

City Council Introduction: **Monday**, June 24, 2002
Public Hearing: **Monday**, July 1, 2002, at **1:30 p.m.**

Bill No. 02R-138

FACTSHEET

TITLE: **WAIVER OF DESIGN STANDARDS NO. 02008**, requested by Brian D. Carstens and Associates on behalf of Lonnie Athey, for a time extension for the installation of the required improvements for Silver Springs 4th Addition Final Plat, including grading of Liberty Court, rock, gravel, seeding and one street name sign, on property generally located at Dawn Drive and Liberty Lane (South 56th Street and ½ mile north of Saltillo Road).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 06/12/02
Administrative Action: 06/12/02

RECOMMENDATION: Approval of a 24-month extension, including a review of the bond amount (8-0: Newman, Steward, Carlson, Duvall, Larson, Bills-Strand, Taylor and Schwinn voting 'yes'; Krieser absent).

STAFF RECOMMENDATION: Denial.

FINDINGS OF FACT:

1. The staff recommendation to **deny** this request for extension of time for the installation of improvements is based upon the "Analysis" as set forth on p.3-4, concluding that the approval of the Silver Springs 4th Addition required construction of the road and a street sign. There are no unusual conditions or circumstances to warrant the approval of the time extension.
2. The applicant's testimony and other testimony in support is found in p.5-6.
3. There was no testimony in opposition.
4. The Planning Commission discussion is found on p.6-7.
5. On June 12, 2002, the Planning Commission disagreed with the staff recommendation and voted 8-0 to recommend approval of a 24-month time extension, with review of the bond amount. (See Minutes, p.7).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: June 17, 2002

REVIEWED BY: _____

DATE: June 17, 2002

REFERENCE NUMBER: FS\CC\2002\WDS.02008

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Waiver of Design Standards #02008

DATE: May 22, 2002

PROPOSAL: Brian Carstens, for Lonnie Athey, has requested a Waiver of Design Standards for a time extension of grading, rock, gravel, seeding and one street name sign for Liberty Court, as required by Section 26.27.010, 26.27.050 and 26.27.110 of the Land Subdivision Ordinance in the approval of Silver Springs 4th Addition Final Plat.

LAND AREA: 15.17 acres, more or less.

CONCLUSION: The approval of Silver Springs 4th Addition required construction of the road and a street sign. There are no unusual conditions or circumstances to warrant the approval of the waiver.

RECOMMENDATION:

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Silver Springs 4th Addition, located in the E1/2 of Section 32 Township 9 North, Range 7 East of the East of the 6 P.M., Lancaster County, Nebraska.

LOCATION: Dawn Drive and Liberty Lane (South 56th and 1/2 mile north of Saltillo)

APPLICANT: Brian Carstens
601 Old Cheney Road, Suite "C"110 "Q"
Lincoln, NE
(402) 434 -2424

OWNER: Lonnie Athey

CONTACT: Brian Carstens

EXISTING ZONING: AGR Agricultural Residential

EXISTING LAND USE: Two lots with a horse barn and outbuildings.

SURROUNDING LAND USE AND ZONING:

North: Acreages AGR Agriculture Residential
South: Acreages AGR Agriculture Residential
East: Acreages AGR Agriculture Residential
West: Acreages AGR Agriculture Residential

HISTORY:.

The Planning Commission approved Silver Springs 4th Addition in **September 6, 2000**

Liberty Lane was vacated in **February 2000**

Silver Springs Final Plat was approved in **1995**

Breezy Acres 1st was created in **1986**

The Highlands Plat was created In **1966**

In **1963**, the first portion of Liberty Lane was created as part of the Breezy Acres Plat.

COMPREHENSIVE PLAN SPECIFICATIONS: The 1994 Comprehensive Plan shows this area as Low Density Residential.

UTILITIES:. None

TRAFFIC ANALYSIS: Liberty Lane and Dawn Ave. are classified as local streets.

ANALYSIS:

1. This is a request to extend the time frame for the installation of the required improvements for Silver Springs 4th Addition Final Plat. These include grading of Liberty Court, rock, gravel, seeding and one street name sign.
2. Bonds were posted for the required improvements with the street improvements to be in place in two years.
3. The applicant states the owner, Lonnie Athey, does not desire to sell lots 3 and 4 at this time and would like an extension of 24 months or longer.
4. The County Engineer notes further delays are not recommended.
5. Prior actions of a similar nature, resulted in the vacation of Liberty Lane because the improvements had not been installed over a period of many years.

