

City Council Introduction: **Monday**, May 24, 2004
Public Hearing: **Monday**, June 7, 2004, at **1:30 p.m.**

Bill No. 04R-117

FACTSHEET

TITLE: **WAIVER NO. 04007**, requested by Duane Wenzl, to waive the subdivision requirements for sidewalks, street trees, street improvements and dedication of additional right-of-way associated with Wenzl Final Plat No. 04033, generally located at north 48th Street and Doris Bair Circle.

STAFF RECOMMENDATION: Approval of the waiver of street improvements; denial of the waiver of street trees, sidewalks and dedication of additional right-of-way.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/12/04
Administrative Action: 05/12/04

RECOMMENDATION: Denial of the waiver of street trees and dedication of additional right-of-way; approval of the waiver of street improvements; and conditional approval of the waiver of sidewalks, provided that the sidewalks shall be installed by the owner, at the owner's expense, when North 48th Street is improved by the City (9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes').

FINDINGS OF FACT:

1. These waiver requests are associated with Wenzl Addition Final Plat.
2. The staff recommendation as set forth above is based upon the "Analysis" as set forth on p.4, concluding that there are no unusual circumstances that would warrant the approval of the waiver of sidewalks, street trees or right-of-way. The installation of sidewalks and street trees and the dedication of right-of-way do not create a hardship or injustice to the subdivider. The waiver of street improvements is acceptable provided the applicant does not object to any future assessment. In lieu of posting a surety, the City would accept a cash contribution for street trees and sidewalks. The City would then use the funds to install sidewalks and street trees after North 48th Street is improved. Parks & Recreation agrees with this alternative.
3. The applicant's testimony and testimony in support is found on p.6.
4. There was no testimony in opposition.
5. The Planning Commission discussion with staff is found on p.6-7.
6. On May 12, 2004, the Planning Commission agreed with the staff recommendation, except for the waiver of sidewalks, and voted 9-0 to:
 - deny the waiver of street trees;
 - approve the waiver of street improvements;
 - deny the waiver of dedication of additional right-of-way; and
 - approve the waiver of sidewalks, without surety, upon condition that the sidewalks shall be installed by the owner, at the owner's expense, when North 48th Street is improved by the City. (Commissioner Carlson disagreed with this amendment in the vote on the motion to amend, but voted to approve the main motion.)

FACTSHEET PREPARED BY: Jean L. Walker

DATE: May 17, 2004

REVIEWED BY: _____

DATE: May 17, 2004

REFERENCE NUMBER: FS\CC\2004\WVR.04007

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 12, 2004 PLANNING COMMISSION MEETING

P.A.S.: Waiver of Design Standards #04007

PROPOSAL: Waive sidewalks, street trees, street improvements and dedication of additional right-of-way associated with Wenzl Final Plat #04033.

LOCATION: N. 48th St. & Doris Bair Cir.

LAND AREA: 6.04 acres, more or less

CONCLUSION: There are no unusual circumstances that would warrant the approval of the waiver to sidewalks, street trees or right-of-way. The installation of sidewalks and street trees and the dedication of right-of-way does not create a hardship or injustice to the subdivider.

The waiver to street improvements is acceptable provided the applicant does not object to any future assessment.

RECOMMENDATION:

| | |
|---------------------|----------|
| Sidewalks | Denial |
| Street Trees | Denial |
| Street improvements | Approval |
| Right-of-way | Denial |

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 121 I.T. located in the SE 1/4 of Section 5, Township 10 North, Range 7 East, Lancaster County, Nebraska.

EXISTING ZONING: I-1 Industrial

EXISTING LAND USE: Industrial

SURROUNDING LAND USE AND ZONING:

North: I-1 Industrial

South: I-1 Industrial

East: I-1 Industrial

West: I-1 Industrial

HISTORY:

- March 19, 2004** Wenzl Addition final plat was submitted to the Planning Department.
- February 26, 2001** HJB Industrial Park 2nd Addition Administrative final plat was approved by the Planning Director.
- December 1, 1997** 48th & Superior Addition Administrative Final Plat was approved by the Planning Director.
- December 8, 1995** Doris Bair Park 2nd Addition Administrative Final Plat was approved by the Planning Director.

