

FACTSHEET

TITLE: LETTER OF APPEAL filed by the Director of Planning and the Interim Director of the Public Works & Utilities Department, appealing the Planning Commission action on **USE PERMIT NO. 148 (Resolution No. PC-00906)**, specifically the conditions of approval granting the permittee access on North 27th Street, on property generally located at North 27th Street, north of Folkways Boulevard.

STAFF RECOMMENDATION: Conditional approval, deleting the access shown on North 27th Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 02/02/05, 02/16/05 and 03/02/05
Administrative Action: 03/02/05

PLANNING COMMISSION ACTION: Conditional approval, with amendments granting access on North 27th Street (7-2: Sunderman, Krieser, Taylor, Larson, Marvin, Carlson and Bills-Strand voting 'yes'; Carroll and Pearson voting 'no'), **Resolution No. PC-00906**.

FINDINGS OF FACT:

1. The proposed Use Permit No. 148 was requested by Ross Engineering, Inc., on behalf of Dr. Elliott Rustad and Randy Haas of TO Haas Tire Store, to develop 24,317 sq. ft. of commercial floor area on property generally located at North 27th Street, north of Folkways Boulevard.
2. The applicant also requested waivers of the requirements for stormwater detention; front yard setbacks; minimum area; and the preliminary plat process.
3. The staff recommendation of conditional approval, except the waiver of stormwater detention, was based upon the "Analysis" as set forth on p.10-11, concluding that, with conditions, the use permit is in conformance with the Comprehensive Plan and the Zoning and Subdivision Ordinances. The staff recommendation and conditions of approval delete the access shown on North 27th Street (See Engineering Services Memorandum, paragraph #4, dated December 30, 2004, p.37-38).
4. Testimony on behalf of the applicants is found on p.16-17; 20-21; 22-23; and 24-25. The applicant objected to the deletion of the access shown on North 27th Street and requested an amendment to Condition #1.1.3 accordingly (p.12). This amendment would also delete the last requirement under Condition #3.2, "to relinquish the right of direct vehicular access from Outlot A to N. 27th Street." (p.14).
5. Testimony in opposition is found on p.18-19 and 23-24, including the agent for the developer of King Ridge and the City Traffic Engineer. The developer of King Ridge believes they have designed their development in respect for the City's access goals and the applicants should be held to the same requirements. The City Traffic Engineer stressed that the City has purchased access control for the frontage of the Rustad and TO Haas property along North 27th Street to increase the safety and efficiency of 27th Street, and recommended that the plan be revised to eliminate access to North 27th Street.
6. This application was held over for four weeks and the agent for King Ridge described an improved internal road connection that they are willing to build. The applicant's agent acknowledged the improvement but reiterated his request for access to 27th Street.
7. On March 2, 2005, the Planning Commission voted 7-2 to adopt Resolution No. PC-00906, which approved Use Permit No. 148, with conditions, with amendments to allow the access to North 27th Street, as requested by the applicant (Carroll and Pearson dissenting).
8. On March 10, 2005, the Director of Planning and the Interim Director of Public Works & Utilities filed an appeal to the amendments made to the conditions of approval by the Planning Commission which allow the access on North 27th Street.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\2005\UP.148 Appeal

[**Scan in Letter of Appeal as p.2**]

DATE: March 14, 2005

DATE: March 14, 2005



**CITY OF LINCOLN
NEBRASKA**

MAYOR COLEEN J. SENG

www.ci.lincoln.ne.us

Public Works and Utilities Department

555 South 10th Street
Suite 203

Lincoln, Nebraska 68508

402-441-7548

fax: 402-441-8609

March 9, 2005

Joan Ross
City Clerk
555 South 10th Street, Room 103
Lincoln, NE 68508

RE: Letter of Appeal - Use Permit No. 148
Resolution No. PC-00906

Dear Joan:

The Planning and Public Works & Utilities Departments wish to appeal Planning Commission Resolution No. PC-00906 to the City Council, specifically:

The amendment to Condition #1.1.3: Revisions to the satisfaction of the Public Works and Utilities Department memo dated December 30, 2004, except paragraph 4, "Access";

The deletion of the following language: to relinquish the right of direct vehicular access from Outlot A to N. 27th Street.

Please contact Randy Hoskins at 441-7570 if you need any further information.

Sincerely,

Ann Harrell
Interim Director
Public Works and Utilities

Marvin Krout
Director
Planning Department

cc: Jean Walker, Planning
Mark Hunzeker
DaNay Kalkowski
Bill Olson
Randy Hoskins, Public Works

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CITY OF LINCOLN
NEBRASKA

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****Corrected** PLANNING COMMISSION FINAL ACTION
NOTIFICATION**

TO : Mayor Coleen Seng
Lincoln City Council

FROM : Jean Walker, Planning 

DATE : March 4, 2005

RE : **Use Permit No. 148, King Crest**
(N. 27th Street, north of Folkways Blvd.)
Resolution No. PC-00906 - **Corrected**

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, March 2, 2005:

Motion made by Carlson, seconded by Pearson, to approve **Use Permit No. 148**, with conditions, with amendment to Condition #1.1.3 and deletion of the requirement "to relinquish the right of direct vehicular access from Outlot A to N. 27th Street", as requested by the applicant (allowing an access onto 27th Street), and with amendment to add Condition #1.1.10, as recommended by staff, requested by Ross Engineering, Inc., on behalf of Dr. Elliott Rustad and Randy Haas of TO Haas Tire Store, to develop 24,317 square feet of commercial floor area, including requested waivers to the required storm water detention, front yard setbacks, minimum use permit area and the preliminary plat process, on property generally located at North 27th Street and north of Folkways Boulevard. Motion for conditional approval, with amendments, carried 7-2: Sunderman, Krieser, Taylor, Larson, Marvin, Carlson and Bills-Strand voting 'yes'; Carroll and Pearson voting 'no'.

The Planning Commission's action is final, unless appealed to the City Council by filing a Letter of Appeal with the City Clerk within 14 days of the date of the action by the Planning Commission.

Attachment

cc: Building & Safety
Rick Peo, City Attorney
Public Works
Ron Ross, Ross Engineering, Inc., 201 N. 8th, #401, 68508
Dr. Elliott Rustad, 1919 S. 40th St., Suite 333, 68506-5247
Bicentennial Estates Neighborhood Assn., P.O. Box 4735, 68504-4735
Dave Lewis, Bicentennial Estates H.O. Assn., 2333 Philadelphia, 68521
Ken Kendler, Bicentennial Estates H.O. Assn., 5009 Bunker Hill, 68521
Bill Olson, Attorney at Law, 134 S. 13th Street, Suite 800, 68508
Mark Hunzeker, Attorney at Law, P.O. Box 95109, 68509
DaNay Kalkowski, Attorney at Law, 1111 Lincoln Mall, #350, 68508
Randy Hoskins, Public Works & Utilities

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RESOLUTION NO. PC- 00906

USE PERMIT NO.148

1 WHEREAS, Elliot Rustadt and Randy Haas have submitted an application in
2 accordance with Section 27.31.100 of the Lincoln Municipal Code designated as Use Permit
3 No. 148 to develop 24,317 square feet of commercial floor area, including requested waivers to
4 the required storm water detention, front yard setbacks, minimum use permit area, and the
5 preliminary plat process on property generally located at N. 27th Street and north of Folkways
6 Blvd., legally described to wit:

7 Lot 48 I.T., and Lot 1, Block 1, King Ridge 1st Addition, Lincoln,
8 Lancaster County, Nebraska; and

9 WHEREAS, the real property adjacent to the area included within the site plan
10 for this construction of commercial buildings will not be adversely affected; and

11 WHEREAS, said site plan together with the terms and conditions hereinafter set
12 forth are consistent with the intent and purpose of Title 27 of the Lincoln Municipal Code to
13 promote the public health, safety, and general welfare.

14 NOW, THEREFORE, BE IT RESOLVED by the Lincoln City - Lancaster County
15 Planning Commission of Lincoln, Nebraska:

16 That the application of Elliot Rustadt and Randy Haas, hereinafter referred to as
17 "Permittee", to develop 24,317 square feet of commercial floor area be and the same is hereby
18 granted under the provisions of Section 27.27.100(I) of the Lincoln Municipal Code upon
19 condition that construction and operation of said commercial space be in strict compliance with

1 said application, the site plan, and the following additional express terms, conditions, and
2 requirements:

3 1. This permit approves 24,317 square feet of commercial floor area on a lot
4 of less than five acres and a reduction to the front yard setback from 50' to 42' along Folkways
5 Blvd., and a waiver of the preliminary plat process.

6 2. Revise the site plan to show:

- 7 a. All required waivers in the waiver requests table.
- 8 b. Revisions to the satisfaction of the Parks Department memo
9 dated January 4, 2005.
- 10 c. Revisions to the satisfaction of the Public Works and Utilities
11 Department memo dated December 30, 2004, except paragraph 4
12 "Access".
- 13 d. Provide LES easements as requested in the January 4, 2005
14 memo.
- 15 e. Landscaping to provide 90% screen and the plants on private
16 property.
- 17 f. Show sidewalk from Folkways Blvd. to Building B from Building A
18 and along the north side of Outlot A from N. 27th Street to Building
19 B.
- 20 g. Reduce the radius of the curbs NW and NW of the TO Haas
21 building and SE of Building A.
- 22 h. Indicate the lot number for the TO Haas property.
- 23 i. Revise the building and parking stall summary table to reflect a
24 restaurant in Building B.
- 25 j. Revise King Ridge 2nd Addition Use Permit No. 103 to remove
26 the TO Haas property from the King Ridge Use Permit.