Background:

a) In July 1963 the plat of Breezy Acres was approved and dedicated the northeast 30' of Liberty Lane. That plat showed setbacks to the road right of way.

b) In 1966 The Highland subdivision was approved. East-west roads were waived in lieu of extending Liberty Lane to the west. The subdivider dedicated ½ the road and agreed to bring the road to grade at his expense.

c) In 1979, Breezy Acres South was submitted which would extend Ramona Drive north to Liberty Lane and add the southeast ½ of Liberty Lane. This plat was never completed but was replaced by Breezy Acres 1st.

d) In 1986, Breezy Acres 1st was approved, (replacing Breezy Acres South). The existing building in the south was noted to “be relocated”. Neighbors testified that Ramona Drive should be extended to Liberty Lane and Liberty Lane extended west. City Council, on appeal, waived the improvement to Liberty Lane, the extension of Ramona Drive, and the building of Liberty Lane. Mr. Severin, of Olsson Assoc., representing the applicant, testified that Liberty Lane would be opened in a later phase. Outlot A was created until Liberty Lane was opened.

e) In 1995, Silver Springs Final Plat was created. The County Engineer and the Public Works Department requested Liberty Lane be extended west and built. The Liberty Lane extension (the north 30' only) and 3 lots were shown as one undevelopable Outlot until Liberty Lane is extended. A \$50,000 bond was required for roads.

f) In February 2000, the County Board approved the vacation of Liberty Lane between Dawn Ave and Cromwell Drive. The Planning Department and County Engineer had recommended denial. All related bonds and obligations were released.

g) In September 2000, the Planning Commission approved Silver Springs 4th Addition Final Plat that required the construction of Liberty Lane Court as a condition.

5. Chapter 26.31.010 Modification of Requirements, notes that whenever the tract to be subdivided is of such unusual size or shape or is surrounded by such development or unusual condition that the strict application of the requirements contained in these regulations would result in actual hardship or injustice, the council may vary or modify such requirements. The applicant has not shown any of these circumstances exist to warrant an extension to the time to install the required improvements.

Prepared by:

Mike DeKalb, AICP
Planner

WAIVER OF DESIGN STANDARDS NO. 02008

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 12, 2002

Members present: Newman, Steward, Carlson, Duvall, Larson, Bills-Strand, Taylor and Schwinn; Krieser absent.

Staff recommendation: Denial.

Proponents

1. Brian Carstens presented the application on behalf of Lonnie and Mary Jane Athey. About two years ago, the applicant requested vacation of Liberty Lane in connection with a final plat. Liberty Lane has had a lot of history dating back to 1964. At the time that Liberty Lane was vacated, Athey had to do a final plat to provide access frontage for a couple of lots that would be buildable in the future. He would like to continue to live at the site and use it as it exists. He does not intend to sell the lots. He would like a time extension to put in the bulb of the cul-de-sac which was platted about two years ago. There is a tree mass and 14 mature pine trees that they do not wish to remove at this time. It is a hardship at this point because the county is not maintaining Liberty Lane and Dawn Avenue. Athey would be required to maintain that cul-de-sac and it would serve no purpose until the lots are sold and developed.

2. Marlyn Schwartz, 10445 Dawn Avenue, Breezy Acres, testified in support. There are eight residents in Breezy Acres. It was developed slightly before he moved there. The developer of Breezy Acres told Schwartz that the reason the county never accepted the maintenance on Liberty Lane was because the culvert at 56th & Liberty Lane was undersized. Schwartz is feeling very guilty about what his actions have caused for this applicant by developing Silver Springs. In 1995, he platted 120 acres directly west and north of Athey. This is adjacent to the Highlands which is directly south of Silver Springs. Because Silver Springs could not meet the design standards for streets, an outlot was created next to Liberty Lane so that they could start developing and selling lots at Silver Springs. Approximately 2 years ago, Schwartz came to the Commission with a plan to develop those lots and requested the vacation of Liberty Lane. There was a petition in favor of the vacation signed by 75 people. At that time, Athey had to confirm that there was not going to be some ground that was landlocked and he had the plat prepared showing how a cul-de-sac would solve the problem. At that time it was determined that the cul-de-sac had to be put in within 2 years. Schwartz does not want Athey to lose the trees in his front yard. The county has never maintained Liberty Lane. Schwartz took care of the snow for 18 years and Athey has taken care of it the last 18 years. It seems needless that this cul-de-sac has to be forced in at a time when Athey is not ready to retire and sell those lots. Schwartz urged that the Commission consider postponing that cul-de-sac until Athey is ready to put it in.