COMPREHENSIVE PLAN SPECIFICATIONS:

“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.” (F-18)

“Sidewalks should be provided on both sides of all streets, or in alternative locations as allowed through design standards or the Community Unit Plan process.” (F-66)

“Interconnected networks of streets, trails and sidewalks should be designed to encourage walking and bicycling and provide multiple connections within and between neighborhoods.” (F-66)

“The sidewalk system should be complete and without gaps.” (F-89)

Right-of-Way widths for projects on the Year 2025 Street and Highway Improvement Plan are displayed on the Right-of-Way Standards map. (F-112)

Collector Streets: These streets serve as a link between local streets and the arterial system. Collectors provide both access and traffic circulation within residential, commercial and industrial areas. moderate to low traffic volumes are characteristic of these streets.
(F-105)

TRAFFIC ANALYSIS:

The 2025 Comprehensive Plan designates N. 48th St. as a collector. The Plan identifies N. 48th St. as 100' R-O-W and is listed as a proposed project for 4 lanes + turn lanes.

The 2003-2009 Capital Improvement Program (CIP) identifies N. 48th St. as proposed project #91 for 2008-09 and beyond.

Project 91: N. 48th St. –Doris Bair Cir. to Greenwood St.

Improve existing N. 48th St. to four through lanes plus left and/or tight turn lanes at intersections. This project will improve safety and capacity, and serve traffic generated by development in north Lincoln. Local funds. Project length 1.5 miles. (2008-09 and beyond)

ANALYSIS:

1. The applicant is requesting a waiver to the installation of sidewalks, street trees, dedicating additional right-of-way and improvements to N. 48th St. This is associated with Wenzl Addition final plat.
2. Section 26.27.010 requires that all streets shall be graded to their full width and that all streets abutting and within a new subdivision shall be paved with curbs and gutters. N. 48th St. is shown as a proposed project in the CIP. Since N. 48th St. is in the CIP, Planning does not object to the waiver to street improvements provided the applicant does not object to any future assessment.
3. Section 26.27.090 of the Land Subdivision ordinance requires that street trees be planted on both sides of all streets within the subdivision and on the side of the streets abutting the subdivision.
4. Section 26.27.020 of the Land Subdivision Ordinance stated that sidewalks shall be constructed on both sides of all streets within the subdivision and on the side of the streets abutting the subdivision.
5. The 2025 Comprehensive Plan identifies N. 48th St. for 100' right-of-way.
6. Three previous subdivisions; Doris Bair Park 2nd Addition, 48th & Superior Addition and H.J.B. Industrial Park 1st Addition; that abut N. 48th St. in this area have been approved. All three subdivisions required a surety to be posted for sidewalks and street trees for N. 48th St.
7. The subdivision ordinance allows four years after the plat is approved to install sidewalks and street trees.
8. Currently N. 48th St. is a rural design two lane asphalt cross-section with the drainage in shoulder ditches. Future improvements will allow for the installation of sidewalks and street trees.
9. Public Works Department recommends that the waiver to sidewalks and right-of-way not be granted.
10. In lieu of posting a surety, the City would accept a cash contribution for street trees and sidewalks. The City would then use the funds to install sidewalks and street trees after N. 48th St. is approved. Parks & Recreation Department agrees with this alternative.

Prepared by:

Tom Cajka
441-5662
tcajka@ci.lincoln.ne.us
Planner

DATE: April 29, 2004

APPLICANT: Duane Wenzl
4600 N. 48th St.
Lincoln, NE 68504
(402) 488-2771

OWNER: same as applicant

CONTACT: same as applicant

WAIVER NO. 04007

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff Recommendation: Approval of the waiver of street improvements; denial of the waiver of street trees, right-of-way and sidewalks.

Ex Parte Communications: None.

