

FACTSHEET

TITLE: **COMBINED PRE-EXISTING USE PERMIT/SPECIAL PERMIT NO. 10A**, requested by Design Associates of Lincoln, Inc., on behalf of Flowerview Associates, to reduce setbacks due to the right-of-way acquisition along "O" Street and North 66th Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 06/25/03
Administrative Action: 06/25/03

STAFF RECOMMENDATION: Denial.

RECOMMENDATION: Conditional Approval (8-0: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn voting 'yes').

FINDINGS OF FACT:

1. This application seeks to revise the boundary of the pre-existing use permit/special permit to reduce the setbacks due to the street widening project on "O" Street and North 66th Street.
2. The staff recommendation to **deny** this application is based upon the "Analysis" as set forth on p.3-4, concluding that the buildings in question were constructed in accordance with B-5 standards prior to the widening of "O" Street and North 66th Street. With the street widening, the front yard setback was reduced below 50', making the buildings non-standard. The applicant was awarded \$275,381 for damages, which staff had been led to believe included the building becoming non-standard and any rebuilding needing to be set back at 50 feet. Staff suggested that, having compensated the owner, any rebuilding should comply with the front yard standards, which are intended to promote green space along the City's major corridors.
3. The applicant's testimony is found on p.7-8, explaining that this application pertains to Hollywood Video, DaVinci's and the northerly portion of the strip mall along 66th Street. Several right-of-way takings have rendered three building pad sites to be in noncompliance with design standards. The attorney representing the applicant in the condemnation proceedings advised that the \$275,000 in damages did not include any compensation for the nonstandard status and is currently on appeal. The applicant will withdraw the appeal in the condemnation if this amendment to the special permit/use permit is approved. (See Minutes, p.7-8).
4. Margaret Blatchford, Assistant City Attorney handling the condemnation proceedings, advised that the City Law Department believes that this application should be approved, acknowledging that this amendment was offered to the applicant during the condemnation appeal negotiations. (See Minutes, p.8). The letter submitted by Ms. Blatchford on June 19, 2003, is found on p.17.
5. There was no testimony in opposition.
6. The Planning Commission discussion with staff is found on p.8-9.
7. On June 25, 2003, the Planning Commission disagreed with the Planning staff recommendation and voted 8-0 to recommend conditional approval, based upon the testimony of the City Attorney and the agreement by the applicant to withdraw the condemnation appeal (See Minutes, p.8-9). The conditions of approval are found on p.4-5.
8. The Site Specific conditions of approval required to be completed prior to scheduling this application on the City Council agenda have been satisfied. In view of the new information presented at the Planning Commission on the status of the condemnation proceedings, Planning staff withdraws the recommendation of denial and supports the Law Department's recommendation of approval.
9. Note: The applicant has submitted a letter of appeal to Condition #3, which requires the submittal of a surety to guarantee the landscaping south of Pad 1, with the amount of the surety to be determined by the Parks and Recreation Department (See p.18).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: August 4, 2003

REVIEWED BY: _____

DATE: August 4, 2003

REFERENCE NUMBER: FS\CC\2003\PEUPSP.10A

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for June 25, 2003 PLANNING COMMISSION MEETING

- P.A.S.:** Combined Pre-Existing Use Permit/Special Permit #10A
- PROPOSAL:** Revise the boundary of the Use Permit to reflect right-of-way acquisition along "O" St and N. 66th St. Reduce front yard setback for pads 1, 4 and 6. Correct the site plan in the parking area located north of Pads 3 & 7.
- LOCATION:** N. 66th St. and "O" St.
- LAND AREA:** 19.47 acres, more or less
- CONCLUSION:** The buildings in question were constructed in accordance with B-5 standards prior to the widening of "O" St. & N. 66th St. With the street widening the front yard setback was reduced below 50', making the buildings non-standard. The applicant was awarded \$275,381.00 for damages, which included the buildings becoming non-standard. Any rebuilding should comply with the front yard standards, which are intended to promote green space along the City's major corridors.

RECOMMENDATION:	Denial
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GENERAL INFORMATION:

- LEGAL DESCRIPTION:** see attached
- EXISTING ZONING:** B-5, Planned Regional Business District.
- EXISTING LAND USE:** Commercial--East Park Plaza
- SURROUNDING LAND USE AND ZONING:**

North: I-1, Industrial
South: B-1, Local Business District
East: B-5, Planned Regional Business District
West: B-5, Planned Regional Business District

HISTORY:

September 9, 1996 Combined Pre-Existing Use Permit/Special Permit No. 10 to increase the number of theater screens and add 6,656 square feet of retail was approved by City Council.

The zoning for this area was changed from “G” Local Business to B-5 Planned Regional Business in the 1979 zoning update and designated as Pre-Existing Use Permit No. 1.

COMPREHENSIVE PLAN SPECIFICATIONS: The 2025 Comprehensive Plan shows this area as commercial.

General Principles for all commercial uses include:

“so that they enhance entryways or public ways corridors, when developing adjacent to these corridors.”

“in a manner that supports the creation and maintenance of green space as indicated in the environmental resources section of this Plan.” (F38)

Make “greenspace” an integral part of all environments--“Green space” can come in a wide variety of forms. The policies of the Comprehensive Plan strive to incorporate such uses in the full range of urban and rural landscapes. (F37)

Prevent the creation of a “wall-to-wall city” through the use of green space partitions– As cities and villages expand, establishing corridors and districts of green should be part of the growth process. (F57)

Buildings should be compatible in terms of height, building materials and setback. Buildings with more intrusive uses should have greater setbacks, screening requirements and be built of more compatible materials. (F42)

TRAFFIC ANALYSIS:

“O” Street is classified as a principal arterial. “O” St. is currently under construction to become 6 lanes plus turn lanes.

N. 66th Street is classified a minor arterial. N. 66th St. from “O” St. to “Q” St. is currently under construction to become 4 lanes plus turn lanes.

