

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 16, 2012 AGENDA

Subject:	Type:	Submitted By:
APPLICATION FOR REPLAT — LOTS 1 & 2, GILES CORNER REPLAT 2 (NW OF 72 ND & GILES)	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A public hearing has been scheduled and a resolution prepared to approve a replat application for Lots 1 and 2, Giles Corner Replat 2 (a replat of Lot 80A, Giles Corner), generally located northwest of 72nd Street and Giles Road.

FISCAL IMPACT

None.

RECOMMENDATION

Approve.

BACKGROUND

A public hearing has been scheduled and a resolution prepared to approve a replat application for Lots 1 and 2, Giles Corner Replat 2, generally located northwest of 72nd Street and Giles Road. The application was submitted by Simmonds Restaurant Management, Inc., on behalf of the property owner, Kanne Korp LP. The property is zoned C-1 PUD, Shopping Center Commercial, Planned Unit Development, with the Gateway Corridor Overlay District. The property is currently vacant; the replat is for the purpose of constructing a Jimmy Johns restaurant.

The replat approval is conditioned on recording a common area maintenance agreement prior to releasing the final plat for recording.

A detailed staff report is attached.

On September 20, 2012, the Planning Commission unanimously recommended approval of the proposed replat to Council subject to the satisfactory resolution of the issues noted in the staff report.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, FOR APPROVAL OF THE REPLAT FOR LOT 80A, GILES CORNER, TO BE REPLATTED AS LOTS 1 AND 2, GILES CORNER REPLAT 2, A SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., IN SARPY COUNTY, NEBRASKA.

WHEREAS, Simmonds Restaurant Management, Inc., has applied on behalf of the property owner, Kanne Korp LP, for approval of a Replat for Lot 80A, Giles Corner, to be replatted as Lots 1 and 2, Giles Corner Replat 2; and

WHEREAS, the City Administrator and the City Engineer have reviewed the replat; and

WHEREAS, on September 20, 2012, the La Vista Planning Commission held a public hearing and reviewed the replat and recommended approval subject to resolution of items identified by the city engineer and staff; and

WHEREAS, Items remaining to be resolved include the following:

1. A finalized common area maintenance agreement must be recorded prior to releasing the final plat for recording.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the plat for Lot 80A, Giles Corner, to be replatted as Lots 1 and 2, Giles Corner Replat 2, a subdivision located in the Southeast $\frac{1}{4}$ of Section 14, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, generally located northwest of 72nd Street and Giles Road, be, and hereby is, approved subject to the conditions contained in the last two recitals above and review and approval by the City Engineer and the City Attorney.

PASSED AND APPROVED THIS 16TH DAY OF OCTOBER, 2012.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

**CITY OF LA VISTA
PLANNING DIVISION**

RECOMMENDATION REPORT

CASE NUMBER: 2012-SUB-07

FOR HEARING OF: October 16, 2012

Report Prepared on: October 4, 2012

I. GENERAL INFORMATION

A. APPLICANT:

Simmonds Restaurant Management, Inc.
11404 W. Dodge Rd.
Omaha, NE 68154

B. PROPERTY OWNER:

Kanne Korp LP
P.O. Box 729
Carroll, IA 51401

C. LOCATION: Northwest of 72nd Street and Giles Road

D. LEGAL DESCRIPTION: Lot 80A, Giles Corner

E. REQUESTED ACTION(S): Replatting of Lot 80A into two lots.

F. EXISTING ZONING AND LAND USE: C-1 PUD, Shopping Center
Commercial – Planned Unit Development, Gateway Corridor Overlay
District

G. PURPOSE OF REQUEST: Development of one lot for a Fast Food
Establishment as per 5.10.02.06 of the Zoning Ordinance; creation of separate lot
for future development.

H. SIZE OF SITE: 1.46 Acres

II. BACKGROUND INFORMATION

A. EXISTING CONDITION OF SITE: Existing Lot 80A is a relatively
flat, vacant lot west of the La Vista Crossing strip mall.

