning Department

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