ANALYSIS:

1. This application is to reduce setbacks due to the street widening project on “O” Street and N. 66th Street.
2. Due to the street widening of “O” Street and N. 66th Street, the distance from the existing buildings to the property line has been reduced to less than the required 50 feet.
3. The applicant is requesting to retain all rights to remodel, renovate, reconstruct or replace these buildings within the existing building envelope or within building envelopes located an equal distance from the public right-of-way as the existing envelopes.
4. This area is zoned B-5. The B-5 zoning district requires a 50' front yard. The required front yard shall be entirely landscaped.

5. The applicant's letter states that the front yard setback for Pad 4 was reduced due to right-of-way acquisition. The building on Pad 4 was built less than 50' from the front property line and became nonstandard when this area was rezoned to B-5.
6. The right-of-way acquisition resulted in Pads 1&6 becoming nonstandard. Lincoln Municipal Code §27.03.460 defines nonstandard use as follows:

Nonstandard use shall mean the category of nonconformance consisting of lots occupied by buildings or structures or uses which existed immediately prior to the effective date of this title or which become nonstandard through a change in the zoning ordinance or district boundaries that fail to comply with any of the following: minimum lot requirements for the area, density, width, front yard, side yard, rear yard, height, unobstructed open space, or parking for the district in which they are located, even though the use of the premises conforms to the permitted uses within the district as set out in the provisions of this title.
7. The applicant was awarded \$275,381.00 in damages resulting from the street widening project. The City acquired approximately 7,927 square feet of property for the street widening.
8. The 2025 Comprehensive Plan encourages open space and green space along major corridors. More intrusive buildings within Commercial Centers should have greater setbacks and screening requirements.
9. Landscaping should be increased proportionately to the reduced setback.
10. The new boundary reflects the property line after right-of-way acquisition.
11. The request to amend the parking layout reflects the actual parking stalls on site
12. The landscape plan has not changed from the previously approved plan. However, some of the landscaping shown adjacent to Pad 1 has been removed. The landscaping that has been removed should be replanted.

If the City Council chooses to approve this application the following conditions should apply.

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:

- 1.1 Revise the site plan to show:

- 1.1.1 The correct property line along "O" St. and N. 66th St. There are several areas where dual property lines are shown.
 - 1.1.2 Delete the cloud around the parking area east of Pad 5 & 6.
 - 1.1.3 Delete the cloud around "Pad 7".
 - 1.1.4 Increase the amount of landscaping shown on the site plan adjacent pad site 1 by 26 percent.
 - 1.1.5 Delete the reference to Original Use Permit No.1 and Actual Stalls to Date from Parking Stall Totals table.
2. This approval permits a reduction in front yard setback for Pad 1 to 37'; Pad 4 to 44' and a portion of Pad 6 as shown on the site plan to 33'.
3. Submit a surety to guarantee the landscaping south of Pad 1, the amount of the surety to be determined by Parks and Recreation Department.

STANDARD CONDITIONS:

4. The following conditions are applicable to all requests:
 - 4.1 All development and construction shall have been completed in compliance with the approved plans.
 - 4.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established property owners association approved by the City Attorney.
 - 4.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 4.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 4.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.
5. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Tom Cajka
Planner

DATE: June 12, 2003

APPLICANT: Flowerview Associates
99 Park Avenue
New York, NY

OWNER: same as applicant

CONTACT: J.D. Burt
Design Associates
1609 "N" St.
Lincoln, NE 68508

COMBINED PRE-EXISTING USE PERMIT/ SPECIAL PERMIT NO. 10A

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 25, 2003

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

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Proponents

1. J.D. Burt of Design Associates, 1609 N Street, appeared on behalf of Kimberly Carbullido, representing the owner. Burt explained that there have been several right-of-way takings adjacent to East Park that have rendered three building pad sites to be in noncompliance with design standards, i.e. Hollywood Video, DaVinci's and the northerly portion of the strip mall along 66th Street. During the right-of-way takings the owners were of the understanding there would be no difficulty rebuilding any one of these sites upon damage by fire or for remodeling. They have since become aware that that may not be true. The intent of this application was to validate the existing building envelopes and allow the owner to reconstruct in a similar fashion to what they have today in the event there was some sort of disaster that required reconstruction.

Having reviewed staff comments, Burt indicated that he understands the landscaping requirements, although he is not sure the owner agrees.

Larson sought to clarify that this action is just to make it possible to reconstruct these buildings with the same setbacks if they are destroyed by any reason. Burt used Hollywood Video as an example--if that building was rendered inhabitable or needed to be replaced, they could not build the building in the same location because of the right-of-way taking. If they are required to move the building back by the 13' taken as part of the right-of-way project, they will lose parking stalls and they end up with a piece of real estate that cannot be used in the same fashion. He is not certain how the value came to \$275,000, but the desire is to be able to build what exists today.

2. Kim Carbullido, attorney for the applicant, acknowledged that the owner did receive compensation of approximately \$275,000, although that is on appeal. This compensation is a result of the taking. The amount did not include any type of compensation for rendering the building as "nonstandard". The owner had been told by a representative during the takings hearing that a special use permit such as this request, as far as they knew, had never been denied. The owner wants to be made whole again and the desire is to be able to use the buildings in the manner as originally intended, and in the event there is destruction, they want to rebuild. The \$275,000 did not include any compensation for the nonstandard status, and it also did not include a taking that is just north on 66th Street.

Carbullido further stated that the applicant has stated that if this permit is approved, the appeal to the City for compensation for the nonstandard use will be withdrawn.

Schwinn referred to the landscaping issue. There was currently landscaping in place. Did you lose landscaping with the street widening? Burt was not sure. Carbullido believes that approximately \$5,000 was awarded for landscaping. Burt has not seen the plans and he is not sure whether that \$5,000 for landscaping was specific to landscaping adjacent to pad 1 or landscaping along 66th Street. From the applicant's perspective, if they can be made whole and plant a few more bushes, they would like to do that.