B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:

1. **North:** R-1 Single-Family Residential /Giles Corner residential
2. **East:** C-1 Shopping Center Commercial/La Vista Crossing
3. **South:** CC – Community Commercial/ Strip Mall (Papillion)
4. **West:** R-1 Single-Family Residential /Giles Corner residential

C. RELEVANT CASE HISTORY: Not applicable.

D. APPLICABLE REGULATIONS:

1. Section 5.10 of the Zoning Regulations – C-1 Shopping Center Commercial
2. Section 5.15 of the Zoning Regulations – PUD Planned Unit Developments
3. Section 5.17 of the Zoning Regulations – Gateway Corridor (Overlay District)
4. Section 3.08 of the Subdivision Regulations – Replots

III. ANALYSIS

A. COMPREHENSIVE PLAN: The Future Land Use Plan of the Comprehensive Plan designates the area for Commercial development.

B. OTHER PLANS: Not applicable.

C. TRAFFIC AND ACCESS:

1. Vehicular access is provided to the property over a private roadway that was established in an ingress/egress easement granted in 2007. This easement did not identify who benefits from the easement and contains a brief statement about maintenance. The maintenance statement does not identify how costs are to be allocated and how maintenance will be handled if a property owner does not maintain their area. To address these concerns (as well as sewer maintenance concerns discussed later in this letter) there needs to be a Common Area Maintenance Agreement that more fully addresses maintenance issues. An acceptable draft of such an agreement needs to be provided prior to the plat being scheduled for City Council consideration and a signed copy will be needed prior to releasing the signed final plat mylars for recording. The proposed use of the property is consistent with the existing zoning and commercial use of the property was considered when the infrastructure was installed. A traffic impact study was done in 2002 for a development potential of 37,500 square feet. That study included a review of traffic signal warrants for the 74th and Giles intersection which indicated that warrants would not be met with traffic projections through 2025. Therefore, no additional traffic study is required. The preliminary and final plat drawings contain a notation that there will be an ingress/egress, sidewalk, parking and pedestrian easement over all private drives and parking areas constructed in Lots 1 and 2 in favor of the owners of Lots 1 and 2. I do not have objections to this proposal, however, for building permit review purposes the quantity of parking provided on each lot will need to meet the applicable requirements for the proposed buildings on each lot. The application documents to date do not propose new public or private, shared infrastructure improvement to be constructed by the Subdivider of this Subdivision, therefore, the need

for a draft subdivision agreement is not triggered by Article 3.03.15 of the Subdivision Regulations.

2. The development on these lots will need to include sidewalks along 74th Street and along the existing private roadways connecting to 74th Street and to Giles Road. Such sidewalks should be 5 feet wide and be ADA accessible.

D. UTILITIES:

1. A private sanitary sewer exists in an easement over proposed Lot 2. The easement document for this sewer, that was submitted by the applicant, shows that the owner of Lot 80A granted the easement to the owner of Lot 80B but retained the right to benefit from this sewer. The submittal includes a proposed easement over Lot 2 to reach Lot 1. The Grading and Utilities Exhibit needs to include a notation as to whether the proposed sewer in the easement across Lot 2 will be built by the owner of Lot 1 and serve only Lot 1, or if it is to be a proposed shared sewer. If it is to be a shared sewer, then a draft subdivision agreement will be required by Article 3.03.15 of the Subdivision Regulations. The issue of maintenance of the existing shared sewer needs to be addressed more clearly than is provided in the existing easement document.
2. The tract sewer connection fee will need to be collected at the time each lot is issued a building permit. The fee is currently \$5,973.00 per acre.
3. Based on the submittal documents at this time, the Papillion Creek Watershed Partnership storm water management fee set forth in the City of La Vista Master Fee Schedule is not applicable to this property. As noted in the Master Fee Schedule the fee is collected when set forth in a subdivision agreement for new development or significant redevelopment. In accordance with Article 3.03.15 of the Subdivision Regulations, a draft subdivision agreement is required when the proposed subdivision will include public and/or private, shared (common area) infrastructure improvements which is not proposed in this application. If subsequent submittals indicate that there will be proposed infrastructure of this type, then a draft subdivision agreement may be necessary which would include the storm water management fee.