27 3. Final plats will be approved by the Planning Director after:

- 28 a. The sidewalks, streets, drainage facilities, street lighting,
29 landscape screens, street trees, temporary turnarounds and
30 barricades, and street name signs have been completed or the
31 Permittee has submitted a bond or an escrow of security
32 agreement to guarantee their completion.
- 33 b. The Permittee has signed an agreement that binds the
34 Permittee, their successors and assigns:

- 1 (1) To complete the installation of sidewalks as shown on the
2 final plat within four (4) years following the approval of this
3 final plat.
- 4 (2) To complete the public water distribution system to serve
5 this plat within two (2) years following the approval of this
6 final plat.
- 7 (3) To complete the public wastewater collection system to
8 serve this plat within two (2) years following the approval
9 of this final plat.
- 10 (4) To complete the enclosed public drainage facilities shown
11 on the approved drainage study to serve this plat within
12 two (2) years following the approval of this final plat.
13
- 14 (5) To complete land preparation including storm water
15 detention/retention facilities and open drainageway
16 improvements to serve this plat prior to the installation of
17 utilities and improvements but not more than two (2) years
18 following the approval of this final plat.
- 19 (6) To complete the installation of public street lights within
20 this plat within two (2) years following the approval of this
21 final plat.
- 22 (7) To complete the planting of the street trees within this plat
23 within four (4) years following the approval of this final plat.
- 24 (8) To complete the installation of the street name signs within
25 two (2) years following the approval of this final plat.
26
- 27 (9) To complete the installation of the permanent markers
28 prior to construction on or conveyance of any lot in the
29 plat.
- 30 (10) To timely complete any other public or private
31 improvement or facility required by Chapter 26.23
32 (Development Standards) of the Land Subdivision
33 Ordinance which have not been waived but which
34 inadvertently may have been omitted from the above list of
35 required improvements.
- 36 (11) To submit to the Director of Public Works a plan showing
37 proposed measures to control sedimentation and erosion
38 and the proposed method to temporarily stabilize all
39 graded land for approval.
- 40 (12) To complete the public and private improvements shown
41 on the preliminary plat Use Permit.

- 1 (13) To retain ownership of or the right of entry to the outlots in
2 order to maintain the outlots and private improvements on
3 a permanent and continuous basis and to maintain the
4 plants in the medians and islands on a permanent and
5 continuous basis. However, the subdivider may be
6 relieved and discharged of this maintenance obligation
7 upon creating, in writing, a permanent and continuous
8 association of property owners who would be responsible
9 for said permanent and continuous maintenance. The
10 subdivider shall not be relieved of such maintenance
11 obligation until the private improvements have been
12 satisfactorily installed and the documents creating the
13 association have been reviewed and approved by the City
14 Attorney and filed of record with the Register of Deeds.
15
- 16 (14) To submit to the lot buyers and builders a copy of the soil
17 analysis.
- 18 (15) To comply with the provisions of the Land Preparation and
19 Grading requirements of the Land Subdivision Ordinance.
- 20 (16) To protect the trees that are indicated to remain during
21 construction and development.
- 22 (17) To properly and continuously maintain and supervise the
23 private facilities which have common use or benefit, and to
24 recognize that there may be additional maintenance issues
25 or costs associated with providing for the proper
26 functioning of storm water detention/retention facilities as
27 they were designed and constructed within the
28 development, and that these are the responsibility of the
29 land owner.

- 30 4. Before receiving building permits:
 - 31 a. The Permittee shall have submitted a revised and reproducible
32 final plan including 7 copies.
 - 33 b. The construction plans shall comply with the approved plans.
 - 34 c. Final Plats shall be approved by the City.
- 35 5. Before occupying the buildings all development and construction shall
36 have been completed in compliance with the approved plans.
- 37 6. All privately-owned improvements shall be permanently maintained by the
38 owner or an appropriately established homeowners association approved by the City Attorney.

1 7. The site plan accompanying this permit shall be the basis for all
2 interpretations of setbacks, yards, locations of buildings, location of parking and circulation
3 elements, and similar matters.

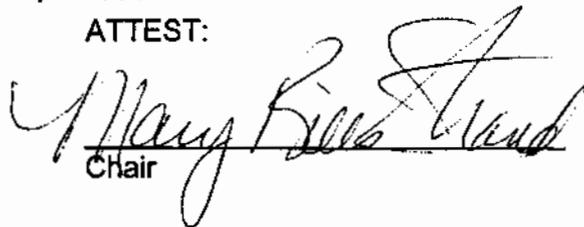
4 8. This resolution's terms, conditions, and requirements bind and obligate
5 the Permittee, their successors and assigns.

6 9. The Permittee shall sign and return the letter of acceptance to the City
7 Clerk within 30 days following the approval of the use permit, provided, however, said 30-day
8 period may be extended up to six months by administrative amendment. The clerk shall file a
9 copy of the resolution approving the use permit and the letter of acceptance with the Register of
10 Deeds, filling fees therefor to be paid in advance by the Permittee.

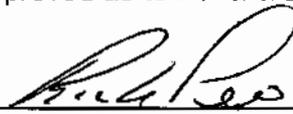
11 10. The site plan as approved with this resolution voids and supersedes all
12 previously approved site plans, however all resolutions approving previous permits remain in
13 force unless specifically amended by this resolution.

DATED this 2nd day of March, 2005.

ATTEST:


Chair

Approved as to Form & Legality:



Chief Assistant City Attorney

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for February 2, 2005, PLANNING COMMISSION MEETING

****As Revised and Adopted by Planning Commission: March 2, 2005
Resolution No. PC-00906****

P.A.S.: Use Permit #148, King Crest Addition

PROPOSAL: To obtain a use permit for three lots with a total of 24,317 square feet of commercial floor area.

LOCATION: N. 27th and north of Folkways Boulevard.

WAIVER REQUEST:

Storm Water Detention
Front Yard setbacks
Minimum area
Preliminary Plat process

LAND AREA: 2.9 acres, more or less.

CONCLUSION: With conditions the use permit is in conformance with the Comprehensive Plan, Zoning and Subdivision Ordinances.

<u>RECOMMENDATION:</u>	Conditional Approval
<u>Waivers:</u>	
Storm Water Detention	Denial
Front Yard Setbacks	Approval
Minimum area	Approval
Preliminary Plat process	Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached.

EXISTING ZONING: B-2, Planned Neighborhood Business.

EXISTING LAND USE: Retail, residential.

SURROUNDING LAND USE AND ZONING:

North: Undeveloped B-2
South: Undeveloped, restaurant, bank, B-2, B-5
East: Undeveloped B-2

West: Residential

R-2

COMPREHENSIVE PLAN SPECIFICATIONS: This area is shown as commercial in the Comprehensive Plan (F-25).

HISTORY: Use Permit 103B, King Ridge 2nd Addition was approved by the City Council in June 2001.

Change of Zone from R-3, Residential to B-2, Planned Neighborhood Business was approved by the City Council in November 2000.

King Ridge 1st Addition Preliminary Plat and Use Permit #103A were approved by the City Council in November 1999.

Kind Ridge Addition Preliminary Plat and Use Permit #103 were approved by the City Council in February 1998.

Change of zone from R-3, Residential to B-2, Planned Neighborhood Business and I-1, Industrial was approved by the City Council in March 1997.

The area was changed from AA, Rural and Public Use to R-3, Residential during the 1979 zoning update.

UTILITIES: Utilities are available to the site.

TOPOGRAPHY: The undeveloped property, where the residential house is presently, is several feet higher than the adjacent ground.

TRAFFIC ANALYSIS: Access was relinquished to the residential property, and was assumed to take future access through the King Ridge Use Permit area, however, due to grading (inconsistent with the King Ridge preliminary plat) and property owner differences, it appears this will not happen. The letter from the applicant indicates that the City Traffic Engineer agreed to one access point to N. 27th Street as shown on the site plan. However, the Public Works and Utilities Department memo indicates that access was purchased from the previous property owner and recommends the access be eliminated from the site plan. The present owner purchased the property with the understanding that access was controlled on N. 27th Street and that the city had previously paid for the access rights.

The distance between the proposed curb cut in Folkways Blvd. For their property is approximately 400 feet west of the median opening at the future N. 30th Street and Folkways Blvd.

N. 27th Street is classified as a major urban arterial. Folkways is classified as a local street. The preliminary plat shows 4-lane divided street paving, with two lanes presently built.

ANALYSIS:

1. This is a request to obtain a use permit for to expand a commercial building and add two

new buildings with a total of 24,317 square feet of floor area. The applicant requests waivers to on site detention, front yard setbacks, minimum use permit area, and the preliminary plat process.

2. The property north of TO Haas Tire Store was not included in the King Ridge Use Permit. Planning Staff required the applicant for the King Ridge Use Permit to provide access to this lot, under the assumption that this lot would eventually be incorporated into the King Ridge Use Permit. However, the grading plan for the King Ridge Use Permit lowered the grade approximately 20 feet from the property north of the TO Haas Tire Store. The northern property and TO Haas were able to come together to form a separate and new use permit, King Crest Addition. The B-2 district has a minimum 5 acre area requirement that the Planning Commission may modify under two conditions. Section 27.31.100(l) indicates:

(l) A use permit may be granted for a lot of less than five acres, provided:

- (1) The lot was legally created prior to the effective date of this ordinance;
- (2) The lot has remained under separate ownership from adjoining properties in the B-2 district.

The Planning Commission may, under the above conditions, adjust the requirements under paragraph (b) to permit the applicant a reasonable use of his property.

3. The applicant's attorney submitted a letter indicating that it is their opinion that the lots meet this requirement.
4. The applicant requests to reduce the front yard setback along Folkways Boulevard from 50' to 42' and to justify the reduction has provided additional screening along the frontage of Folkways Boulevard. Staff believes this is acceptable since the applicant is mitigating the loss of setback with 90% screening from 2'-4'.
5. The applicant requests to waive the preliminary plat process and coordinate the preliminary plat with the use permit is acceptable to the Planning Department because it streamlines the development process and eliminates duplicate process.
6. The Public Works and Utilities Department has several comments in their attached memo. The Public Works and Utilities Department indicated that the request to waive detention is unacceptable unless the adjoining property owner agrees to handle the increased runoff produced by this development.
7. The Lincoln Lancaster County Health Department has two advisory comments in their attached memo.