Proponents

1. Duane Wenzl, owner of **Wenzl Contracting**, presented the waiver request. This property, which was previously a farmstead, was developed in 1974. The developer put in over 80,000 yards of fill so that it would be out of the floodplain and Wenzl has continued doing business at this location. He is now going into semi-retirement and has sold part of the property to Stiefer Bros. In support of the waiver of dedication of additional right-of-way and street improvements, Wenzl stated that the road carries very little traffic. Doris Bair ball park was constructed in 1988, the traffic to that facility flowing on weekends or after hours. There is hardly any traffic on the road anymore. He still has trees on his property. The money should be used somewhere else.

2. Dale Stiefer, Stiefer Bros. Construction, 4550 N. 48th Street, testified in support. Every garbage hauler, every contractor and private owners up and down N. 48th used this road in going to the landfill. However, today, there is a transfer station and there is very little traffic. He does not know why this street would be widened. He believes that almost every property owner will protest the taking of their property to widen the street. He does not know where this street is going to go. It certainly will not go to the landfill, but maybe to the Doris Bair Park. He pointed out that the sidewalk would be required to be constructed within four years; however, he is doubtful that the new street will be put in within four years so there will not be grades so that the sidewalks can be put in properly. If there is a sidewalk district passed to put in the sidewalks, he will comply. He does not believe the bond should be required at this time.

Bills-Strand inquired whether there are any sidewalks along 48th Street. Stiefer stated that there are none. There are some trees on the Wenzl property. Stiefer had one tree that died. From his place to the south, there is no room for the street trees. It's all parking. When all of this property was developed, parking was allowed to be placed within 2.5 feet of the property line.

There was no testimony in opposition.

Marvin agreed that if the sidewalk is required to be constructed, it might have to be torn out in four years for the street widening. When is 48th Street scheduled to be widened? Tom Cajka of Planning staff advised that the widening of 48th Street is in the CIP for 2008-09 or later. Planning suggests that in lieu of waiving the sidewalk and street trees, the developer submit to the city a cash equivalent

instead of an escrow, and then at the time the improvements are made, the city would install the sidewalk and street trees. North 48th Street is a two-lane, asphalt rural cross-section. It is proposed to go to four lanes up to Doris Bair Circle. The Comprehensive Plan and CIP identify it as four lanes plus turn lanes, with 100' of total right-of-way.

Larson does not understand why that would be four lanes. Does it lead to anything? Dennis Bartels of Public Works advised that this section of North 48th Street is at the tail end of the program. The project is identified from 48th and Fremont to this point. It is difficult to say how wide it would be. The main intention was four lane from Fremont to Superior, and this area would be at the tail end of the project and there would probably be no need to put the four lanes all the way to Doris Bair Circle. He does not know how far they might take the four lanes north.

Pearson inquired whether there is a mechanism to say that instead of waiving the sidewalks and street trees or bonding, that the applicant will agree to put them in when the street goes in. She does not believe they should have to put the money up for the sidewalks today. Cajka believes that might be difficult because the property ownership could change and the person doing this development may no longer be involved. Rick Peo of City Law Department believes there might be potential to do something like that. Then when the final plat comes forward, those conditions would have to be filed with the property. In effect, the Planning Commission would be waiving the requirement that the sidewalks be built and waiving the requirement that there be a guarantee that it be built, which creates an enforcement problem and no way to collect the money. The City Council could order sidewalk construction at any time. Deferral of the sidewalk installation without being bonded would be a unique situation.

Bills-Strand wondered how to handle the situation when the concrete goes right up to the property line. What if there isn't room for street trees? Peo noted that street trees are frequently waived, or sometimes the street tree is put on private property. There are some options.

Carlson believes there are some trees on the property. Maybe Parks should look at the existing inventory to see if they are sufficient for street trees. Cajka acknowledged that there are trees but he is not sure they would be classified as street trees. At this time, Parks has said that they do not oppose the cash payment to put the street trees in at a later time. Cajka pointed out that over the last ten years, there were three other subdivisions done in this area north and south, and all three of those subdivisions were required to escrow for sidewalks and street trees.

Response by the Applicant

Stiefer stated that he will plant the trees on his property. His neighbors to the south don't have any place to put trees. There are trees on the property to the north. He would rather put in his own sidewalk rather than have the city put it in. He does not want to put up the bond.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Larson moved to approve the applicant's request, except street trees, seconded by Pearson.