IV. REVIEW COMMENTS:

1. A finalized common area maintenance agreement will be needed prior to scheduling to City Council. In addition to the road maintenance issues

this will need to address maintenance of the existing shared sanitary sewer across the north side of proposed Lot 2 that will serve Lot 2 as well as Lot 80B.

2. Chapter 154 of the City Municipal Code requires a Post Construction Storm Water Management Plan and a permit will be required through the Permix web site that is utilized by all Papillion Creek Watershed Partnership communities. A Post Construction Storm Water Management Plan has been provided and a draft Maintenance Agreement has been provided in the draft Subdivision Agreement. The PCSMP will be reviewed in detail as part of the review process through the Permix web site, but the concept of using an extended detention basin to serve both lots is acceptable.
3. The Planned Unit Development overlay over this property is not applicable as it relates to the building setbacks of residential properties in the Giles Corner subdivision.
4. The applicant has been notified that there are special regulations relating to the Gateway Corridor (Overlay District) that will affect the building and site design process.
5. Approval of the replat does not constitute approval of the illustrated site layout for the proposed Lot 1.

V. PLANNING COMMISSION RECOMMENDATION:

Approval of Giles Corner Replat 2 subject to the satisfactory resolution of the following issues prior to City Council review:

- A. A finalized common area maintenance agreement will be needed prior to scheduling to City Council. In addition to the road maintenance issues this will need to address maintenance of the existing shared sanitary sewer across the north side of proposed Lot 2 that will serve Lot 2 as well as Lot 80B.
- B. The title on the final plat will need to be moved in order to allow the 5" by 2 ½" blank space in upper right corner requested by the Sarpy Register of Deeds.

VI. STAFF RECOMMENDATION:

Approval of Giles Corner Replat 2, subject to the satisfactory resolution of the following issues prior to recording of the final plat:

- A. A finalized common area maintenance agreement must be recorded prior to releasing the final plat for recording.