Support

1. Margaret Blatchford, Assistant City Attorney, appeared on behalf of the City Attorney and as representative of the city in the condemnation. She stated that the City Law Department is recommending approval of this action. Condemnation presents a unique situation and can create a hardship to those property owners. She believes this application is the proper remedy.

Steward wondered whether there is a circumstance that as long as they use the building and/or the building is changed in some manner beyond their control, that they have the authority to rebuild, but if it changes for any other use or there is any other action, it seems that approval of this would negate a future unpredictable circumstance on behalf of the property owner rather than the city. Blatchford responded that the condemnation has reduced their front yard requirements and they will not be able to rebuild or enlarge unless they have a variance to this use permit. Whether planning has historically recognized that in the past, she does not know. But she believes the attorney for the condemnee was correct in saying that we did offer that as a solution.

There was no testimony in opposition.

Staff questions

Steward asked staff to respond to his concern about future circumstances upon rebuilding. Ray Hill of Planning staff offered that if for any reason the setback is changed by action of the city, either by changing the zoning ordinance or by the taking or by the acquisition, the property line changes and then it changes the setback. In the past, this has been determined to create a nonstandard use because of the fact that it was originally correct and then changed by ordinance or the acquisition of right-of-way.

It falls under the nonstandard provision, i.e. if the building is completely restored, it must comply with the setbacks of that district. Steward understands the technicality of the nonstandard use; however, he is searching for a process that recognizes the property owner's interest and the city's desire. Rick Peo of the City Law Department stated that there is a lot of historical precedence of granting these types of situations. Frequently, when expanding the right-of-way of arterials, we look for 60' vs. 50'. We negotiate with the developer--if they give 50' voluntarily, we reduce the required setback as a tradeoff. He believes that is analogous to this situation. We want to avoid increasing damages for which we have to offer compensation to make the parties whole. Here you have a use permit that you are authorized to modify so he believes it is straight forward. Frequently, we have to argue that the city has never denied a special permit to rebuild or reconstruct a nonstandard or nonconforming use. If this use permit application is denied, it is kind of implied that we would deny a special permit if that

situation would arise and we would be more inclined to have to pay compensation. He believes there is background and there are principles to support this proposal.

Schwinn believes Steward is trying to get to the point that if one building burns down or gets damaged in a flood, they need to be able to rebuild, but by changing the special permit, are we giving the permission for them to tear those buildings down and build something different with the same setbacks. Peo's response was that the pad sites have been approved and they would have to amend the use permit to change the pad sites.

Larson confirmed that there has already been compensation for taking the right-of-way. Peo stated that it is on appeal at this time. The condemnees have indicated that they would not seek the additional loss for nonstandard use if this permit is granted.

Schwinn wondered whether the agreement to withdraw the appeal needs to be listed as one of the conditions of approval. Carbullido stated that she does have a letter from her client that states if this permit is approved, they will withdraw the appeal. Peo does not believe there needs to be a condition per se.

Carlson commented that it's the use permit that gives the Planning Commission and City Council latitude to be specific about the pad sites and their location. This permit allows reduction of front yard setback. Is that carte blanche? Is there something that differentiates between existing building and proposed new building? Peo stated that nonconforming and nonstandard uses are allowed to remain and exist as they are, but cannot be reconstructed or extended unless they comply with the code, except that there is a special permit provision to allow a nonconforming use to be reconstructed notwithstanding violation of the zoning code. That's kind of a "wait and see" application. Peo further clarified that if the use permit is amended, the building envelope is reduced to a reduced setback, so that they could come in automatically and rebuild at the same place they are today.

Response by the Applicant

Burt further added that through the years, there has been the practice to accept public access and utility easements in lieu of right-of-way for the same purpose. If this had not gone through condemnation, we would not be here today.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