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 All required waivers in the waiver requests table.
 - 1.1.2 Revisions to the satisfaction of the Parks Department memo dated January 4, 2005.
 - 1.1.3 Revisions to the satisfaction of the Public Works and Utilities Department memo dated December 30, 2004, except paragraph 4. "Access". (**Per Planning Commission, at the request of the applicant, 03/02/05**)
 - 1.1.4 Provide LES easements as requested in the January 4, 2005 memo.
 - 1.1.5 Landscaping to provide 90% screen and the plants on private property.
 - 1.1.6 Show sidewalk from Folkways Blvd. to Building B from Building A and along the north side of Outlot A from N. 27th Street to Building B.
 - 1.1.7 Reduce the radius of the curbs NW and NW of the TO Haas building and SE of Building A.
 - 1.1.8 Indicate the lot number for the TO Haas property.
 - 1.1.9 Revise the building and parking stall summary table to reflect a restaurant in Building B.
 - 1.1.10 Revise King Ridge 2nd Addition Use Permit No. 103 to remove the TO Haas property from the King Ridge Use Permit. (**Per Planning Commission, as recommended by staff, 03/02/05**)

2. This approval permits 24,317 square feet of commercial floor area and a modification to the front yard setback, minimum use permit area and waive the preliminary plat process.

3. Final Plats will be approved by the Planning Director after:

- 3.1 The sidewalks, streets, drainage facilities, street lighting, landscape screens, street trees, temporary turnarounds and barricades, and street name signs have been completed or the subdivider has submitted a bond or an escrow of security agreement to guarantee their completion.
- 3.2 The subdivider has signed an agreement that binds the subdivider, its successors and assigns:

to complete the installation of sidewalks as shown on the final plat within four (4) years following the approval of this final plat.

to complete the public water distribution system to serve this plat within two (2) years following the approval of this final plat.

to complete the public wastewater collection system to serve this plat within two (2) years following the approval of this final plat.

to complete the enclosed public drainage facilities shown on the approved drainage study to serve this plat within two (2) years following the approval of this final plat.

to complete land preparation including storm water detention/retention facilities and open drainageway improvements to serve this plat prior to the installation of utilities and improvements but not more than two (2) years following the approval of this final plat.

to complete the installation of public street lights within this plat within two (2) years following the approval of this final plat.

to complete the planting of the street trees within this plat within four (4) years following the approval of this final plat.

to complete the installation of the street name signs within two (2) years following the approval of this final plat.

to complete the installation of the permanent markers prior to construction on or conveyance of any lot in the plat.

to complete any other public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Land Subdivision Ordinance in a timely manner which inadvertently may have been omitted from the above list of required improvements.

to submit to the Director of Public Works a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land for approval.

to complete the public and private improvements shown on the preliminary plat Use Permit.

to retain ownership of or the right of entry to the outlots in order to maintain the outlots and private improvements on a permanent and continuous basis and to maintain the plants in the medians and islands on a permanent and continuous basis. However, the subdivider may be relieved and discharged of this maintenance obligation upon creating, in writing, a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance. The subdivider shall not be relieved of such maintenance obligation until the private improvements have been satisfactorily installed and the documents creating the association have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds.

to submit to the lot buyers and builders a copy of the soil analysis.

to comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.

to protect the trees that are indicated to remain during construction and development.

to properly and continuously maintain and supervise the private facilities which have common use or benefit, and to recognize that there may be additional maintenance issues or costs associated with providing for the proper functioning of storm water detention/retention facilities as they were designed and constructed within the development, and that these are the responsibility of the land owner.

~~to relinquish the right of direct vehicular access from Outlot A to N. 27th Street.~~
(Per Planning Commission, at the request of the applicant, 03/02/05**)**

General:

4. Before receiving building permits:

4.1 The permittee shall have submitted a revised and reproducible final plan including 7 copies.

4.2 The construction plans shall comply with the approved plans.

4.3 Final Plans shall be approved by the City.

STANDARD CONDITIONS:

5. The following conditions are applicable to all requests:

5.1 Before occupying the buildings all development and construction shall have been completed in compliance with the approved plans.

5.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.

5.3 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.

5.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

5.5 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, filing fees therefor to be paid in advance by the applicant.

USE PERMIT NO. 148, KING CREST

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 2, 2005

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

Staff recommendation: Conditional approval.

Becky Horner of Planning staff submitted a new condition of approval #1.1.10 to be added to the staff recommendation:

1.1.10 Revise King Ridge 2nd Addition Use Permit No. 103 to remove the TO Haas property from the King Ridge Use Permit.

Proponents

1. Ron Ross of Ross Engineering, 201 N. 8th Street, appeared on behalf of **Dr. Elliott Rustad**, the owner of the north property with the existing ranch residential home, and on behalf of **Randy Haas of TO Haas Tire** on the northeast corner of Folkways Boulevard and N. 27th Street. The two property owners have agreed to work together to obtain a use permit for the Rustad property. When King Ridge was first presented, it basically formed a use permit and preliminary plat around the then Lewis property, which Dr. Rustad purchased, and as a result it was left as an island area. The Rustad property was rezoned B-2 and the City, in reviewing the overall plan, approved a grading plan that suggested regrading the Lewis property. The grading plan shows the Lewis property house being someday removed and shows the northern area and the eastern area being graded down after the house is removed, rendering this piece of property useless unless there is access provided from the north. That was ultimately to be the plan for King Ridge, showing access to this property. That access shown on the King Ridge plan has not happened. It would cost \$120,000 to remove the trees and the soil just to do the grading to lower the site, and at that point there is no access to 27th Street.

The owners have met with Planning and submitted a site plan. During their meeting, Dennis Bartels of Public Works suggested that there be no controlled access on 27th Street and it was confirmed that the State's controlled access was stopped about one-half mile to the north. Rustad was not aware of any controlled access. Later in the staff review, it was found that the City had acquired controlled access from the Lewis' and thus the problem. Planning is suggesting that there is no access to be provided. That is the only outstanding issue on this use permit. Ross had suggested a common driveway off of Folkways Blvd. The use permit proposes two buildings on the north and the TO Haas existing facility with a very small expansion, showing a common driveway connecting the two and a right-in right-out driveway on 27th Street.

Ross explained that this developer does not have an agreement with the King Ridge property. The developer will not do any grading into the King Ridge property, but will add some minor detention storage, with underground detention under the parking lot, leaving only the issue of no access off of 27th Street.

In that the current owners were not aware of any limited access, Carlson inquired whether that would have been revealed in the title search. Ross concurred that Rustad was not aware, but Ross himself discovered it through the title company. The controlled access was purchased from the previous owner. It was in the title search but Dr. Rustad was not aware.

2. Bill Olson testified on behalf of **TO Haas Tire and Randy Haas**, the owner of the south lot. The tire store was built in 1999 and opened in 2000. That lot was purchased from King Ridge Development in 1999, and was the first commercial property developed in that immediate area. The property was purchased without access to 27th Street, but at the time of the purchase and when it was built, and as it sits today, there was a median cut going past TO Haas, which the city has since filled, requiring a U-turn to get access to the TO Haas property. This problem for traffic trying to get to the TO Haas property diminishes the value of the tire store. They have met with Ridge Development several times and with the city. The only possible course to follow to get better access to this property is to have access off 27th Street through the adjoining property owned by Dr. Rustad.

Olson further advised that when this property was purchased by TO Haas Tire, there was no indication by the then owner (seller) that the Folkways median was going to be closed, and it was subsequently closed. Had Haas known, he would have had the opportunity to buy other lots with better access. This is why TO Haas has joined in this application. TO Haas has nine retail stores in Lincoln and has been in business in Lincoln since 1947. Without access, it really hurts the value and the business of this store. Olson requested that this use permit be approved with the site plan as submitted showing the access.

3. Mark Hunzeker appeared on behalf of **Dr. Elliott Rustad**. Rustad bought the property with the record notice of controlled access but did not have what he considered to be actual notice. Nevertheless, the fact is that the city does control access to 27th Street at this time. There are city ordinances which are clearly intended and clearly ordinarily enforced to require that when abutting property is developed, that the developer provide reasonable access to other undeveloped property. The way the property is graded, there is a 20' differential between the grade of the Rustad property and the abutting King Ridge property. There is no way in the world that Rustad can take any access to that even if there was a road there, which there is not. Rustad has attempted to work with the owners along the east side to no avail, so they have no choice but to bring this plan forward.

Hunzeker further pointed out that the King Ridge use permit included a requirement that the developer construct a third traffic lane in N. 27th Street when the property is fully developed, so that northbound 27th would have three through lanes. This application is proposing to build that third lane up to the point of access to the Rustad property, and in addition, to dedicate additional right-of-way for construction of a turn lane to this right-in right-out access at such time as the third lane is extended all the way to the north. Hunzeker believes this is a reasonable solution. The Rustad

property is zoned B-2 so he is entitled to use that property for commercial use, except that his only access is via the gravel access road that the city provided to the residence. Here we are with really only one realistic solution and the only obstacle is the condition of approval which incorporates the Public Works memo dated December 30, 2004.

Hunzeker then proposed an amendment to Condition #1.1.3 as follows:

1.1.3 Revisions to the satisfaction of the Public Works and Utilities Department memo dated December 30, 2004, except paragraph 4. "Access".

This would eliminate the problem and would give both the TO Haas property better access and some reasonable access to the Rustad property. 27th Street at this location currently has two north bound lanes. The only parcel excluded from the annexation agreement is the Rustad property. The developer of King Ridge is required to construct a third north-bound lane in the future. This developer is offering to construct that third north-bound lane up to the right-in right-out access point and dedicate enough right-of-way.

Carroll inquired whether TO Haas was in place when Rustad purchased the residential property. Hunzeker believes that it was shortly after Rustad purchased the property that the King Ridge project was approved. Carroll confirmed that when Rustad purchased the property, the only legal access Rustad had was on the gravel road along parallel to 27th Street. Hunzeker concurred, stating that Rustad still has the gravel drive access. Ordinarily, when surrounding property is developed, access is required to be provided to unsubdivided abutting property. The grading plan submitted showed that the Rustad property and the future access was going to be graded down. Rustad's only option is to take all the trees off the property and lower it about 20 feet at a substantial cost and provide a similar kind of embankment along the south boundary of his property and along N. 27th Street, which in doing so all by itself would eliminate the use of approximately ½ acre of his property. Even if he did that, there is no road to take access.