VII. ATTACHMENTS TO REPORT:

1. Vicinity Map
2. Preliminary Plat, Final Plat

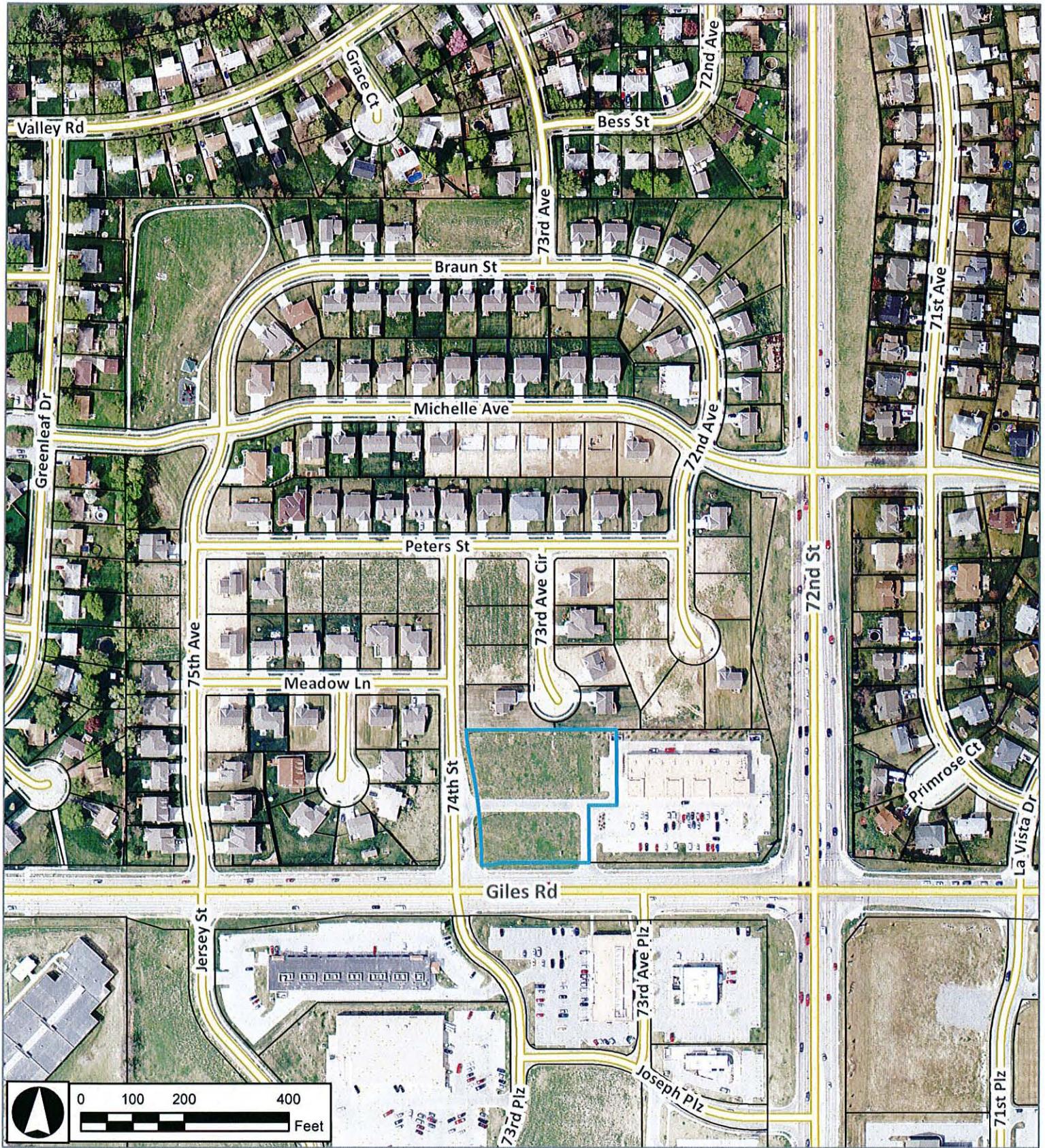
VIII. COPIES OF REPORT SENT TO:

1. Paul Gonzales, E & A Consulting Group, Inc.
2. Simmonds Restaurant Management, Inc.
3. Kanne Korp LP
4. Public Upon Request

 10/14/12
Prepared by:

Community Development Director

Date

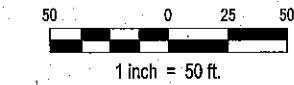
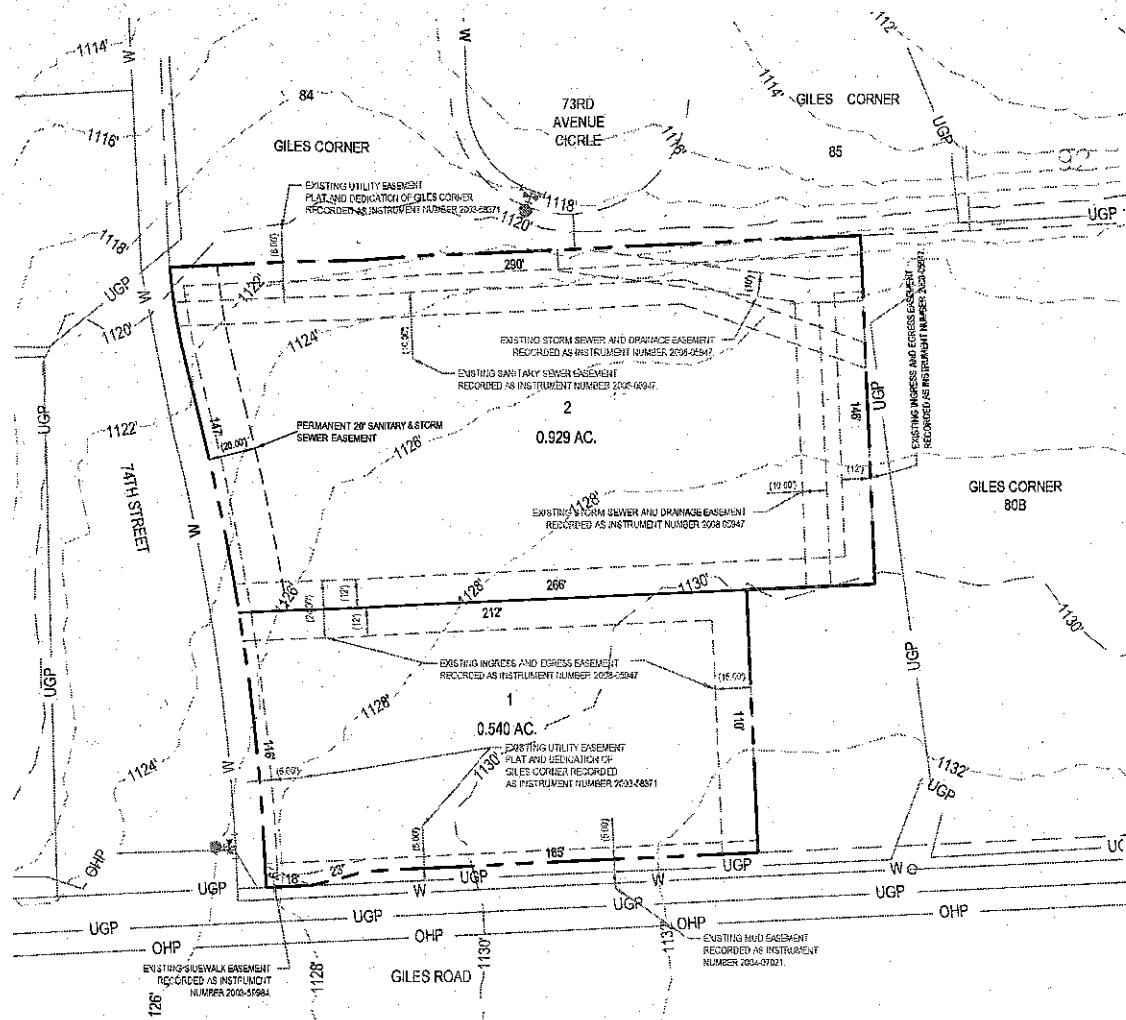


Vicinity Map

Giles Corner Replat 2

09/13/12
CAS





PROJECT SITE

84TH STREET	GILES ROAD	72ND
	CORNHUSKER ROAD	

VICINITY MAP

LEGEND

- - - - - BOUNDARY LINE
 - - - - - LOT LINE
 - - - - - EASEMENTS
 - - - - - EXISTING EASEMENTS
 - - - 1120 - EXIST. MAJOR CONTOURS
 - - - 1122 - EXIST. MINOR CONTOURS
 - - - W - EXIST. WATER LINE
 - - - UGP - EXIST. UNDERGROUND POWER LINE
 - - - OHP - EXIST. OVERHEAD POWER LINE
 - - - ST - EXIST. STORM SEWER
 - - - SS - EXIST. SANITARY SEWER

LEGAL DESCRIPTION

BEING A REPLAT OF LOT 80A, GILES CORNER, A SUBDIVISION LOCATED IN PART OF THE SE1/4 OF THE SE1/4 OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6th P.M., SARPY COUNTY, NEBRASKA.

CONTAINING AN AREA OF 1.470 ACRES, MORE OR LESS.