Wenzl came forward and asked the Commissioners to drive the property before voting on this application.

Carlson stated that he is opposed to the motion. The waiver of the street improvements is acceptable, but he thinks the sidewalks are important. This is an area in transition. He thinks it is a mistake to think this area is going to stay the way it is. He would support approving the waiver of street improvements, but not the sidewalks and street trees.

Carroll would not want to do away with the right-of-way. The city should take the right-of-way. It is there for the city to use if they need it. The right-of-way waiver should be denied. He agrees that the sidewalks and street trees should be required because we have required them for other plats in the area.

Bills-Strand indicated that she has driven on this road a lot of times to Doris Bair Park. It is a county road and there isn't a lot of traffic. It probably won't have street improvements for quite awhile. She does not have a problem with street trees. She agrees to have the right-of-way and they should agree to install the sidewalks at their cost when the street improvements are done.

Motion to approve applicant's request, except for street trees failed 1-8: Larson voting 'yes'; Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Marvin and Bills-Strand voting 'no'.

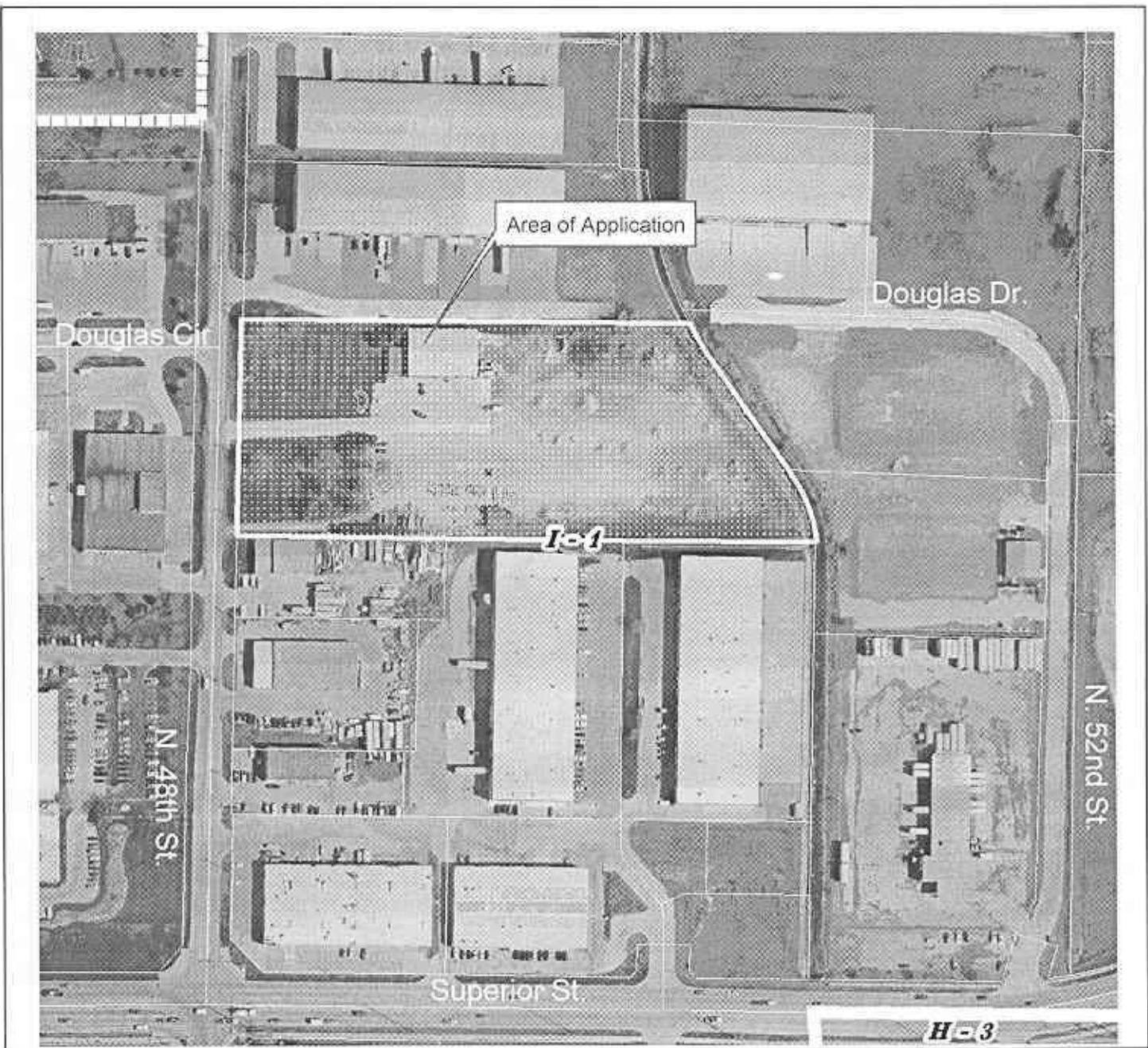
Carlson moved to approve the staff recommendation, which approves the waiver of street improvements and denies the waiver of street trees, sidewalks and additional right-of-way, seconded by Carroll.