3. Lonnie Athey, 10701 Dawn Avenue, owning approximately 9 acres, testified in support. Two years ago he did agree to put in the cul-de-sac; otherwise, the road would have gone completely through his land. He moved to this address 18 years ago to raise his family and enjoy the country. He has no intention of selling off the lot until he retires and he is not ready to retire. He does not want to put in a rock cul-de-sac for no purpose at all. They would lose their flower garden and all the beautiful trees. When he retires, he will put in the cul-de-sac and sell the two lots. He doesn't plan to retire for 10 years.

Newman inquired whether this is the road that was vacated because there was a barn in the middle of the road. Athey confirmed that to be true. He removed half of the horse barn. The outlot cannot be built upon until he provides the cul-de-sac.

Carlson wondered why Athey bothered to subdivide when he wasn't ready to sell. Athey stated that he had to bring his plat in with Marlyn Schwartz so that the road would not be put through his property.

There was no testimony in opposition.

Staff questions

Newman inquired whether there is any way to condition the time extension to the point in time that Athey retires or subdivides and sells the property. Mike DeKalb of Planning staff indicated that the minimum improvements of a subdivision require that the road be put in within 2 years; however, they can ask for extension of time. Typically the extension is for two years, the intention being that the improvements be put in place so that the improvements are done when and if they decide to sell. This area has a long history in the sense that Ramona Circle was going to be extended and that was waived. Liberty Lane was probably a hodge-podge where you had dedications and extensions of waivers. It was never built. When it came around to the last bits of the subdivision coming into place where Silver Springs had to connect and the road had to be done, the landowners did not want the road and it was vacated. In that process it would have created a landlocked parcel. In order to resolve the landlocked parcels, the subdivision was approved showing the two lots and a cul-de-sac. The condition of subdivision is that cross-section improvements be put in place. The county has not picked up the maintenance because the road is not at county road standards.

DeKalb confirmed that there is a bond in place for the improvements.

Carlson inquired whether that obligation runs with the property in the event that it is sold. DeKalb believes it is still the obligation of the developer or the developer's heirs, successors and assigns. Then it passes on to the future property owner. That makes it even more complicated.

Steward inquired whether staff explored any alternatives with the owner as to the environmental issues that were raised about the tree mass. For example, is this the only location for the access? DeKalb observed that those trees would not have been there if Liberty Lane had been built. The trade-off was not to require Liberty Lane and remove the trees, but to require adequate frontage on the landlocked lots and this cul-de-sac was the minimum requirement.

Response by the Applicant

Carstens showed at the map how the property was originally platted. They could not meet design standards without the cul-de-sac. There is a certificate of deposit in the City Treasurers office guaranteeing the cul-de-sac.

DeKalb suggested that the cost of doing things does go up and if the time is extended we should probably upgrade the bonds and determine whether they are sufficient.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