DEVELOPER

TODD KANNE
KANNE KORP LP
PO BOX 729
CARROLL, IA 51401

ZONING

EXISTING: C-1

NOTES

1. A PERMANENT RECIPROCAL INGRESS AND EGRESS, SIDEWALK, PARKING AND PEDESTRIAN EASEMENT, IS GRANTED TO THE OWNERS OF LOTS 1 AND 2, THEIR GUESTS AND INVITEES OVER ALL OF THOSE PRIVATE DRIVES AND PARKING AREAS AS CONSTRUCTED IN SAID LOTS 1 AND 2.
2. DIRECT VEHICULAR ACCESS TO GILES ROAD FROM LOT 1 WILL NOT BE ALLOWED.
3. ALL LOT LINES ARE RADIAL TO CURVED STREETS UNLESS SHOWN AS NONRADIAL (N.R.)

Proj No:	P2012.312.01	Revisions	
Date:	08/07/2012	<input checked="" type="checkbox"/>	Date
Designed By:	PJG		Description
Drawn By:	TRH		
Scale:	1" = 50'		
Sheet:	1 of 1		

PRELIMINARY PLAT

GILES CORNER REPLAT 2
LA VISTA, NEBRASKA



E & A CONSULTING GROUP, INC.

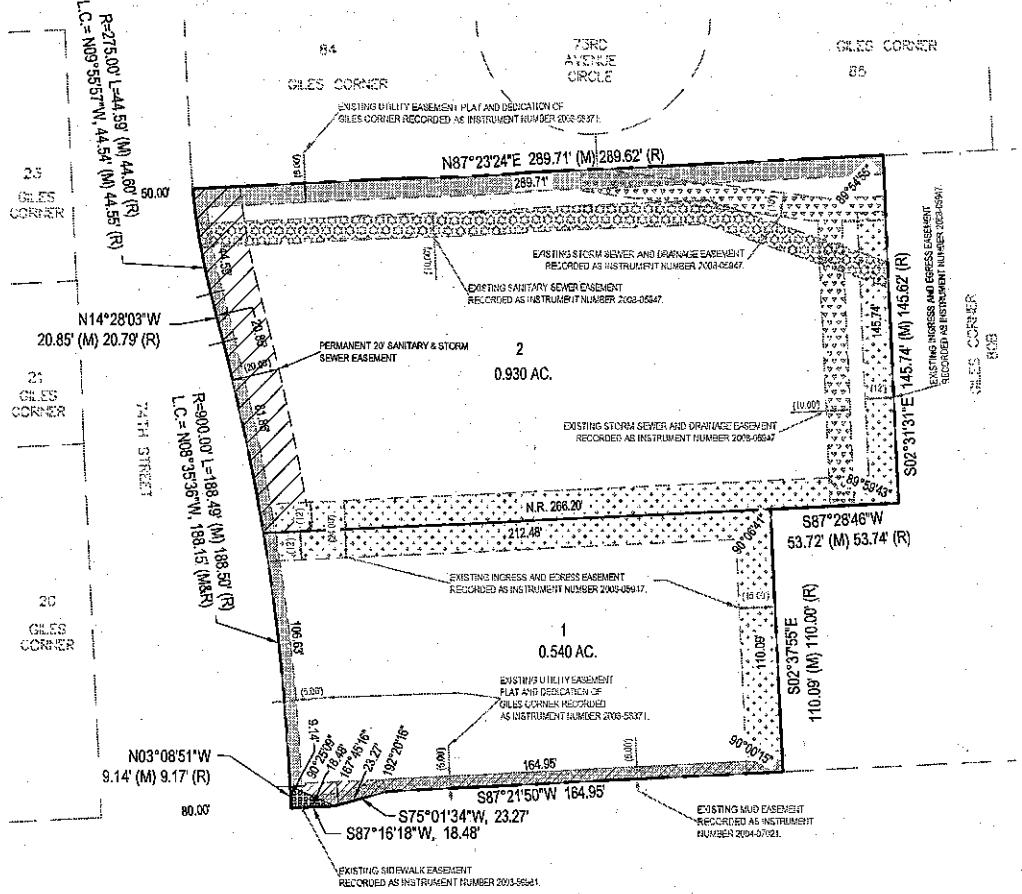
Engineering • Planning • Environmental & Field Services

330 North 117th Street Omaha, NE 68154
Phone: 402.895.4700 Fax: 402.895.3599
www.8220.com

GILES CORNER REPLAT 2

LOTS 1 AND 2 INCLUSIVE

BEING A REPLAT OF LOT 80A, GILES CORNER, A SUBDIVISION LOCATED IN PART OF THE SE1/4 OF THE SE1/4 OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6th P.M., SARPY COUNTY, NEBRASKA.