Bills-Strand inquired whether there is any other business along there with access to 27th Street. Hunzeker stated that there are no businesses between TO Haas and the next major street to the north. Lincoln Crossing has several access points.

Bills-Strand wondered whether a service road could be constructed where the gravel road exists. Hunzeker does not believe we would want that much commercial traffic to cut across the intersection of 27th and Folkways to get there. It would not meet any design standard for a curb cut, much less a private roadway.

Opposition

1. Danay Kalkowski appeared on behalf of **Ridge Development Company**, the owners and developers of the King Ridge property. Ridge Development originally owned almost the entire quarter section, 147 acres, except for the property that was owned by the previous owner before Rustad. King Ridge has almost ½ mile of frontage onto 27th Street. King Ridge is not opposed to commercial development on the Rustad property nor the expansion of TO Haas. But King Ridge is opposed to the request for access to 27th Street and agrees that the access needs to be shown

through the King Ridge site. Access to 27th Street is not the only solution. Kalkowski acknowledged that King Ridge did attempt to work with the previous owners to include the property as part of the King Ridge property but they had no desire to participate. From the very beginning, the city has been clear that there would be no access to 27th Street except at Folkways Boulevard and Enterprise Drive. The city would not allow any right turn lanes into the King Ridge development. As part of the King Ridge use permit, the developer was obligated to build a continuous third deceleration lane from North Hills Drive all the way up to the edge of the property, with the understanding there would be no other access at 27th Street. The grading of King Ridge was influenced by the fact that there would not be access to 27th Street. An internal access road network was required. The lots had to be graded in order to make the Enterprise Drive access work. King Ridge was required to show access to two areas that had relinquished access, including the Cross Ridge property located on the north side. The second is the Rustad property.

Kalkowski also suggested that the preliminary plat grading plan is “conceptual” on the Rustad property, and that a more specific plan would be done when Rustad came in with his own use permit. In order for the Rustad property to work with the access shown, it would need to be graded and lowered somewhat, the same as some of the King Ridge property. There are reasonable ways to make the access work without wiping the entire site down 20 feet.

Because of the small size of the property and the fact that it is B-2, Kalkowski stated that King Ridge has always anticipated that Rustad would work with King Ridge to provide the access. King Ridge is prepared to build the road to the Rustad property when it is developed. If the city allows access to 27th Street for this development, it opens the door for other development along 27th Street to come in and ask for the same access.

King Ridge supports the Planning staff recommendation and conditions of approval.

Marvin expressed concern about the TO Haas access as it exists today. Kalkowski suggested that the two sites are interconnected. You can go from the Haas property to the Rustad property. Her clients are ready and willing to build the access road to the Rustad property. It does not have to be the exact grading plan shown on the preliminary plat. That was entirely conceptual.

2. Randy Hoskins, City Traffic Engineer, clarified that at one point he said he supported access to this site. At the time that statement was made, he was not aware that the city had purchased the control of access across this property and that these things had been planned out in advance with the Kind Ridge development. Once he found that out, he advised the owners that he was no longer in support of the access. There are no driveways along 27th Street between Superior and Interstate 80. At the time when the city was constructing 27th Street, it was a requirement of the federal funding to buy the control of access to not allow direct access from businesses to 27th Street. The existing gravel driveway could not be used as commercial access. The median break into the Haas site was closed with the installation of the traffic signal at 27th and Folkways. The location where that median existed was within the left turn lane for the westbound traffic at the intersection. The city’s experience has shown that to create a dangerous situation.

Dennis Bartels of Public Works explained that when traffic studies were done for King Ridge, they were showing a volume of traffic that warranted a signal at the Folkways intersection and that was one reason for closing the median break because of the stacking.

Carlson referred to the northeast corner of the Rustad property. The applicants are saying that presents a very serious challenge, and the adjacent property does not believe it is that big of a challenge. What is the alternative to not allowing access on 27th? What is the city's position on how the Rustad property should gain access? Bartels suggested that the 20 feet of cut can be adjusted. If the two property owners cooperated, the same dirt could be moved with a scraper from one side of the property line to the other. Being able to maintain the access control on 27th Street is very important as far as moving traffic and from a safety standpoint.

Response by the Applicant

Ron Ross urged that the access to the TO Haas property has become frustrating and extremely economically depressing. These two developers have agreed to go ahead and build the third northbound turn lane into the site. Hunzeker informed the Commission that they had meetings with the King Ridge developers and were told "no, thanks" when asked about the possibility of access along the east property line of the TO Haas property. King Ridge told them they would have to buy the lot. King Ridge wants the Rustad property cut down to improve the visibility of the entire center. It is a mistake on the part of the city not to enforce the ordinance to provide reasonable access to the Rustad property. The city has acknowledged this mistake but they are not willing to say it should be corrected by giving access to 27th Street. The mistake occurred in the enforcement of the subdivision ordinance when this property around the Rustad property was developed. These applicants do not have reasonable access and the cost of that access should not be borne by Elliott Rustad. Hunzeker believes that this application proposes a reasonable solution.

Ross noted that there is a letter on file from Danay Kalkowski that indicates that Ridge Development is not interested in meeting with these two developers and is not interested in working out any ultimate access solution.

Carlson believes that is a different position than Ridge Development is suggesting today. Hunzeker stated that this use permit would not be here if the position as represented by Ridge Development today had been communicated to these applicants. Although, it would have required a lot of negotiation. The access that they are proposing even now is very circuitous viz-a-viz the Rustad property.

Bills-Strand wondered about landlocking. Rick Peo of the City Law Department clarified that the city bought the control of access. It is just a long time come situation. There have been various meetings over several years to negotiate an access issue on this development and there has not been a solution that meets all of the parameters for everyone involved. There has never been a win-win situation identified. Access is shown and reasonable access is there on the drawing board so the property is not technically landlocked, especially from the existing residential use. But no one has reached a solution on how to get the pieces to meet. That is why they are here today.

Marvin asked whether “reasonable” access means you can force them to grade their property down. Peo pointed out that the initial decision making fell short when the first plan was approved.

Carlson moved to delay for two weeks, seconded by Sunderman.

Carlson believes the adjacent property is presenting a new position. It sounds like they are interested in participating in some sort of mutual grading. It also sounds like they are not interested in additional access to 27th Street and perhaps that is the leverage to participate in a mutual grading plan.

Marvin stated that he will support the delay. The issue of access off of 27th Street, from the city’s perspective, has to do with rear-end accidents. He would like to see the access drawn through internally.

Carroll does not believe the two parties are going to get together. He does not believe a delay is going to help the situation. If the applicant wants a delay, the applicant can ask for it.

Taylor agreed that the parties will probably not reach an agreement.

Carlson understands that the applicant has not asked for a delay and he is also certain that they want direct access on N. 27th. Maybe the issues can be satisfied by providing a deceleration lane. Maybe the applicant would like two weeks to further negotiate rather than be denied access on 27th Street.

Bills-Strand believes there have been a series of mistakes made by all three parties. Maybe the city is a little at fault in not granting access to a property that is landlocked; Rustad should have read his title insurance closer; and Ridge Development should try harder when submitting a grading plan on property that they don’t even own. She wants to give two weeks to work something out.

Motion for two-week delay carried 7-2: Carlson, Sunderman, Marvin, Pearson, Krieser, Larson and Bills-Strand voting ‘yes’; Taylor and Carroll voting ‘no’. This application will be scheduled for continued public hearing and action on Wednesday, February 16, 2005.

CONT’D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 16, 2005

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

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

The Clerk announced that the applicant has requested a two-week deferral until March 2, 2005.

Taylor moved to defer two weeks, with continued hearing and action on Wednesday, March 2, 2005, seconded by Carroll and carried 7-0: Marvin, Pearson, Carroll, Taylor, Krieser, Sunderman and Carlson voting 'yes'; Bills-Strand and Larson absent.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 2, 2005

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

Staff recommendation: Conditional approval, without access on N. 27th Street.

Ex Parte Communications: None.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Dr. Elliott Rustad**, the owner of one of the parcels, and reminded the Commission that this site is surrounded by an existing use permit called King Ridge. The grading plan that was approved and has been implemented on surrounding property leaves the Rustad property some 18-20 feet above the grade of the remainder of that use permit. The approval of the King Ridge grading plan was in violation of the city's subdivision ordinance, which requires that the subdivider provide reasonable access to abutting unsubdivided property. Dr. Rustad is left without reasonable access to his property. The city zoned the property B-2 along with the lands on three sides, and Dr. Rustad has the right to develop the property for commercial use; however, with no reasonable access available, that is very difficult.

The access that is being shown across the TO Haas property to the south was agreed upon between Dr. Rustad and TO Haas, assuming there would be access to 27th Street as shown. Without the 27th Street access, the Rustad property will not have access to the south other than via the gravel access which exists to serve the existing residence. Nobody believes that to be adequate for or desirable for commercial development. Furthermore, without 27th Street access, the TO Haas property would remain stranded without reasonable access due to the median that has been constructed in Folkways Blvd. The trucks have to go to the end of the median and make u-turns in order to get back to the TO Haas property.

Hunzeker advised that the applicant has had conversations with the surrounding property owners. One possible solution would be to construct an access road along the east side of the TO Haas property to a new private roadway which would run east all the way down to N. 30th Street, which would leave some access available to these properties; however, there is still the problem of no reasonable access in and out of the property from Folkways. This is not acceptable to Dr. Rustad nor to TO Haas. The applicant did propose to the city that they break the median in order to provide an access and that was rejected.

Hunzeker stated that the applicant is proposing to build a third lane northbound from Folkways all the way to their proposed 27th Street access, and, in addition, to dedicate additional right-of-way to provide a turn lane outside of that third through lane at such time as the third through lane is constructed on up to Enterprise Drive. The city has security for the construction of that entire third

lane posted by the developer of the surrounding subdivision. Therefore, in essence, the city would get the third through lane and the turn lane at no cost to the city. That would provide safe access to the Rustad property, better and more reasonable access to the TO Haas property and solve this problem.

Hunzeker requested that Condition #1.1.3 be amended by deleting the period and inserting “except paragraph 4 “Access”.