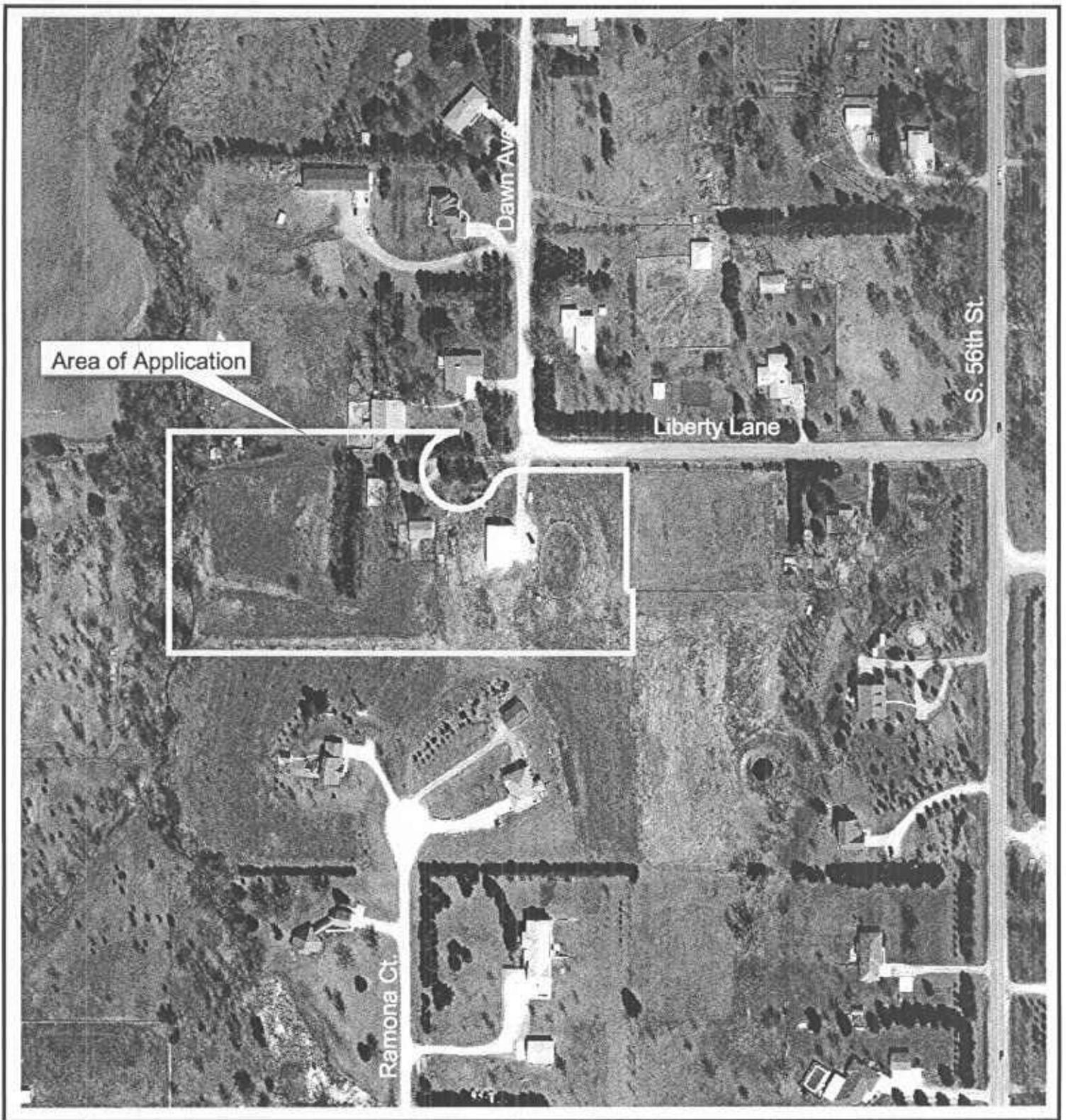
June 12, 2002

Carlson moved to approve the extension of time for 24 months with a condition that the bond amount be reviewed, seconded by Larson.

Newman believes she was one of the few people that voted against vacating Liberty Lane. She has mixed feelings about prolonging this for two years. She sees good sense in it but she respects staff's opinion and she can see some frustration here; however, she will support this motion.

Carlson is a proponent of connectivity and wants to make sure we don't get in a position of designing by default with houses being built, etc.

Motion for approval to extend the time for installation two years, with review of the bond amount, carried 8-0: Newman, Steward, Carlson, Duvall, Larson, Bills-Strand, Taylor and Schwinn voting 'yes'; Krieser absent.