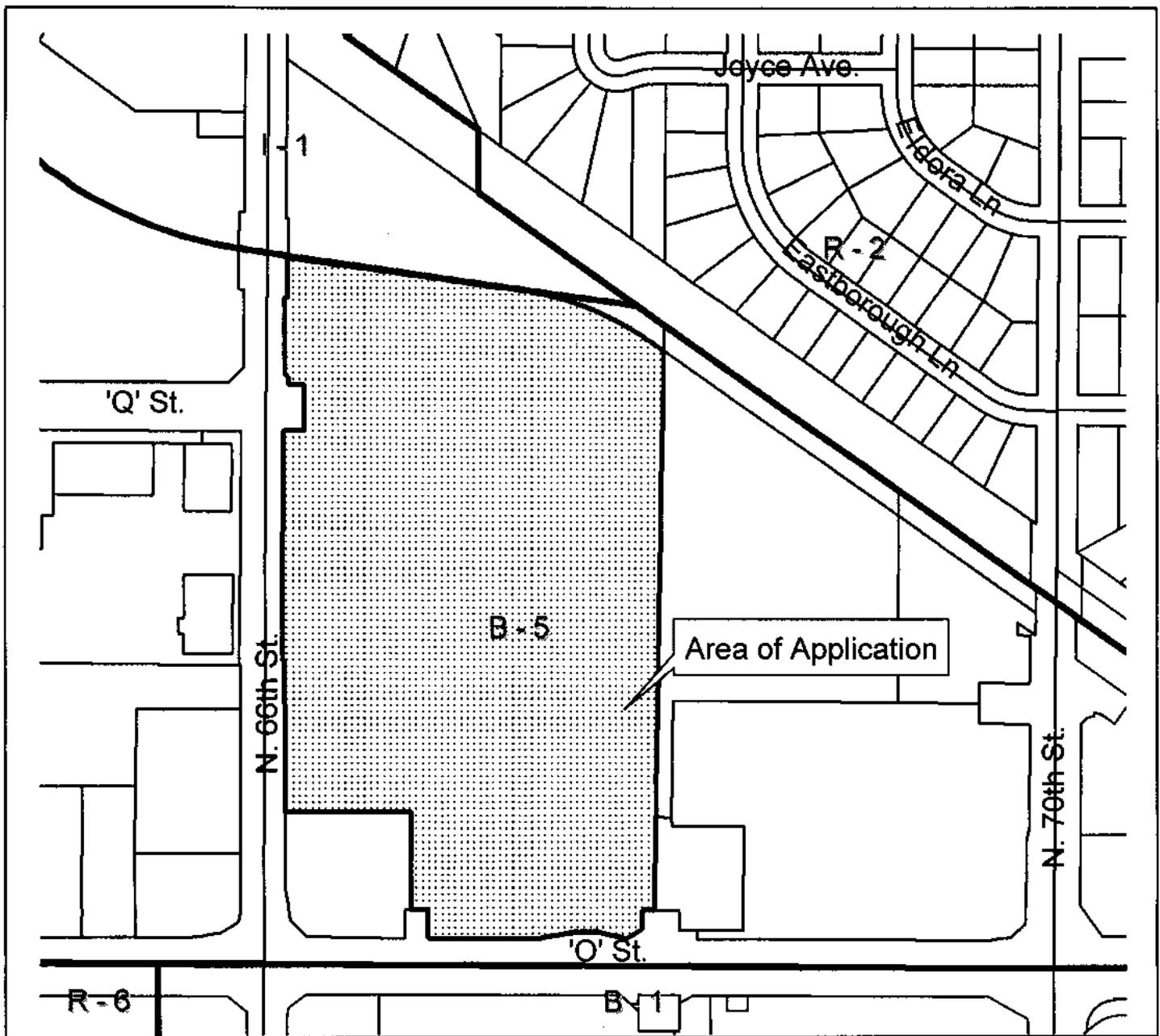
June 25, 2003

Bills-Strand moved approval, with conditions, seconded by Larson and carried 8-0: Steward, Bills-Strand, Larson, Krieser, Duvall, Carlson, Taylor and Schwinn voting 'yes'.



Combined Pre-Existing Use Permit/ Special Permit #10A
66th & 'O' St.
East Park Plaza



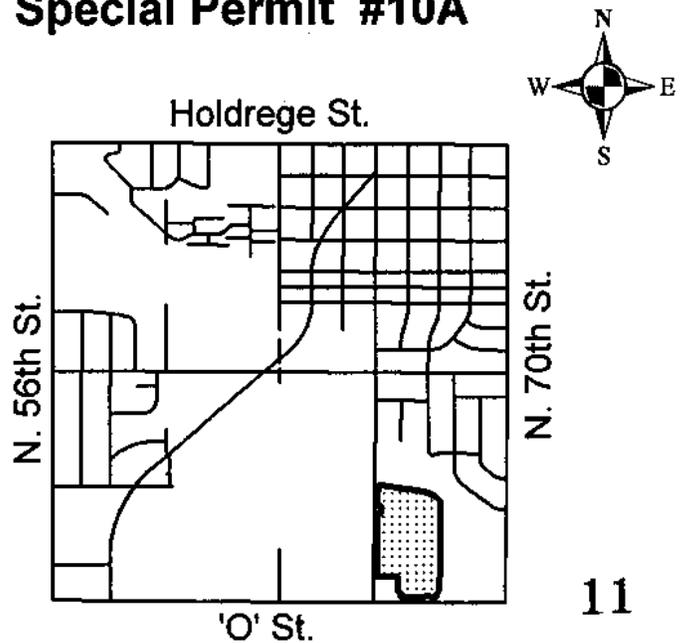
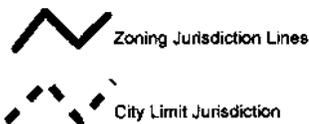


Combined Pre-Existing Use Permit/ Special Permit #10A
66th & 'O' St.
East Park Plaza

Zoning:

One Square Mile
 Sec. 21 T10N R7E

- 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

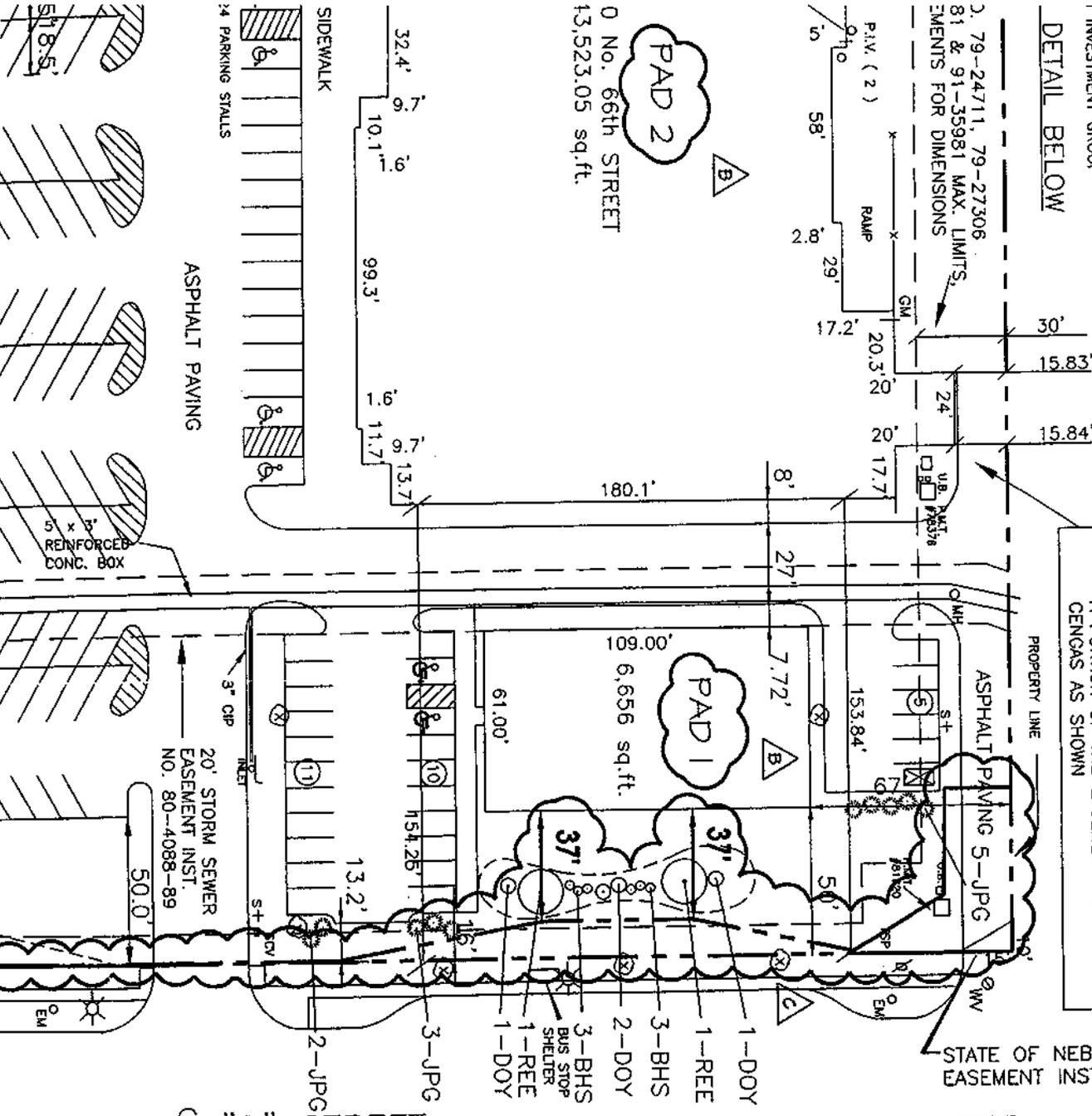


OT 245 LT.
 INVESTMENT GROUP

DETAIL BELOW

2. 79-24711, 79-27306
 81 & 91-35981 MAX. LIMITS.
 DIMENSIONS FOR DIMENSIONS

0 No. 66th STREET
 13,523.05 sq.ft.



NOTE: FREEZER ENCLOSURE AT SOUTHEAST CORNER OF RUSS'S B & R IGA OCCUPIES A PORTION OF THE EASEMENT TO CENGAS AS SHOWN

STATE OF NEBRASKA R-1
 EASEMENT INST. NO. 70-

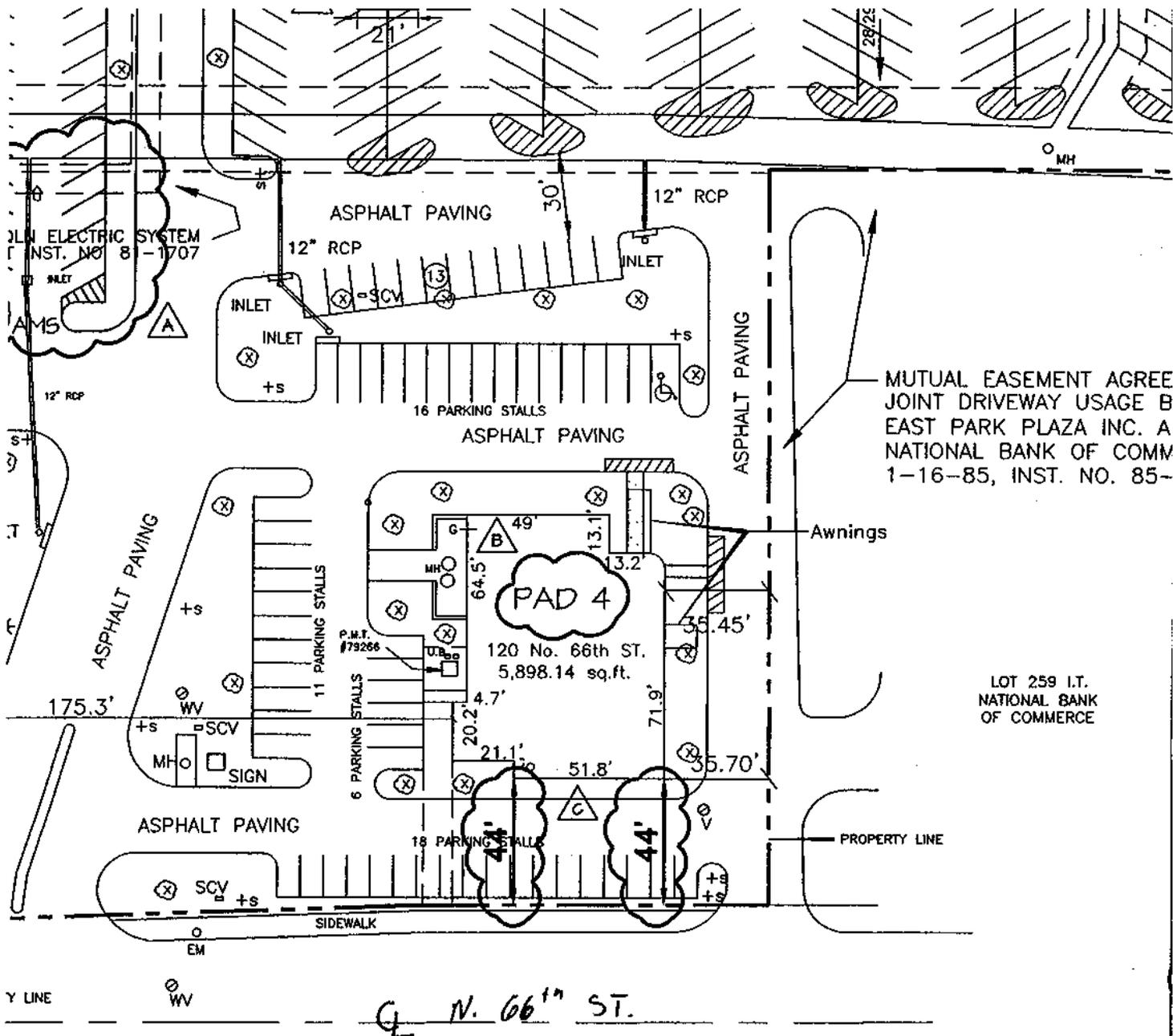
SCALE : 1" = 50'