The median was not there when TO Haas built the building. He does not know if it was proposed, but he believes this is probably the only collector street in town that has a median down the middle with four through lanes. It is not an arterial. Hunzeker believes it is reasonable to break that median, but that possibility has been rejected by Public Works and the city is unwilling to accept any responsibility for having a hand in creating this situation by approving the grading plan.

Pearson believes the “right turn in” is a good idea, but is there no way to balance the right turn out? Hunzeker believes there are two potential solutions. There would be a possibility of extending that turn lane a short distance to provide for some acceleration, or to construct that access as a “right turn in” only.

2. Bill Olson, appeared on behalf of **TO Haas Tire**, and explained the proposed internal traffic flow through the development. They have also met with Public Works and the developer. The problem for TO Haas is that this does not do anything for the TO Haas and Rustad property off of Folkways without a median break. The median was not there when the TO Haas store was built and they had no idea about it. There was a median break but it has since been closed, requiring a U-turn at North 30th Street to get to TO Haas. TO Haas has been there since the inception of the commercial area. They took a chance at this location. They had relied on good faith of the developer and the city. There is no good answer other than access to 27th Street. He agrees with the amendment requested by the applicant.

Pearson agrees that the access is not acceptable. If we are seriously talking about access to N. 27th Street, she believes a merge lane must be considered. She does not believe you are going to be able to cut off the “exit” traffic. Olson suggested that the 27th Street access be moved further south. There will not be a lot of traffic backed up on 27th Street trying to get into the TO Haas property.

Opposition

1. DaNay Kalkowski appeared on behalf of **Ridge Development Company**, the owner of King Ridge, which surrounds this site. After the February 2nd hearing, Ridge Development worked on providing a better internal access for the two lots that did not require an unreasonable amount of grading on the Rustad property. It utilized a median access onto N. 30th Street, which the city had not previously allowed. This proposal was found to be acceptable by Public Works. This revised plan would require some grading on the west side of the Rustad property but only to bring it down to the same level as the TO Haas site. Ridge Development believes there are reasonable ways to

make the internal connection. She believes they have come up with a better and more reasonable design. You can turn on 30th and go right back over to the site. Ridge Development stands willing and ready to build the internal road connection.

Kalkowski renewed the objection of Ridge Development to permitting direct access onto N. 27th Street. Ridge Development was required to do a 140 + acre development without right turn lanes. They have multiple pad sites along 27th that must be served by internal access. Lincoln Crossing pad sites also take internal access.

With respect to the right turn lane, because there is a right turn lane at Folkways, Ridge Development was required to build a continuous third lane from Folkways all the way up to Enterprise as an acceleration lane, contemplating no additional access to 27th Street in that area.

Kalkowski acknowledged that TO Haas bought their property from Ridge Development. The Rustad property was an independent piece which was owned by a third party who did not want to work with the King Ridge development. The Rustad property was the only part that was not master planned as the original King Ridge development.

2. Randy Hoskins, City Traffic Engineer, acknowledged that he did work with both the applicant and the engineers for the surrounding property in trying to come up with something acceptable to provide access for everyone. In the larger picture, we have a rather large development area that is basically sitting unused at this time; however, in looking at the King Ridge traffic study, we are talking about some significant volumes in the future. In looking at the median break being requested in Folkways, in the future, in the pm peak hour, there will be 440 left turns that want to go south on 27th off Folkways. This means you need a 420' long left turn lane. Based on that, it gets us beyond the edge of the TO Haas property, so any turn lane into that site along Folkways is not realistic. Hence, the city was looking at the area further to the east where there will be a traffic signal in the future.

Hoskins agreed that there is a third lane to be constructed in 27th Street, which was a requirement of the King Ridge development. That third lane would actually go the length of the property extending beyond Enterprise, which could create something of an acceleration lane to get traffic back out and up to speed, which would not be available under creating just a "right turn lane in" with no "right turn lane out". Moving the access further south will not function well as an acceleration nor a deceleration lane because it would be too short.

Hoskins clarified that this is not the only collector street in town with a median. He agrees that u-turns for larger trucks is not a good thing. But, in most cases you have professional truck drivers who will know better than to try and pull a u-turn in the street. There is a good network of streets around this that truck traffic could use now that Fletcher and 33rd have been built.

Hoskins reiterated that the city did buy access control along all of 27th Street north of Superior. You won't find driveways of this sort accessing single properties anywhere along there. Some of the pad sites do require additional circulation to get to them. The Public Works Department would like to see that the current ability to safely and efficiently move traffic on 27th Street be maintained.

Hoskins advised that the King Ridge traffic study identified the median. Perhaps TO Haas came in before that but he did not know for sure.

Response by the Applicant

Hunzeker agreed that the proposal by Kalkowski is better than before, but it does not solve the problem. To suggest that the Rustad property will be granted some sort of unfair advantage by granting access to 27th seems a little bit twisted or distorted because this problem was created by the fact that the grading plan does not provide for reasonable access to the Rustad property. This situation was partially created by the city's approval of a grading plan that did not meet the city's subdivision ordinance. He understands the city's concern in buying the access, but the city helped create the situation that makes access to this site unreasonable, and the city has been unwilling to provide reasonable access for both of these properties to function reasonably. Hunzeker also understands the concern about traffic exiting onto 27th Street, even though there will be three lanes of through traffic and a fourth lane providing access into the Rustad property. It is possible to make that access a "right turn in" with no exit permitted on 27th Street. If that is the desire, the Commission may wish to add language to his previous amendment to Condition #1.1.3, "and modify the 27th Street access to provide right turn in only with no exit movement onto 27th Street". This is less than optimal, but at least then there will be access back to Folkways where people can get out going northbound.

ACTION BY PLANNING COMMISSION:

March 2, 2005

Carlson moved for conditional approval, with amendments to include Condition #1.1.10 recommended by staff, and the applicant's revision to Condition #1.1.3, "except paragraph 4 access", seconded by Pearson.

Carlson stated that he is not sure about the major traffic issue caused by providing a short deceleration lane and access to 27th. It might be more of a conflict by doing a median break. There will be three lanes plus a turn lane, which he believes provides ample opportunity for through motion.

Marvin does not think this is any different than many businesses we have on "O" Street between 48th and 56th Street.

Bills-Strand believes that no exit on 27th would be difficult to enforce. She sees this site all of the time and there is a huge grade difference between the properties. This is one of the main feeder streets to North Star.

Motion for approval, with conditions, as amended, granting access onto 27th Street, carried 7-2: Sunderman, Krieser, Taylor, Larson, Marvin, Carlson and Bills-Strand voting 'yes'; Carroll and Pearson voting 'no'. This is final action unless appealed to the City Council within 14 days.

Exhibit A

LEGAL DESCRIPTION

A Legal description of Lot 48 Irregular Tract and Lot 1, Block 1, King Ridge 1st Addition to the City of Lincoln, all located in the Northwest Quarter of Section 6, Township 10 North, Range 7 East of the Sixth Principal Meridian, Lancaster County, Nebraska and more particularly described by metes and bounds as follows:

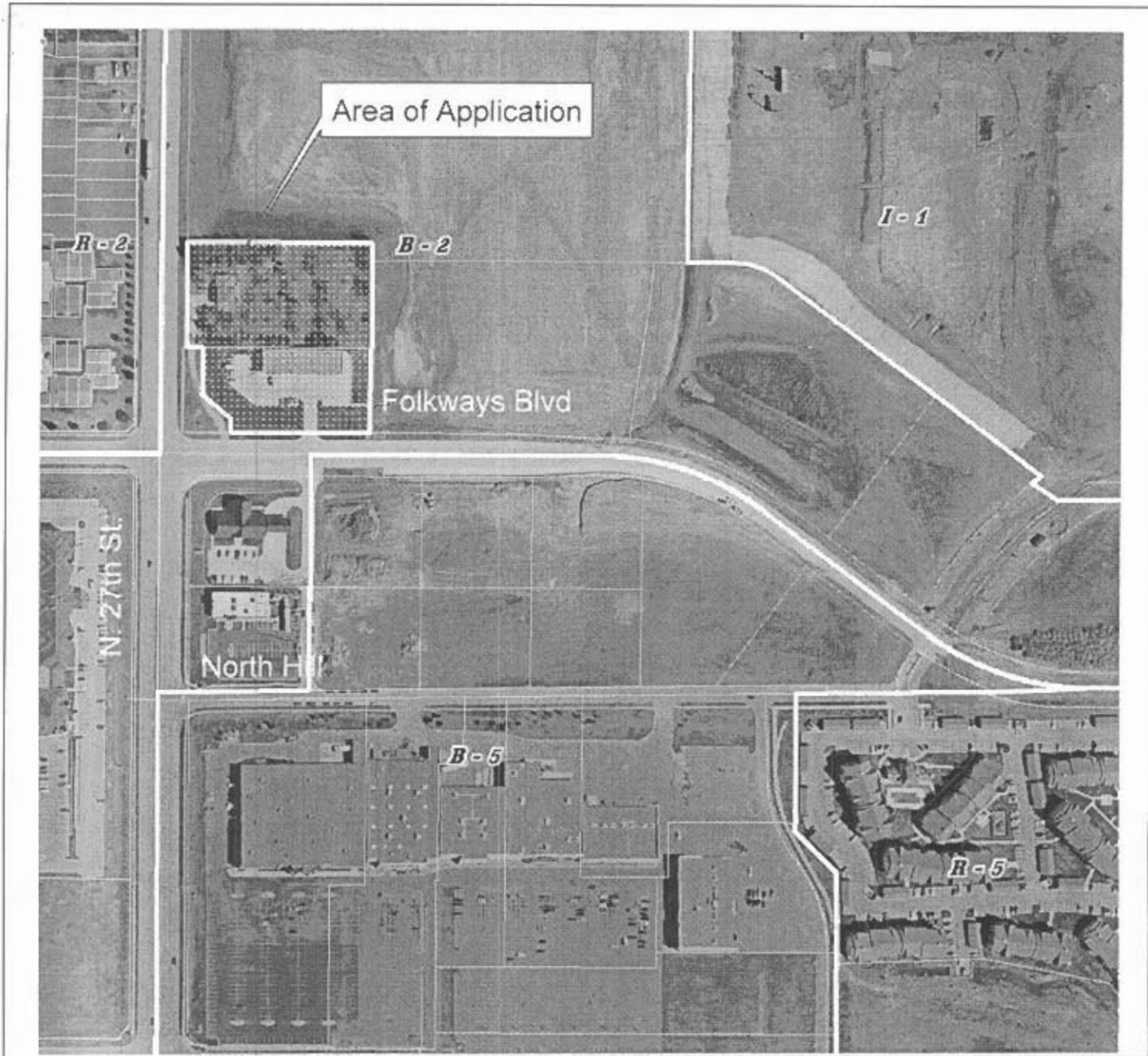
Referring to the West One-Quarter Corner of Section 6, Township 10 North, Range 7 East of the Sixth Principal Meridian, Lancaster County, Nebraska; Thence N 00°15'35" E, (an assumed bearing), and on the West Line of the Northwest Quarter of said Section 6, a distance of 701.26 feet to a point on the West Line of the Northwest Quarter of said Section 21; Thence S 89°44'25" E, and perpendicular to the West Line of the Northwest Quarter of said Section 6, a distance of 50.00 feet to a set 5/8" Rebar, being the Southwest Corner of Lot 48 Irregular Tract, located in the Southwest Quarter of the Northwest Quarter of Section 6, Township 10 North, Range 7 East of the Sixth Principal Meridian, Lancaster County, Nebraska and a point on the East Right-of-way Line of North 27th Street and also said point is the POINT OF BEGINNING; Thence N 00°15'35" E, 50 feet east and parallel with the West Line of the Northwest Quarter and on the West Line of Lot 48 Irregular Tract of said Section 6 or the East Right-of-way Line of said North 27th Street, a distance of 208.61 feet to a found 5/8" Rebar, being the Northwest Corner of Lot 48 Irregular Tract of said Section 6 or the Southwest Corner of Outlot "C", Block 1 of King Ridge 1st Addition to the City of Lincoln, located in the Northwest Quarter of Section 6, Township 10 North, Range 7 East of the Sixth Principal Meridian, Lancaster County, Nebraska; Thence S 89°52'18" E, and on the North Line of Lot 48 Irregular Tract of said Section 6 or the South Line of Outlot "C", Block 1 of said King Ridge 1st Addition, a distance of 367.13 feet to a found 5/8" Rebar, being the Northeast Corner of Lot 48 Irregular Tract of said Section 6; Thence S 00°09'49" W, and on the East Line of Lot 48 Irregular Tract of said Section 6 or on the West Line of Outlot "C" and Outlot "D", Block 1 of said King Ridge 1st Addition, a distance of 209.41 feet to a found ¼" Rebar, being the Southeast Corner of Lot 48 Irregular Tract of said Section 6 or the Northeast Corner of Lot 1, Block 1 of said King Ridge 1st Addition; Thence S 00°11'43" W, and on the East Line of Lot 1 or West Line of Outlot "D", Block 1 of said King Ridge 1st Addition, a distance of 168.51 feet, to a found ¼" Rebar, being the Southeast Corner of Lot 1 or the Southwest Corner of Outlot "D", Block 1 of said King Ridge 1st Addition and also said point being on the North Right-of-way Line of Folkways Boulevard; Thence N 89°44'47" W, and on the South Line of Lot 1, Block 1 of said King Ridge 1st Addition or the North Right-of-way Line of said Folkways Boulevard, a distance of 277.67 feet to a set 5/8" Rebar, being the South-Southwest Corner of Lot 1, Block 1 of said King Ridge 1st Addition and also said point being on the East Right-of-way

OCT 31 2002

CITY/LANCASTER
PLANNING DEPARTMENT

Line of said North 27th Street; Thence N 00°15'35" E, and on the West Line of Lot 1, Block 1 of said King Ridge 1st Addition or the East Right-of-way Line of said North 27th Street, a distance of 25.50 feet to a set 5/8" Rebar; Thence N 50°05'27" W, and on the West Line of Lot 1, Block 1 of said King Ridge 1st Addition or the East Right-of-way Line of said North 27th Street, a distance of 75.33 feet to a set 5/8" Rebar; Thence N 00°15'35" E, and on the West Line of Lot 1, Block 1 of said King Ridge 1st Addition or the East Right-of-way Line of said North 27th Street, a distance of 94.93 feet to a set 5/8" Rebar, being the Northwest Corner of Lot 1, Block 1 of said King Ridge 1st Addition and also said point is on the South Line of Lot 48 Irregular Tract of said Section 6; Thence N 89°44'51" W, and on the South Line of Lot 48 Irregular Tract of said Section 6 or the North Right-of-way Line of said North 27th Street, a distance of 32.00 feet to the point of beginning and containing a calculated area of 130,444.46 square feet or 2.995 acres, more or less.

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OCT 31 2002
LANCASTER CITY/LANCASTER COUNTY
PLANNING DEPARTMENT



2002 aerial

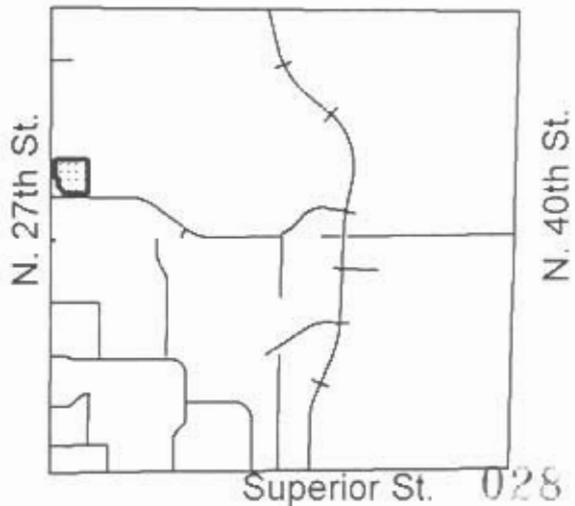
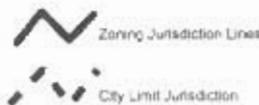
**Use Permit #148
King Crest Addition
N. 27th & Folkways Blvd.**

Fletcher Ave

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. 6 T10N R7E





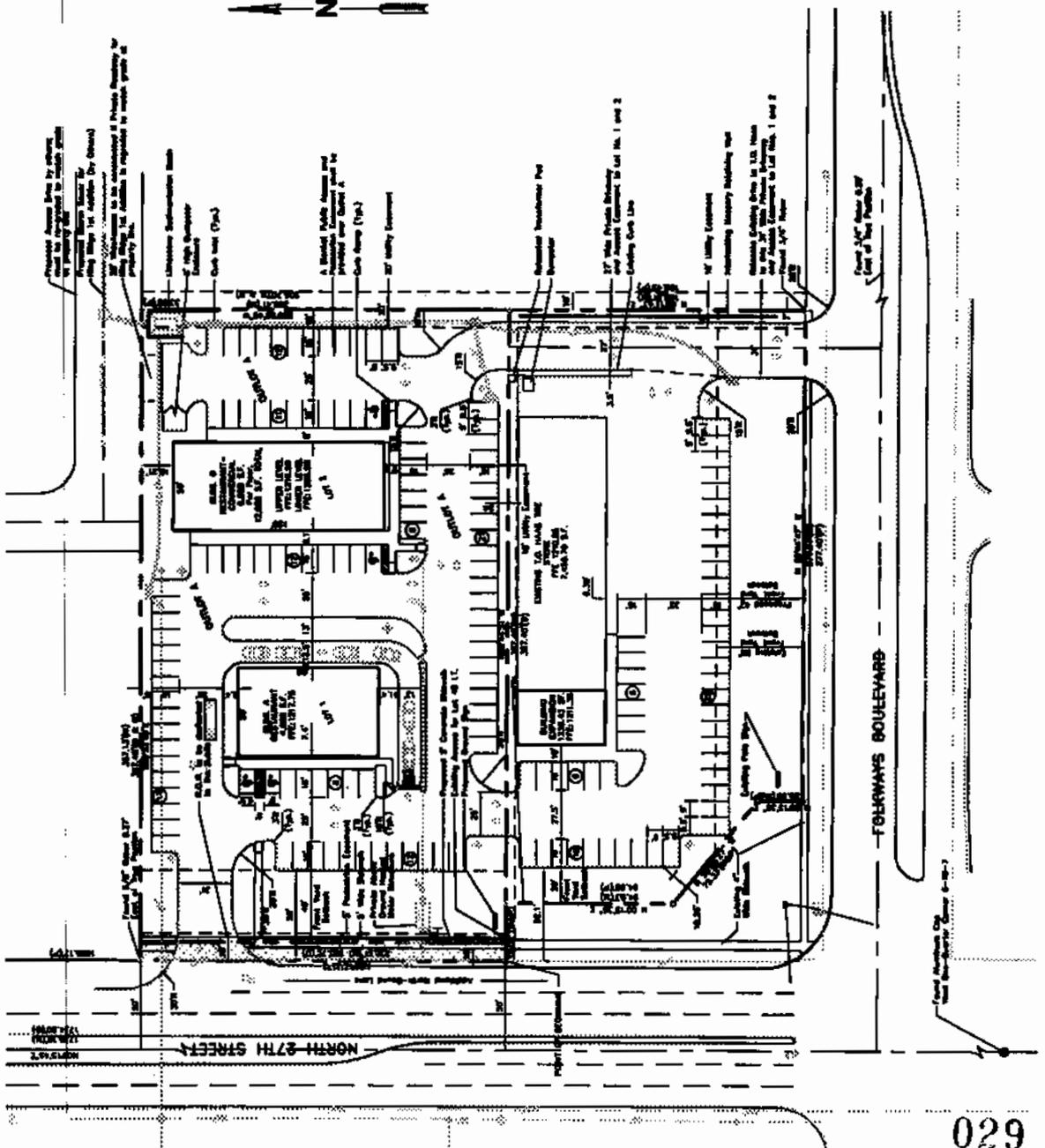
Project No.	10000
Client	King Chest Addition
Address	N 27th Street and Fourways Blvd.
City	Portland, Oregon
Date	10/1/2010
Scale	As Shown
Author	Robert R. Ross
Check	Robert R. Ross
Approved	Robert R. Ross