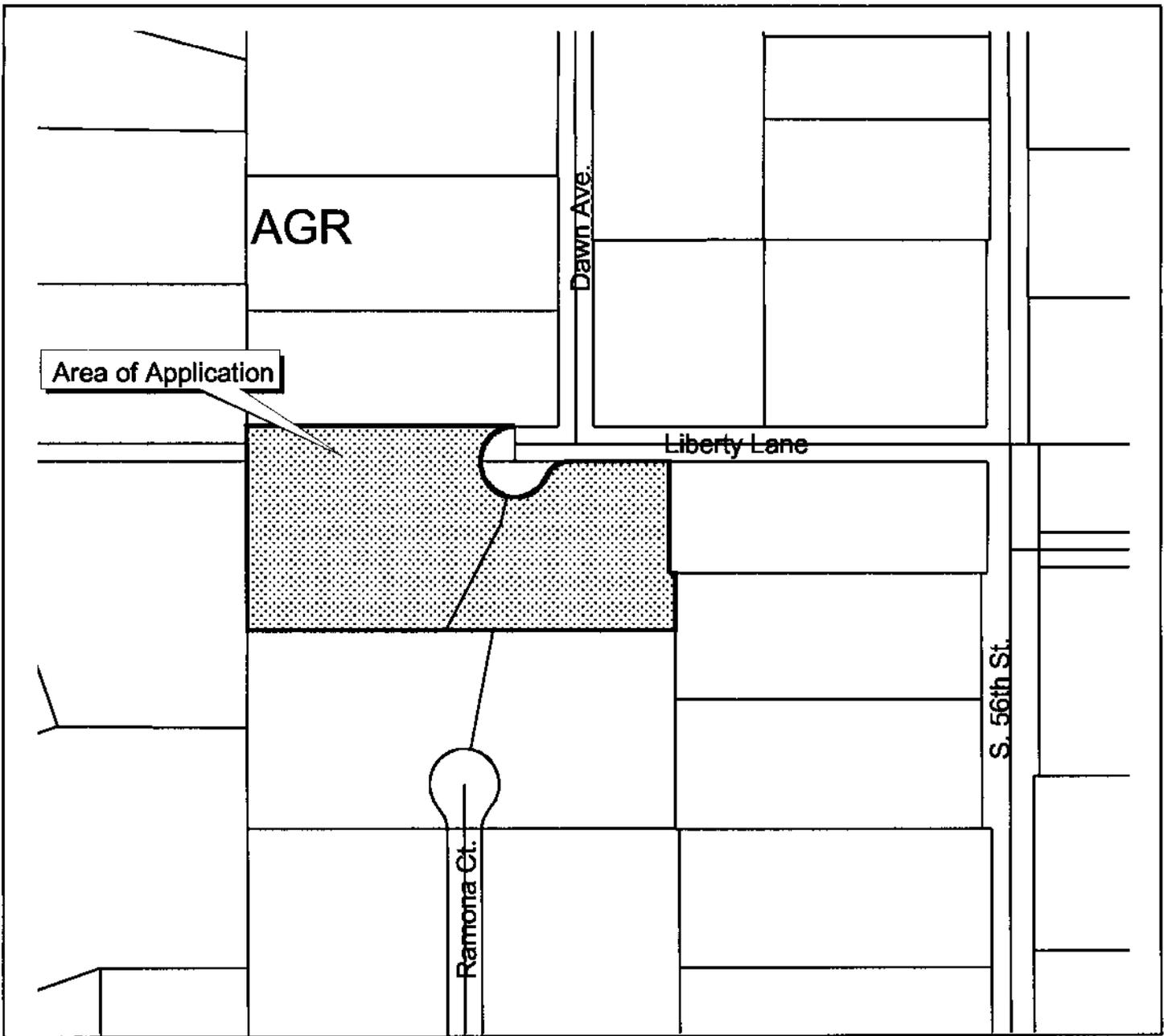
**Waiver of Design Standards #02008
Dawn Ave. & Liberty Lane**



008

Photograph Date: 1997

Lincoln City - Lancaster County Planning Dept.

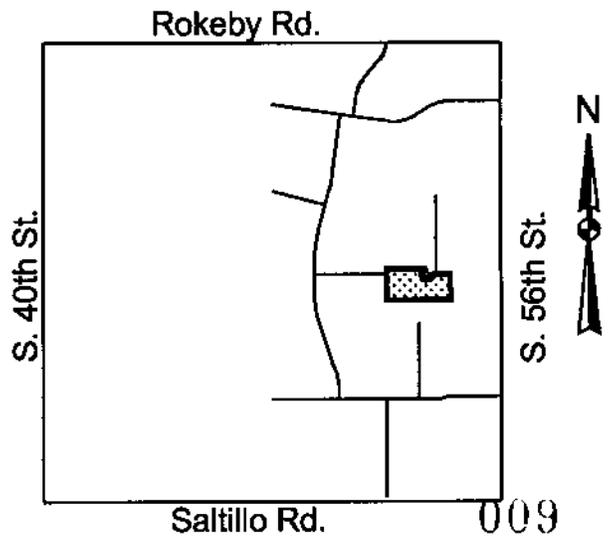
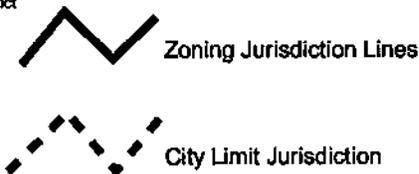