LEGEND

- PP = POWER POLE
- LP = LIGHT POLE
- TSP = TRAFFIC SIGNAL POLE
- PMT = PAD MOUNTED TRANSFORMER
- FH = FIRE HYDRANT
- WV = WATER VALVE
- GV = GAS VALVE
- GM (#) = GAS METER (# OF)
- (T) = TREE
- (C) = CORNERS FOUND AS NOTED
- (R) = CORNERS SET, #5 REBAR & LS #483 CAP
- M = MEASURED
- P = PLATTED
- UB = UTILITY BOX
- +S = SIGN
- (B) = HANDICAPPED PARKING STALL
- (MH) = MANHOLE
- (EM) = ELECTRICAL MANHOLE
- VCP = VITRIFIED CLAY PIPE
- RCP = REINFORCED CONCRETE PIPE
- CIP = CONCRETE IRON PIPE

1) BASE LAND USE AND LANDSCAPE PLAN AS PREPARED BY ROSS ENGINEERING, INC.

2) FRONT YARD SETBACKS ARE HEREBY REDUCED TO THE DIMENSIONS SHOWN FOR EXISTING BUILDINGS THAT ARE A RESULT OF RIGHT-OF-WAY ACQUISITIONS BY CITY OF LINCOLN FOR STREET WIDENING PURPOSES.



MUTUAL EASEMENT AGREE
 JOINT DRIVEWAY USAGE B
 EAST PARK PLAZA INC. A
 NATIONAL BANK OF COMM
 1-16-85, INST. NO. 85-

LOT 259 I.T.
 NATIONAL BANK
 OF COMMERCE

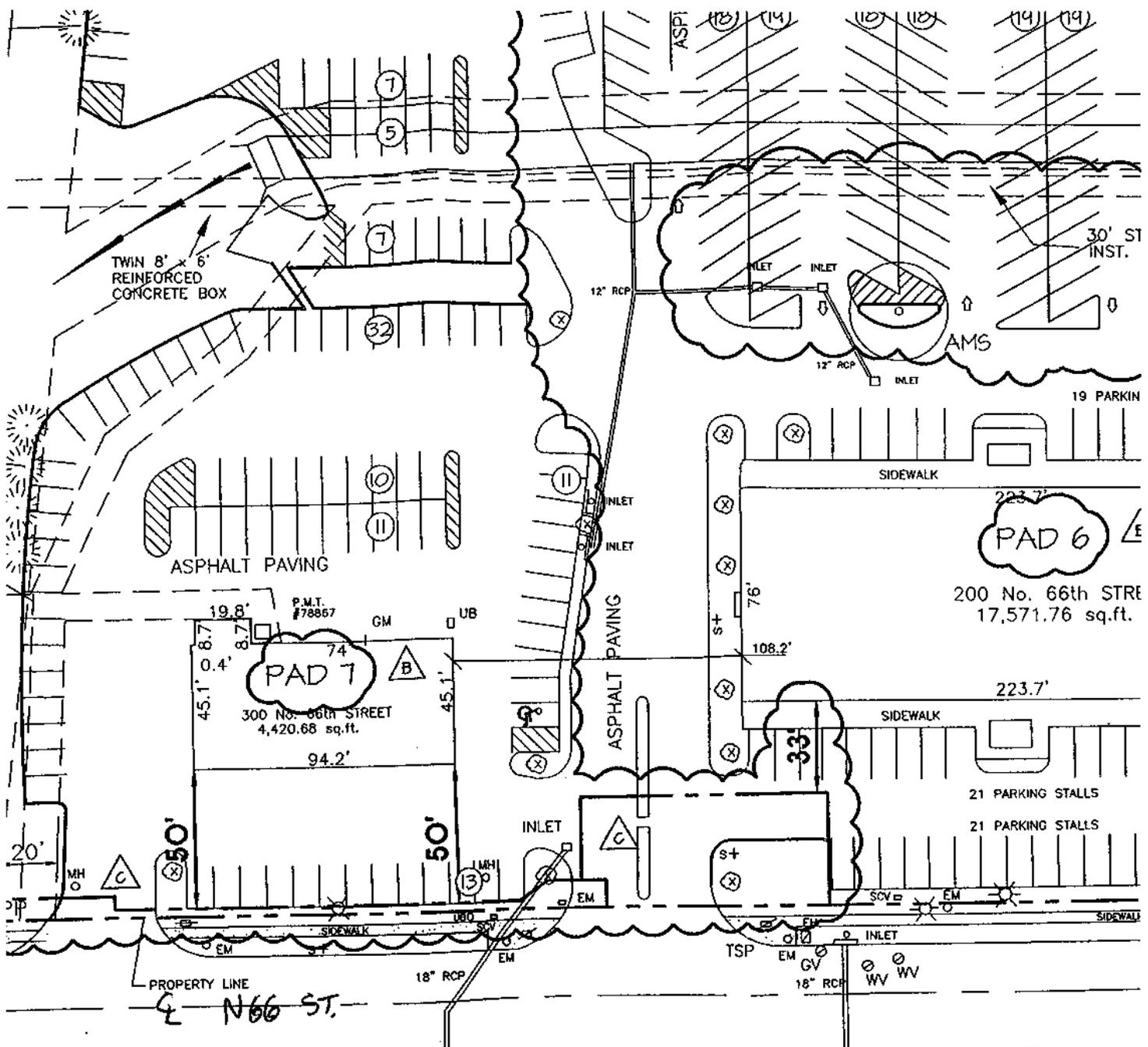
Q. N. 66th ST.