Bills-Strand moved to amend such that the owner agrees to install sidewalks when North 48th Street is widened, seconded by Marvin.

Peo inquired whether this motion requires the escrow for the sidewalks. If you are approving the deferral of sidewalks rather than a waiver, it is okay to defer until the street is constructed, but we need to know whether to require the escrow. Bills-Strand does not want to require the escrow at this time in that the applicant agrees to pay to install the sidewalks at his cost at that time.

Motion to amend carried 8-1: Krieser, Pearson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Carlson voting 'no'.

Main motion, as amended, carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'. The Planning Commission recommendation is to deny the waiver of street trees; approve the waiver of street improvements; deny the waiver of the dedication of additional right-of-way; and conditional approval of the waiver of sidewalks, such that the sidewalks shall be installed by the owner, at the owner's expense, when North 48th Street is improved by the City. No bond is required. This is a recommendation to the City Council.



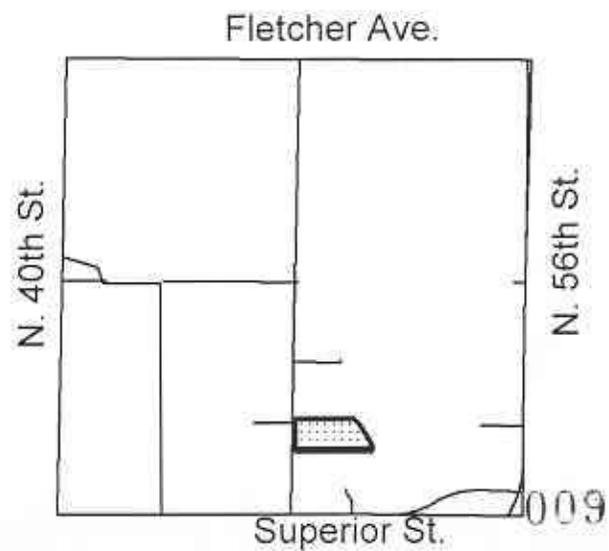
2002 aerial

Waiver #04007 N. 48th & Superior St.

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. 5 T10N R7E



WENZL ADDITION

Final Plat

Lot 2, Doris Bair Park 2nd Addition
(Not a Part)

N89°20'39"E
681.24'M.

521.24'

Cd. Brg. = S30°07'27"E
Cd. = 57.63'

57.63'

LOT 1
(22,399)
Square Feet±

N00°01'56"W
140.00'

N89°20'38"E
160.00'

333.12'W
55.12'

N89°21'55"E
242.00'

S53°29'34"E
92.78'

LOT 2 (41,630)
Square Feet±

S00°01'56"E
93.00'

316.51'

Lot 87 I.T. (Not a Part)

881.42'M
S89°21'55"W

Lot 6, Block 1, H.J.B. Industrial
Park 2nd Addition (Not a Part)

564.88'

Lot 5, Block 1, H.J.B. Industrial
Park 2nd Addition (Not a Part)

LOT 3 (199,268)
Square Feet±

S35°32'06"E
231.08'M.