50 0 25 50
1 inch = 50 ft.

LEGEND

- Boundary Line
- Lot Line
- Easements
- Existing Easements
- (M) Measured Distances
- (R) Recorded Distances

PERMANENT 20' SANITARY & STORM SEWER EASEMENT

Utility easement as described in the final plat and dedication of Giles Corner recorded as instrument number 2003-58371 of the Sarpy County records.

Easement granted to Metropolitan Utilities District recorded as instrument number 200407021 of the Sarpy County records.

Sidewalk easement recorded as instrument number 2003-59984 of the Sarpy County records.

Ingress and egress easement recorded as instrument number 2008-05847.

Sanitary sewer easement recorded as instrument number 2008-05847.

Storm sewer and drainage easement recorded as instrument number 2008-05847.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, TODD KANNE, PRESIDENT OF KANNE KORP LP., OWNERS OF THE PROPERTY DESCRIBED IN THE CERTIFICATION OF SURVEY AND EMBRACED WITHIN THE PLAT, HAVE CAUSED SAID LAND TO BE SUBDIVIDED INTO LOTS AND STREETS TO BE NUMBERED AND NAMED AS SHOWN, SAID SUBDIVISION TO BE HERAFTER KNOWN AS GILES CORNER REPLAT 2 (LOTS TO BE NUMBERED AS SHOWN), AND WE DO HEREBY RATIFY AND APPROVE OF THE DISPOSITION OF OUR PROPERTY AS SHOWN ON THE PLAT, AND WE DO HEREBY DEDICATE TO THE PUBLIC FOR PUBLIC USE THE STREETS, AVENUES AND CIRCLES, AND WE DO HEREBY GRANT EASEMENTS AS SHOWN ON THIS PLAT, WE DO FURTHER GRANT A PERPETUAL EASEMENT TO THE OMAHA PUBLIC POWER DISTRICT, CENTURYLINK COMMUNICATIONS AND ANY COMPANY WHICH HAS BEEN GRANTED A FRANCHISE TO PROVIDE A CABLE TELEVISION SYSTEM IN THE AREA TO BE SUBDIVIDED, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, OPERATE, MAINTAIN, REPAIR AND RENEW POLES, WIRES, CABLES, CONDUITS AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON WIRES OR CABLES FOR THE CARRYING AND TRANSMISSION OF ELECTRIC CURRENT FOR LIGHT, HEAT AND POWER, AND FOR THE TRANSMISSION OF SIGNALS AND SOUNDS OF ALL KINDS INCLUDING SIGNALS PROVIDED BY A CABLE TELEVISION SYSTEM, AND THE RECEPTION ON, OVER, THROUGH, UNDER AND ACROSS A FIVE-FOOT (5') WIDE STRIP OF LAND ABUTTING ALL FRONT AND SIDE BOUNDARY LOT LINES; AN EIGHT-FOOT (8') WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL INTERIOR LOTS; AND A SIXTEEN-FOOT (16') WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL EXTERIOR LOTS. THE TERM EXTERIOR LOTS IS HEREIN DEFINED AS THOSE LOTS FORMING THE OUTER PERIMETER OF THE ABOVE-DESCRIBED ADDITION. SAID SIXTEEN-FOOT (16') WIDE EASEMENT WILL BE REDUCED TO AN EIGHT-FOOT (8') WIDE STRIP WHEN THE ADJACENT LAND IS SURVEYED, PLATTED AND RECORDED AND WE DO FURTHER GRANT A PERPETUAL EASEMENT TO METROPOLITAN UTILITIES DISTRICT OF OMAHA AND BLACK HILLS ENERGY, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, INSTALL, OPERATE, MAINTAIN, REPAIR AND RENEW PIPELINES, HYDRANTS AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON PIPES FOR THE TRANSMISSION OF GAS AND WATER ON, THROUGH, UNDER AND ACROSS A FIVE-FOOT (5') WIDE STRIP OF LAND ABUTTING ALL CUL-DE-SAC STREETS. NO PERMANENT BUILDINGS OR RETAINING WALLS SHALL BE PLACED IN THE SAID EASEMENT WAYS, BUT THE SAME MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING AND OTHER PURPOSES THAT DO NOT THEN OR LATER INTERFERE WITH THE AFORESAID USES OR RIGHTS HEREIN GRANTED.