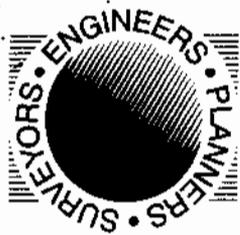
Project No.	10000
Client	King Chest Addition
Address	N 27th Street and Fourways Blvd.
City	Portland, Oregon
Date	10/1/2010
Scale	As Shown
Author	Robert R. Ross
Check	Robert R. Ross
Approved	Robert R. Ross

BUILDING AND PARKING STALL SUMMARY

NO.	AREA	AREA (SQ. FT.)	NO. STALLS	AREA (SQ. FT.)	NO. STALLS
1	REAR	12,000	40	12,000	40
2	FRONT	12,000	40	12,000	40
3	ADJACENT	12,000	40	12,000	40
4	TOTAL	36,000	120	36,000	120

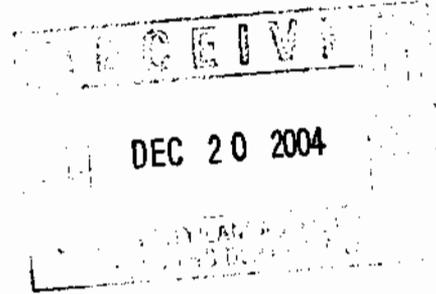
- NOTES:**
- The addition of the Front Street Building along Richmond Blvd. and N 27th Street shall be subject to the requirements of the City of Portland, Oregon, and the State of Oregon, and shall be subject to the requirements of the City of Portland, Oregon, and the State of Oregon, and shall be subject to the requirements of the City of Portland, Oregon, and the State of Oregon.
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ROSS
Engineering,
Inc.

December 17, 2004



Mr. Marvin Krout
Director of Planning
County-City Building
555 South 10th Street
Lincoln, NE 68508

RE: **Use Permit # 103C**
King Crest
North 27th Street and Folkways Boulevard
Lincoln, Nebraska
REI Project No. 136702-B

ESTABLISHED
1974

*Innovative
Designs
For the
Future of
Tomorrow*

Dear Marvin:

On behalf of Dr. Elliot Rustad and Mr. Randy Haas with T.O. Haas Tire Store we are resubmitting the revised Use Permit drawings for King Crest. The Use Permit consists of Lot 48 Irregular Tract and Lot 1, King Ridge First Addition; both located in the Northwest Quarter of Section 6, Township 10 North, and Range 7 East of the Sixth Principal Meridian, Lancaster County, Nebraska. The total area for the Use Permit is 3.00 Acres and the property is zoned B-2. The proposed development is generally located at the northeast corner of North 27th Street and Folkways Blvd.

Lot 1 of King Ridge First Addition is owned by T.O. Haas Tire Store and was included in the original Use Permit No. 103B for King Ridge Addition. Lot 48 I.T. is owned by Dr. Rustad and was excluded from the formal Use Permit approved by the City Council. Lot 48 I.T. currently has a ranch style single-family residence that will be relocated upon approval of the proposed Use Permit.

USE PERMIT

The original Use Permit application was submitted in October of 2002 and is still active. The City of Lincoln sent a letter dated December 10, 2002 to REI with comments. The owners did not pursue the development at that time due to the complications arising with the discovery of controlled access along North 27th Street. After substantial review, attempts to work with the King Ridge developer and meetings and discussions with various City Departments, the owners would like to again request vehicular access along North 27th Street and attempt to work out a resolution to the controlled access. Enclosed is a letter from attorney Mark Hunzeker, which outlines our position regarding access to the Dr. Rustad lot. It should be noted that Lot 48 I.T. was created prior to adoption of Section 27.31.100 (L). This lot is zoned B-2, is adjacent to North 27th Street and has a legal access to Folkways Blvd.

A BRIEF HISTORY

Dr. Rustad originally had REI submit an application for a Preliminary plat and Use Permit in October of 2002. Dr. Rustad was not aware that his property had controlled access along North 27th Street. The existing residence has access from a 12-foot wide crushed rock drive that leads south to Folkways Boulevard. City Staff have commented that the crushed rock drive was provided only as a temporary access for the current residence, and that it would not be allowed for commercial use. City Staff have indicated that when the residence is no longer used this crushed rock access drive will be eliminated and access to Lot 48 I.T. would be through King Ridge development, which lies to the north and east of the Rustad Property. The attorneys for the two owners can find no record that the crushed rock access is considered a temporary access that is intended to eventually be eliminated.

Prior to the discovery of controlled access along North 27th Street the City of Lincoln Traffic Engineer, Randy Hoskins, agreed that access from North 27th Street to the Rustad property would be allowed with a drive, provided a north bound turn lane was also constructed.

The Candy Factory
201 North 8th Street
Suite 401
Lincoln, NE 68508
Phone 402.474.7677
Fax 402.474.7678

www.rossengineering.com



The City also asked Dr. Rustad to work with Ridge Development, the developers of King Ridge to the east of Rustad in order to work out access through their property. The engineer for Ridge Development, Mark Palmer, with Olsson Associates talked with Tom White of Ridge Development. According to Mark, Tom was not interested in granting an easement or selling a small tract of land along the east side of the Rustad and T.O. Haas lot to allow for vehicular access. Nor was Ridge Development willing to regrade their site to meet the existing grade at the common property line with the Rustad property.

After the second meeting with City Staff, Ray Hill from the Planning Department suggested that we again attempt to work out a grading and access solution with King Ridge. Tom White's attorney, DaNay Kalkowski, informed us that we should follow their approved Grading Plan, or purchase a lot from Ridge Development. She later wrote the Planning Department and indicated that her client had spent a great amount of effort and cost in obtaining approval of the Use Permit and that they felt that the best situation for Rustad was to simply abide by the approved Grading Plan. No mention was made of the fact that the approved Grading Plan showed massive site grading and completed tree removal being required on Lot 48 I.T., owned by Dr. Rustad, and that this lot was not included within the limits of the Preliminary Plat and Use permit for King Ridge.

It was at this point that Randy Hoskins agreed to grant access for the Rustad property to North 27th Street. Public Works Department required a third north-bound lane of traffic be built at the time of construction of the proposed driveway. The third lane of traffic would serve as a deceleration lane, just as it does across Lincoln Crossing Shopping Center from Superior Street north to North Hill Road. The proposed driveway access from North 27th Street would also greatly improve access to the T.O. Haas property, adjacent and south of the Rustad property, by means of the proposed north-south interior driveway connection.

Dr. Rustad's attorney, Mark Hunzeker, T.O. Haas attorney, Bill Olson, members of Planning and the Public Works and Utilities Departments, as well as staff from this firm have met again, hoping to negotiate a resolution. After City review, REI was sent the following email from the Planning staff:

"Public Works will not allow any additional access to North 27th Street from this property, or additional access points along the King Crest or King Ridge Use Permit properties (excepting those which are already part of the approved Use Permit). Public Works noted that they have repeatedly indicated both to Ross Engineering as well as to Mark Hunzeker that access would not be granted. The position of the City Staff is that internal access was provided with the approved Use Permit. Any deviation from or issue with that access is a private matter between property owners."

USE AND BUILDINGS:

The two proposed buildings on Rustad's property have been reconfigured. The location of the drive-thru restaurant has been rotated and moved south in order to allow an access to the northern most portion of the site as suggested by the Planning and Public Works Departments. This building envelope is approximately 50 foot by 80 foot, creating 4,000 square feet of building. A drive-thru lane runs along the east side of the building.

The 12,000 square foot two-level proposed commercial retail and office building was modified only slightly since the previous submittal. It still has two-levels at grade with access to the top level from the west side of the building at grade and access to the lower level from grade from the east side. Handicap access is provided for both sides of the building from adjacent parking stalls. It is anticipated that the commercial and retail uses will occur on the top level and office type uses will occur on the lower level.

WAIVERS:

The following waivers to the Lincoln Municipal Code are requested:

DRAINAGE:

Additional detention for the Rustad property is not required because drainage was provided as part of the drainage and detention system planned for King Ridge 1st Addition. The enclosed approved Use Permit Drainage Plan shows the Rustad and T.O. Haas property included in the calculations for the approved Use Permit. Storm water runoff will discharge into the proposed storm sewer system for King Ridge. Runoff from both the Rustad and the T.O. Haas property was included in the original approved Use Permit for King Ridge and was planned to discharge into the proposed storm sewer system and the detention facilities approved for King Ridge Addition.



FRONT YARD SETBACK:

We are requesting a waiver to reduce the front yard setback along Folkways Blvd. We are requesting additional space to accommodate through traffic in front of the existing T.O. Haas Tire Store. The current parking layout was designed to handle minor amounts of traffic and no through traffic. With the recent elimination of the median opening in front of the T.O. Haas Tire Store at their existing driveway entrance, reasonable access to North 27th Street does not exist, and a connection is now proposed to the Rustad property to the north. This will increase the traffic within the T.O. Haas parking lot and increase the danger of fender benders in the parking lot. In order to create a safe distance between parked cars, along the east-west driveway we are requesting eight feet of the 50-foot front yard setback. Planning Staff indicated they would support the waiver of front yard setback if the developer would increase the screening to 90% of the entire length of the front yard. We now show screening at 90% of the front yard visual plane on the Landscape Plan.

RESPONSES TO THE COMMENT LETTER FROM THE CITY OF LINCOLN DATED 12/5/2002:

1. Preliminary Plat reference will be removed, and this letter will serve as a formal request to withdraw the original Preliminary Plat.
2.
 - a. A 16-inch water main will be extended along the east side of North 27th Street. It will be constructed by an Executive order and a private 6-inch water service will serve the Rustad property.
 - b. The 8-inch sanitary sewer is now properly labeled along North 27th Street.
 - c. The lower level of the Commercial building will be served with an ejector pump.
 - d. Detention calculations for the existing Use Permit King Ridge 1st Addition are included with this submittal. The approved Use Permit for King Ridge 1st Addition created adequate detention for the Rustad and T.O. Haas property. Storm water from those lots was designed to sheet drain to an inlet structure at the east edge of sub-area D3 on the King Ridge 1st Addition Drainage Plan. Refer to sub-area D3 on the enclosed Drainage Plan. Storm water then flows through a 24" RCP to a 36" RCP until it reaches a large open swale running to the north along the west property line of King Ridge 1st Addition. The drainage swale empties into a large wetland north of King Ridge 1st Addition.