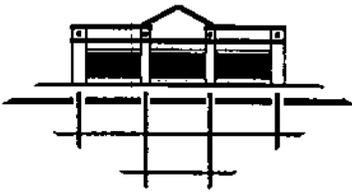
Waiver of Design Standards #02008 Dawn Ave. & Liberty Lane

Zoning:

R-1 to R-8	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. 32 T9N R7E





BRIAN D. CARSTENS AND ASSOCIATES
LAND USE PLANNING RESIDENTIAL & COMMERCIAL DESIGN
601 Old Cheney Road, Suite C Lincoln, NE 68512 Phone: 402.434.2424

May 13, 2002

Mr. Michael V. DeKalb, AICP
Planning Department
City of Lincoln/ Lancaster County
555 South 10th Street
Lincoln, NE 68508

RE: SILVER SPRINGS 4TH ADDITION - EXTENSION OF TIME FOR IMPROVEMENTS

Dear Mike,

On behalf of Lonnie Athey, I am requesting that the City of Lincoln extend the time for the installation of the required improvements required with the approval of the Silver Springs 4th Addition Final Plat.

The Final Plat of Silver Springs 4th Addition was filed at the Lancaster County Register of Deeds Office on 9/21/2000. Lonnie Athey posted two Certificates of Deposits, one in the amount of \$1,500.00 to guarantee the grading of Liberty Court, and one in the amount of \$1,050.00 for the rock, gravel, seeding, and one street name sign for Liberty Court.

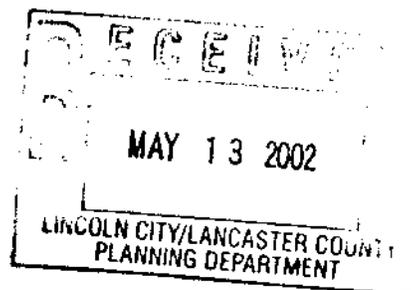
These improvements were to be completed within two years of the approval of the final plat. At this time, Lonnie Athey does not desire to sell off Lots 3 and 4, therefore, the installation of Liberty Court is not required. Lonnie would like to extend the time for these improvements for an additional 24 months or more if possible.

As you are aware, this plat was required with the approval of the vacation of Liberty Lane adjacent to the is property. Please feel free to contact me if you have any further questions.

Sincerely,

Brian D. Carstens

cc. Lonnie Athey



010

Lancaster

DON R. THOMAS - COUNTY ENGINEER

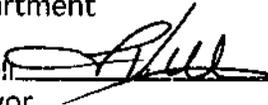
County

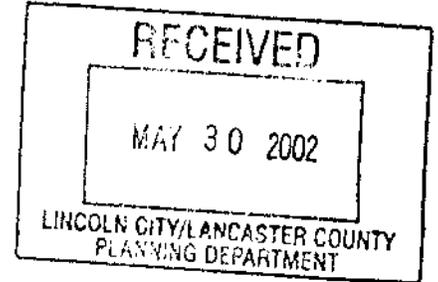
Engineering

Department

DEPUTY - LARRY V. WORRELL
COUNTY SURVEYOR



DATE: May 29, 2002
TO: Jason Reynolds
Planning Department
FROM: Larry V. Worrell 
County Surveyor
SUBJECT: APPLICATION NO. WDS 02008 REVIEW
(AMENDED)



Upon further consideration, this street construction postponement has been for a number of years. This office would not recommend any further days.