ROSS ENGINEERING
 OF SECTION 21, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH PRINCIPLE MERIDIAN, LINCOLN, LANCASTER COUNTY, NEBRASKA,

LET NORTHERLY FROM THE INTERSECTION OF THE CENTERLINE OF 66TH STREET WITH THE CENTERLINE OF 'O' STREET; THENCE ON AN
 FEET TO THE CENTERLINE OF THE CHANNEL OF DEAD MAN'S RUN; THENCE S 83° 07'01" E, A DISTANCE OF 445.00 FEET TO A POINT
 HORD BEARS S 70°29'44" E, AND WHOSE CHORD LENGTH IS 312.99 FEET, TO A POINT ON A LINE MIDWAY BETWEEN THE CENTERLINE
 IT QUARTER; THENCE S 0° 03'31" E, WITH THE EAST LINE OF LOT 199, IRREGULAR TRACTS, A DISTANCE OF 1147.63 FEET TO A POINT
 SOUTHEAST QUARTER; THENCE S 89° 49'34" W, A DISTANCE OF 440.0 FEET; THENCE N 0°07'01" W, A DISTANCE OF 55.0 FEET; THENCE
 W, A DISTANCE OF 185.0 FEET; THENCE WESTERLY PARALLEL WITH THE SOUTH LINE OF THE SAID SOUTHEAST QUARTER, A DISTANCE
 E CENTERLINE OF 66TH STREET; THENCE NORTHERLY PARALLEL WITH AND 40.75 FEET EASTERLY FROM THE CENTERLINE OF 66TH
 A DISTANCE OF 172.59 FEET TO A POINT 35.0 FEET EASTERLY, FROM THE CENTERLINE OF 66TH STREET; THENCE WESTERLY A
 NING 19.65 ACRES, MORE OR LESS.

Y TAKING.
 AID LOT 260, THENCE SOUTHEASTERLY ALONG THE NORTH LINE OF SAID LOT A DISTANCE OF 8.06 FEET TO A POINT 8.0 FEET EAST
 UTHERLY ALONG A LINE PARALLEL TO THE WEST LINE OF SAID LOT A DISTANCE OF 71.39 FEET, THENCE WESTERLY ALONG A LINE
) FEET, THENCE SOUTHERLY ALONG A LINE PARALLEL TO THE WEST LINE OF SAID LOT A DISTANCE OF 146.0 FEET THENCE
 TANCE OF 12.21 FEET TO A POINT 10.0 FEET EAST OF AND NORMAL TO THE WEST LINE OF SAID LOT A DISTANCE OF 21.0 FEET,
 : OF SAID LOT A DISTANCE OF 10.0 FEET TO THE POINT OF INTERSECTION WITH THE WEST LINE OF SAID LOT, THENCE ALONG THE
 TRACT CONTAINS 1,336 SQUARE FEET, MORE OR LESS.

I.T.; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 260, I.T. A DISTANCE OF 440.33 FEET; THENCE NORTH ALONG A LINE WHICH
 RSE, A DISTANCE OF 0.37 FEET; THENCE EAST ALONG A LINE WHICH DEFLECTS 89°50'44" RIGHT FROM THE LAST DESCRIBED COURSE
 NE WHICH DEFLECTS 9°55'11" LEFT FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 69.66 FEET; THENCE EAST ALONG A LINE
 A, A DISTANCE OF 50.85 FEET; THENCE SOUTHEASTERLY ALONG A LINE WHICH DEFLECTS 12°00'00" RIGHT FROM THE LAST
 RTHEASTERLY ALONG A LINE WHICH DEFLECTS 40°54'16" LEFT FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 35.65 FEET;
 FT FROM THE LAST DESCRIBED COURSE. A DISTANCE OF 36.20 FEET; THENCE EAST ALONG A LINE WHICH DEFLECTS 90° RIGHT FROM



LANDSCAPE SCHEDULE

ABBR.	COMMON NAME	BOTANICAL NAME	PLANTING SIZE	MATURE SPREAD	HEI
PIS	Pine, Scotch	<i>Pinus sylvestris</i>	4' - 5'	15'	
AMS	Marshall's Seedless Ash	<i>Fraxinus pennsylvanica</i> "M.S."	1.5" cal	35'	
REE	Redbud, Eastern	<i>Cercis canadensis</i>	5' - 6'	15'	
DOY	Dogwood, Yellowtwig	<i>Cornus sericea</i> "Flaviramea"	2' - 3'	5'	
BHS	Bushhoneysuckle	<i>Diervilla lonicera</i>	2' - 3'	3'	
JPG	Juniper, Goldtip Pfitzer	<i>Juniperus chinensis</i> "Goldtip"	18" - 24"	6'	
AMS	Marshall's Seedless Ash	<i>Fraxinus pennsylvanica</i> "M.S."	1.5" cal	35'	
5 TREES TO BE PLANTED TO REPLACE 5 TREES BEING REMOVED					

Trees Shall Be Staked And Guyed Immediately



4" Water Basin Around Shrub



2" Mulch

Backfill With Soil/Mulch Mixture

- A PARKING REVISIONS NOV. 5, 2002
- B CITY REVIEW COMMENTS JAN. 8, 2003
- C REVISED BOUNDARY RE: ROW TAKING. O

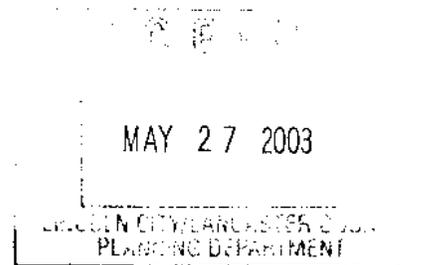


**Design
Associates** *of Lincoln, Inc.*

Pershing Square
1609 'N' Street
Lincoln, NE 68508
Phone: (402) 474-3000 • Fax: (402) 474-4045

May 27, 2003

Marvin Krout
Lincoln/Lancaster County Planning Department
555 South 10th Street
Lincoln, Nebraska 68508



RE: Administrative Amendment
Pre-Existing Use Permit/Special Permit
East Park Plaza
66th and "O" Street

Mr. Krout,

Attached for review and approval, please find six (6) copies of a proposed amendment to the reference development. This amendment requests approval of minor changes to the approved plan for East Park Plaza. The proposed changes to the plan are identified as Revision "C". These revisions are as follow:

Boundary.