30' Wide Utility Easement
Open Drainage Channel Easement

Lot 2, Superior Business
Park (Not a Part)

Cd. Brg. =
S21°42'27"E
Cd. = 100.38'

100.38'

Lot 1, (t)
Park

- Ⓐ Curve Data:
- Δ = 107°49'18"
 - R = 305.58'
 - Cd. = 57.63'
 - Arc = 101.36'
 - Tan. = 28.94'
 - Cd. Brg. = S30°07'27"E
- Ⓑ Curve Data:
- Δ = 27°39'17"
 - R = 210.00'
 - Cd. = 100.38'
 - Arc = 101.36'
 - Tan. = 51.69'
 - Cd. Brg. = S21°42'27"E

- = Found 3/4" Iron Pipe
- = Found 1" Iron Pipe
- = Set 5/8"x24" Rebar with L.S.#343 Cap
- = Found 3/4" Rebar
- x = Chisled "X" in Concrete
- M. = Measured Distance
- P. = Platted Distance

North 48th Street

Memorandum

| | |
|-----------------|--------------------------------------|
| To: | Tom Cajka, Planning Department |
| From: | Dennis Bartels, Engineering Services |
| Subject: | Wenzl Addition Waivers |
| Date: | April 28, 2004 |
| cc: | Randy Hoskins |
| | |

Engineering Services has the following comments concerning requested waivers to Wenzl Addition:

1. We recommend that sidewalks not be waived. Other final plats in the area were required to post sidewalk bonds. A sidewalk system to the softball complex to the north would be desirable.
2. The City has identified widening 48th Street north to Doris Bair Circle. The Comprehensive Plan calls for 100' of right-of-way. I recommend requiring a dedication to 50' east of centerline of 48th.
3. Since there are no curb and gutter sections north and south of this plat in 48th and the City has a proposed CIP project for North 48th across the frontage of this plat, I recommend the requirement for curb and gutter as a requirement of this plat be waived. A condition waiving the right to object to a future assessment would be appropriate.



Memo

To: Tom Cajka, Planning Department

From: Mark Canney, Parks & Recreation

Date: May 4, 2004

Re: Waiver 04007 (Revision)

Staff members of the Lincoln Parks and Recreation Department find it an acceptable alternative to accept payment for the cost of street trees in lieu of the waiver or posting a surety.

If you have any additional questions, comments or concerns, please feel free to contact me at 441-8248. Thank you.

April 15, 2004

Mr. Tom Cajka
Planner
Lincoln/Lancaster County Planning Department
555 S. 10th St.
Lincoln, NE 68508

Mr. Cajka:

This letter is a request for waiver of sidewalks, street trees, and street improvements along east side of North 48th Street, approximately 654'+ north of Superior Street, a distance of 333.12' at the "WENZL ADDITION", Lots 1, 2, and 3.

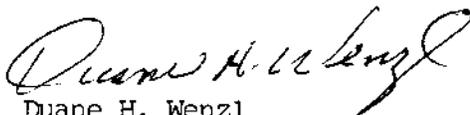
We request sidewalk waiver because sidewalk does not exist along North 48th Street at any adjacent property. Nearest existing sidewalk is located along the south side of Superior Street, heading south on the west side of North 48th. In addition, site/street drainage is by open roadside ditches along the 2-lane North 48th Street draining north towards the North 48th Street Landfill.

We request tree waiver because no trees exist along North 48th Street at the adjacent property to the south all the way to Superior Street, approximately 654'+.

We request waiver of street improvements and widening of right-of-way because North 48th Street is a 2-lane street without curbing and having open roadside ditches starting approximately 175' south of "WENZL ADDITION" and extending north to the North 48th Street Landfill. The possibilities of widening North 48th Street would be slim to none at best due to the fact that it is a dead end into the 48th Street landfill. Also, surrounding businesses along North 48th have buildings and parking lots out to the setbacks for a 66' right-of-way.

If you have any questions you would like to discuss, please call me at 402-466-6544 or fax me at 402-466-7886.

Thank you



Duane H. Wenzl
President
DU-MAR-FRE Development

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