delays

LVW/cm

SUBDIV.WK/WDS 02008 Review.Mem

011

SPRINGS

ADDITION

BREEZY

PROPOSED R.O.W. VACATION

2 ACRES

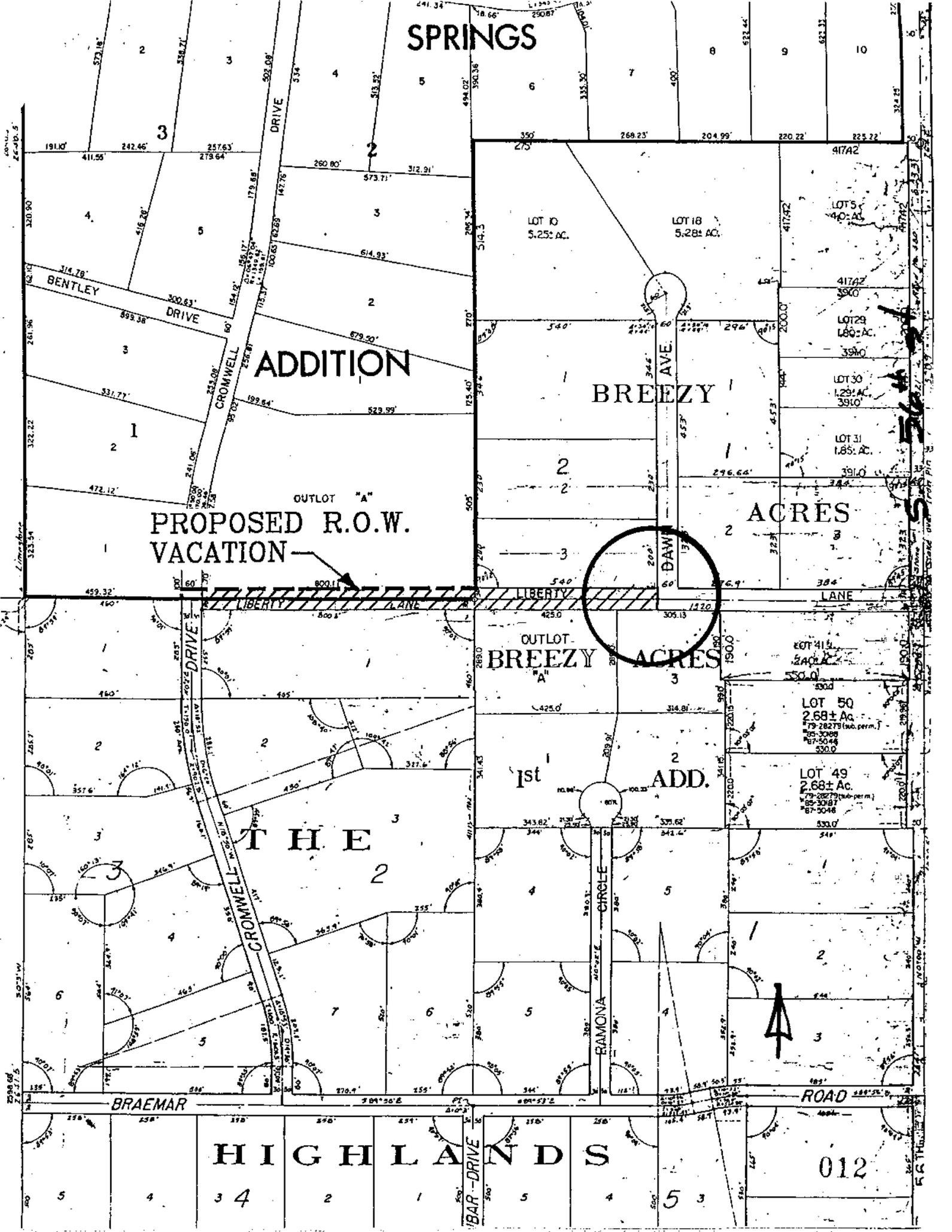
OUTLOT BREEZY ACRES

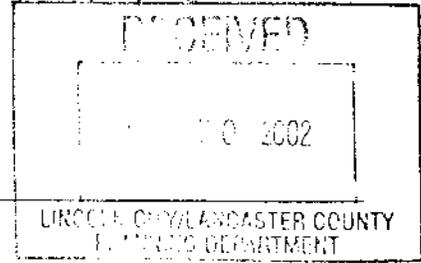
THE

1st ADD.

HIGHLANDS

012





M e m o r a n d u m

To: Jason Reynolds, Planning

From: *D* Dennis Bartels, Engineering Services

Subject: Silver Springs Estates Time Extension

Date: May 16, 2002

cc: Roger Figard
Randy Hoskins
Nicole Fleck-Tooze
Larry Worrell

The developer has requested a time extension of 2 years to the subdivision ordinance requirement to grade and surface Liberty Court. The lots are created and can be sold at any time, I do not see any logic to extending the completion of improvements.