This amendment is being requested to revise the boundary of the approved site plan to reflect right-of-way acquisitions along the property's "O" Street and 66th Street frontage that were necessary to accommodate recent street widening projects. These acquisitions are located at the north approach of 68th Street at "O" Street; along the entire "O" Street frontage; along the 66th Street frontage adjacent to Pads 4 and 7; and at the east approach of "Q" Street at 66th Street.

Required Setbacks.

This amendment proposes to identify and formalize setback requirements along the property's "O" Street and 66th Street frontages that have been reduced as a result of right-of-way acquisition by the city. The referenced right-of-way acquisitions have resulted in the reduction of front yard setbacks for Pads 1, 4 and 6 to 37', 44' and 33', respectively, from the 50' required setback of the zoning district that was required and provided at the time these buildings were constructed.

It is the desire of the property owner to retain all rights to remodel, renovate, reconstruct or replace these buildings within the existing building envelopes or within building envelopes located an equal distance from the public right-of-way as the existing envelopes.

Parking.

This amendment also requests corrections to the site plan in the parking area located north of Pads 3 and 7. During preparation of the attached site plan, variations in dimension of the site plan and platted property lines were discovered. Field investigation revealed the parking area within the limits of the amendment did not correspond with the approved site plan. The attached plan shows the measured limits of the parking area and existing parking stall count.

This variation in the northerly portion of the site has resulted in a reduction of parking stalls on the site as shown on in the Building and Parking Stall Summary. This reduction of 32 stalls from 1,229 to 1,197 stalls continues to exceed the city minimum requirement of 1,184 stalls.

Landscaping.

No changes are proposed to the approved landscape. However, landscaping within the limits of the revised parking area has been relocated to reflect revisions to the site plan.

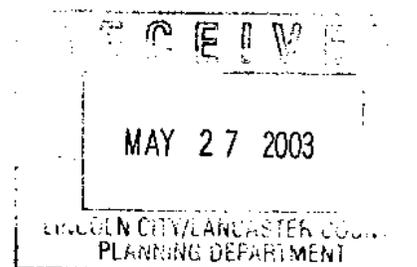
Thank you in advance for your favorable consideration to the proposed revisions to the East Park Plaza development plan.

Please advise if additional information is desired for approval of this request.

Sincerely,



J.D. Burt
For the firm



Lincoln



Nebraska's Capital City

cc: Planning Commission
Applicant
Public Works

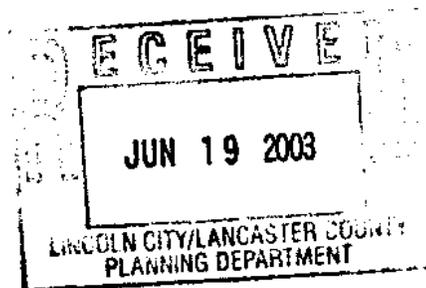
June 19, 2003

TO: Lincoln City/Lancaster County Planning Commission
FR: Margaret Blatchford, Assistant City Attorney *MB*
RE: Request for Special Use Permit #10A at N. 66th St and O St.

In the Planning Staff Report regarding your consideration of a use permit request for the above property, the report indicates that a request has been made to reduce the front yard setback for pads 1, 4, and 6 due to a condemnation action that reduced the distance between the public right of way and Hollywood video to less than the required 50 feet setback.

The report indicates that the applicant was awarded \$275,381.00 in damages resulting from the street widening project. However, that is not an entirely accurate statement in the sense that the award has been appealed to Lancaster County District Court and said award is now a matter of litigation. The applicant has claimed that the award is inadequate because it does not accurately reflect the amount of damages to the remainder of the property due to the taking and, thus, the particular issue of whether or not the reduction in the setback requirements affects the fair market value of the property in a more intrusive manner will be an issue of damages on appeal. The applicant has also claimed that since the building will no longer be in compliance with the front yard requirements, the issuance of any building permit for enlargement, extension or reconstruction abutting O Street which does not conform to the 50' setback will require the approval of an amendment to the use permit reducing the required front yard or approval of a special permit pursuant to LMC 27.63.280.

cc: Ray Hill
Marvin Krout



Law Department / Dana W. Roper, City Attorney / 575 South 10th Street / Suite 4201 / Lincoln, Nebraska 68508
Phone: 402-441-7281, Civil Fax: 402-441-8812, Pros. Fax: 402-441-8813 / Website: www.ci.lincoln.ne.us

Ernest R. (Rick) Peo III, Chief Assistant / John C. McQuinn II, Chief Prosecutor / Richard C. Anderson, Police Legal Advisor
Civil: James D. Faimon / Don W. Taute / Steven J. Huggenberger / Joel D. Pedersen / Connor L. Reuter / Margaret M. Blatchford / Tonya L. Skinner
Prosecution: Patrick C. Campbell / Christine A. Loseke / Rob E. Caples / Marcee A. Shell



Design Associates *of Lincoln, Inc.*

Pershing Square
1609 'N' Street
Lincoln, NE 68508
Phone: (402) 474-3000 • Fax: (402) 474-4045

FACSIMILE TRANSMITTAL

July 31, 2003

Joan Ross, City Clerk
City of Lincoln
555 South 10th Street
Lincoln, Nebraska 68508
Facsimile: 402/441-8325

RE: Pre-Existing Use Permit #10A
East Park Plaza

Ms. Ross,

Please consider this correspondence as a request to appeal Condition of Approval #3 as approved by the Planning Commission on June 25, 2003. We would appreciate your assistance in scheduling this land use application on the Council's agenda to allow the amendment to proceed with public hearing and subsequent action by the Council.

Please advise if additional information is needed.

Sincerely,

J.D. Burt
For the firm

FC: Planning Department 402/441-6377