The total impervious surface of sub-area D3 has not changed from the calculated amount for the Use Permit for King Ridge 1st Addition. The Use Permit for King Ridge 1st Addition shows the grading of Dr. Rustad's property down by means of a steep sloped embankment along Rustad's west and south property lines. Due to the City's approval of grading not within the boundary of the Use Permit for King Ridge 1st Addition; the steep slope embankment had to be shifted to the north and east property line of Dr. Rustad's property only after Ridge Development failed to acquire Dr. Rustad's land, which assumed a coefficient of runoff of 0.70 and is the same as now shown for the Rustad property.
 - e. The Grading Plan has been revised to eliminate grading outside the Dr. Rustad and T.O. Haas property.
 - f. The storm water outlet to the north and east, which was previously shown as a 15-inch RCP, has been increased in size to an 18-inch RCP.
 - g. The North 27th Street access issue was addressed in detail above, but in summary:

Dr. Rustad and Randy Haas would like the City to approve driveway access along North 27th Street to the Rustad Lot. Our position is outlined in an enclosed letter from the attorney Mark Hunzeker. Due to misrepresentation on the original Use permit Grading Plan and disregard by the City of the fact that this site grading was shown and yet no authorization provided by the owner of Lot 48 I.T., and due to no means of Dr. Rustad being able to require the approved Private Roadway to be constructed to the north and east of Lot 48 I.T., the proposed driveway access from North 27th Street is deemed to be a reasonable resolution of the current situation. The only other remedy is to take the matter to court and fight the issue as well as request damages as a result of the Use Permit approved by the City.



18. All plant material has been identified in the landscape schedule.
19. We have made several attempts to work with the owner of King Ridge First Addition, and they have refused to provide a reasonable remedy for the access issue.
20. An Ownership Certificate will be forwarded to the City of Lincoln shortly following this submittal.
21. The existing T.O. Haas Store entrance is labeled as relocated on the Site Plan.
22. A parking legend now shows the parking required per building.
23. Building Envelopes on the Rustad lot have been identified as A and B.
24. A ground sign has replaced the pole sign on the Rustad lot.
25. Sidewalks will no longer be required because the original Private Roadway has been reclassified as Private Driveway.
26. A Building Envelope has been illustrated for the T.O. Haas building.
27. The Side yard setback is 0 feet for nonresidential in B-2, and is not labeled.
28. The only setback required is the frontyard setback of 50-feet and it is labeled on the Site Plan.
29. Proposed lot numbers have been clearly identified. Lots will be created by an Administrative Final Plat.

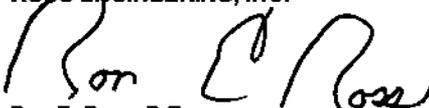
In summary, we believe this submittal meets the standards set forth by the City of Lincoln, and we appreciate your time and consideration. We would be more than happy to meet with City Staff to review the process that went into getting this proposal together and to explain the overall scheme of the proposed development. Please call me if you have any questions.

Included in this submittal are the following drawings:

1. Cover Sheet	21 copies
2. Existing Topographic Site Plan	21 copies
3. Site Plan	21 copies
4. Utility Plan	21 copies
5. Grading Plan	21 copies
6. Drainage Area Plan	21 copies
7. Landscape Plan	21 copies
8. King Ridge First Addition Use Permit Site Plan	1 copy
9. King Ridge First Addition Use Permit Drainage Plan	1 copy
10. King Ridge First Addition Use Permit Details & Calculations	1 copy

cc: Randy Haas
Bill Olson
Mark Hunzeker

Sincerely,
ROSS ENGINEERING, INC.


Ron E. Ross, P.E.

President

Pierson|Fitchett
LAW FIRM

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Randy R. Ewing
Shanna L. Cole
Jason L. Scott

Gary L. Aksamit
of Counsel

January 14, 2005

Becky Horner
Planning Dept.
City of Lincoln
555 S. 10th Street
Lincoln, NE 68508

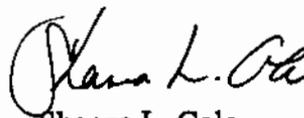
Re: Elliott Rustad property

Dear Becky:

After a review the county records, it is our opinion that the Rustad property was under separate ownership as of the date of the ordinance and that no adjoining property was owned by the previous owners of what is now the Rustad property. As of the date of the ordinance, the property owners were David and Judy Lewis who conveyed it to the Rustads in 2000.

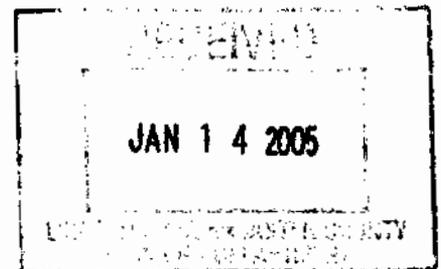
Please contact Mark Hunzeker if you have further questions or concerns.

Sincerely,



Shanna L. Cole
For the Firm

(G:\WPData\MHRustad 872.002 N 27th\Homer 1-14-5.ftr.wpd)



INTER-DEPARTMENT COMMUNICATION



DATE: January 3, 2005
TO: Becky Horner, City Planning
FROM: Sharon Theobald
Ext 7640
SUBJECT: DEDICATED EASEMENTS
DN# 55N-27E

UP #103C

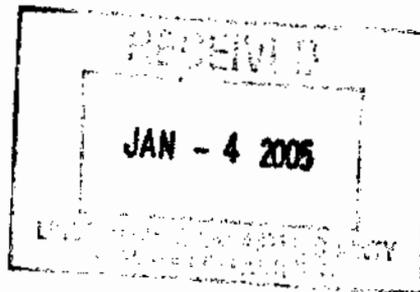
Attached is the Use Permit for King Crest Addition.

In reviewing the dedicated transmission line or other electrical easements shown on this plat, LES does not warrant, nor accept responsibility for the accuracy of any such dedicated easements.

ALLTEL, Time Warner Cable, and the Lincoln Electric System will require the additional easements marked in red on the map. Also, please include "utility" in the public access easement, as noted.

It should be noted, any relocation of existing facilities will be at the owner/developer's expense. Also, additional easements may be required.

Sharon Theobald



ST/ss
Attachment
c: Terry Wiebke
Easement File

Memorandum

To:	Becky Horner, Planning Department
From:	Dennis Bartels, Engineering Services
Subject:	King Crest Use Permit
Date:	December 30, 2004
cc:	Randy Hoskins Roger Figard

Engineering Services has reviewed the proposed Use Permit #103C located east of North 27th Street north of Folkways Boulevard and has the following comments:

1. Water - The proposed water system to serve this development is satisfactory.
2. Sanitary Sewer - The proposed sanitary sewer to serve this development is satisfactory.
3. Grading and Drainage - The application letter states that no grading will need to occur outside this development yet this plan shows a storm sewer outlet 4' to 6' below the existing ground line on the adjacent property. Grading will need to occur on the property to the north outside this development to outlet this storm sewer unless or until the storm sewer shown to the north is built. Mr. Hunzeker, the attorney for the developer, states that the grading plan for King Ridge showing potential grading on this applicant property was approved without notification of this applicant. To avoid this problem for the present application, this Use Permit should be conditioned upon notification and permission of adjacent land owners to accomplish off-site grading shown on this plan.

The plan as submitted shows regrading of the North 27th Street right-of-way west of the TO Haas site and constructing the required screening for the parking lot in City right-of-way. This grading and screening is unsatisfactory in the public right-of-way.

The application proposes to take credit for the drainage and detention proposed for the adjacent development but does not propose to meet the grading and access provisions of the approved plan. The detention for the original King Ridge Use Permit and preliminary plat was waived because of its proximity to the Salt Creek flood plain and permission from adjacent property owners. Since this application is requested separate from the previous application, detention should be provided for the Rustad property portion of this application unless the adjoining property agrees to handle the increased runoff produced by this development.

4. Access - The City has purchased access control for the frontage of this property along North 27th Street. When the original King Ridge plat and use permit was reviewed, the

City required that access be provided to this property in part because of this access control. The access control was purchased with public funds to increase the safety and efficiency of 27th Street. Public Works still believes that the access control is desirable and recommends that access not be sold back to the property owner. The plan should be revised to eliminate access to North 27th Street.

Memo



To: Tom Calka, Planning Department

From: Mark Canney, Parks & Recreation

Date: January 4, 2005

Re: King Crest (Resub) UP 103C

Staff members of the Lincoln Parks and Recreation Department have conducted a plan review of the above-referenced application/proposal and the following comments:

1. Please identify and locate existing/proposed street trees for the project.

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

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Becky Horner

DATE: January 10, 2005

DEPARTMENT: Planning

FROM: Chris Schroeder

ATTENTION:

DEPARTMENT: Health

CARBONS TO: EH File
EH Administration

SUBJECT: King Crest
UP #103C

The Lincoln-Lancaster County Health Department has reviewed the proposed development with the following noted:

- All wind and water erosion must be controlled during construction. The Lower Platte South Natural Resources District should be contacted for guidance in this matter.
- During the construction process, the land owner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but not limited to application of water to roads, driveways, parking lots on site, site frontage and any adjacent business or residential frontage. Planting and maintenance of ground cover will also be incorporated as necessary.

MEMORANDUM

TO: Planning Commission
DATE: February 2, 2005
FROM: Becky Horner, Planning *BH*
RE: Use Permit #148, King Crest
COPIES: Applicant
Ray Hill, Planning

TO Haas is presently in the King Ridge 2nd Addition Use Permit area, since King Crest Use Permit proposes to include TO Haas, then the King Ridge 2nd Addition Use Permit should be amended to remove TO Haas from the Use Permit Boundaries. Due to this the following condition should be added to the staff report conditions.

Please add the following condition to the Use Permit Conditions:

- 1.1.10 Revise King Ridge 2nd Addition Use Permit #103 to remove the TO Haas property from the King Ridge Use Permit.