

INTER-DEPARTMENT COMMUNICATION

TO Nicole Fleck-Tooze  
Public Works  
ATTENTION

DATE September 25, 2001

FROM Rick Peo *Rick Peo*

DEPARTMENT City Law

COPIES TO Allan Abbott  
Roger Figard  
Ray Hill  
Dennis Bartels

SUBJECT Private roadways

**A. Authorization to install private roadways versus public streets.**

Lincoln Municipal Code Section 26.07.145 defines private roadway to mean "a designated area on an approved special permit, use permit, or subdivision, that is privately owned and that is used or intended to be used for the principal purpose of serving as vehicular access to abutting property."

Section 26.23.140(g) provides that:

Every lot shall front upon and have access to a public street, except:

- (1) Lots located in the AG, AGR, R-1, R-2, R-3, R-4, R-5, and R-6 zoning districts may front upon and take access to a private roadway if said lots are located within an approved community unit plan under Chapter 27.65 or a planned unit development under Chapter 27.60 of the Lincoln Municipal Code;
- (2) Lots located in other zoning districts may front upon and take access to a private roadway if said private roadway has been approved either in connection with a use permit under the provisions of Title 27 or with a subdivision of property in conformance with all the requirements of this title.

When lots are to front upon or take access to a private roadway, the subdivision ordinance further requires that the private roadway be subject to a public access easement.

**B. Maintenance of Private Roadways.**

Section 26.23.170 of the Lincoln Municipal Code provides that where the subdivision contains sewers, sewage treatment plants, water supply system, park areas, street trees, or other physical facilities necessary or desirable for the welfare of the area and which are of common use or benefit and which the City does not maintain, a provision

shall be made for the proper and continuous maintenance and supervision of all the facilities by the lot owners in the subdivision. All such maintenance agreements shall be incorporated in covenants and restrictions in deeds to the subdivided property and shall be submitted to the City for its approval prior to inclusion in the deeds.

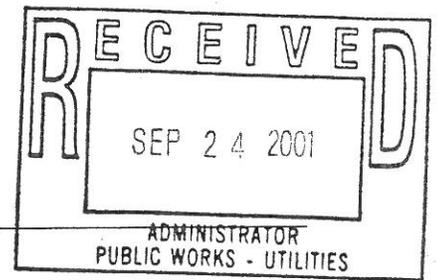
Pursuant to Section 26.23.170, the City conditions the approval of a final plat containing private roadways upon condition that the subdivider maintain the private roadways on a permanent and continuous basis. In addition, pursuant to Section 26.23.170, the subdivider is authorized to be relieved and 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. However, the subdivider is not relieved of this maintenance obligation until the document or documents creating the property owners association have been reviewed and approved by this office and filed of record with the Register of Deeds.

This transfer of obligation to a homeowners association is typically done through the filing of a declaration of covenants, condition, and restrictions upon the property. Under these protective covenants, each lot owner is automatically made a member of the homeowners association and is deemed to have covenanted, consented and agreed to pay annual assessments or charges for the permanent and continuous maintenance of the common areas and private improvements such as private roadways. The protective covenants typically provide for enforcement of the covenants by the subdivider, association or any lot owner. In addition, this office now requires the enforcement provisions to include the right of the City of Lincoln to enforce, by a proceeding at law or in equity, all restrictions, conditions and covenants regarding maintenance of common areas and private improvements such as the private roadways. This office further requires the protective covenants to contain a provision providing that in the event the homeowners association dissolves, the lot owners shall remain jointly and severably liable for the cost and maintenance of the private improvements. The covenants must also contain a provision that the covenants requiring maintenance of the private improvements cannot be amended without first obtaining the consent of the City of Lincoln. Finally, the enforcement provisions must contain a provision that in the event the private improvements are not maintained, the City may at its option perform such maintenance as it deems necessary and bill each of the members of the association for the cost of performance of such maintenance on an equal basis.

With respect to the maintenance of the private roadways, the City believes that it is the initial responsibility of the subdivider or the owners association to enforce the provisions regarding the same. It is only upon their failure to do so that the City would step forward.

ERP/ce

# M e m o r a n d u m



To: Nicole Fleck-Tooze, Public Works and Utilities  
From: Dennis Bartels, Engineering Services  
Subject: Private vs. Public Streets  
Date: September 24, 2001  
cc: Allan Abbott  
Roger Figard  
Ray Hill  
Rick Peo

I have identified the following items as differences between public and private street systems.

## PUBLIC STREETS

1. Public streets are located in dedicated public rights-of-way. Per the subdivision ordinance, the standard right-of-way is the back-to-back paving width plus 33'.
2. Public local streets in residential areas are 27' wide. Commercial or industrial local streets are 33' to 39' wide.
3. Public rights-of-way are required to be graded so that the entire right-of-way drains back to the street paving.
4. Minimum paving thickness and paving material are specified in the design standards.
5. Public Works approves the paving plans, inspects the construction and assumes maintenance responsibility of the paving after the completion and acceptance of the pavement construction.

## PRIVATE STREETS

1. Private roadways are located in public access easements. The minimum width is the width of the paving, but is typically wider to include the easements for sidewalks and utilities that usually parallel the paving.
2. The width of private roadways is specified in the design standards as 27' with no wider widths required in commercial or industrial areas. 21' wide paving is allowed for dead end private roads serving less than 30 parking stalls.
3. The grading of the public access easement outside the paving is not specified in the design standards.
4. No paving thickness is specified. More options for paving materials are allowed for private streets.
5. Private roadways are designed and built by the property owner. The bond posted with the subdivision for the private street is not released until the developer's engineer certifies to Public Works that the street is built in accordance with subdivision requirements and design standards.

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Deviations to design standards for both public and private streets are reviewed and recommended based upon the circumstances. There is generally less flexibility to deviate from public street standards. Public streets must generally conform to the "Minimum Design Standards" of the State of Nebraska Board of Public Roads Classifications and Standards. Private roadways are generally located in special permit and use permit areas where there are unique situations and a desire for flexibility in site design. Design standard waivers are reviewed to determine if the intent of the standards are met and a safe design is still being provided even if specific requirements are not met.