KANNE KORP LP

BY: TODD KANNE, PRESIDENT

ACKNOWLEDGEMENT OF NOTARY

STATE OF
COUNTY OF SARPY)

ON THIS _____ DAY OF _____, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY, PERSONALLY CAME TODD KANNE, PRESIDENT OF KANNE KORP LP, WHO IS PERSONALLY KNOWN TO BE THE IDENTICAL PERSON WHOSE NAME IS AFFIXED TO THE DEDICATION ON THIS PLAT AND ACKNOWLEDGED THE SAME TO BE HIS VOLUNTARY ACT AND DEED AS SUCH OFFICER OF SAID CORPORATION.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

NOTARY PUBLIC

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE MADE A GROUND SURVEY OF THE SUBDIVISION DESCRIBED HEREIN AS GILES CORNER REPLAT 2. I CERTIFY THAT I HAVE SURVEYED THE PROPERTY DESCRIBED HEREON AND THAT PERMANENT MARKERS HAVE BEEN FOUND OR SET AT ALL CORNERS OF THE LOT BEING PLATTED. SAID TRACT OF LAND CONTAINS AND AREA OF 64,016 SQUARE FEET OR 1.470 ACRES MORE OR LESS.

JASON HEADLEY L.S. 604

DATE

APPROVAL OF LA VISTA CITY PLANNING COMMISSION

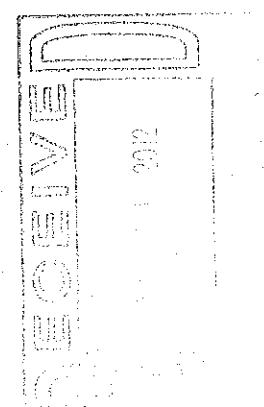
THIS PLAT OF GILES CORNER REPLAT 2 (LOTS NUMBERED AS SHOWN) WAS APPROVED BY THE CITY PLANNING COMMISSION ON THIS _____ DAY OF _____, 2012.

CHAIRMAN OF LA VISTA CITY PLANNING COMMISSION

REVIEW BY SARPY COUNTY PUBLIC WORKS

THIS PLAT OF GILES CORNER REPLAT 2 WAS REVIEWED BY THE SARPY COUNTY SURVEYOR'S OFFICE THIS _____ DAY OF _____, 20____.

COUNTY SURVEYOR / ENGINEER



Proj No: P2012.312.001

Revisions

Date: 08/07/2012

No Date Description

Designed By: PJG

Drawn By: TRH

Scale: 1" = 50'

Sheet: 1 of 1

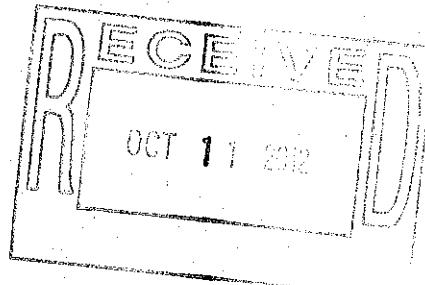
FINAL PLAT

GILES CORNER REPLAT 2
LA VISTA, NEBRASKA



E & A CONSULTING GROUP, INC.
Engineering • Planning • Environmental & Field Services
Engineering Answers

330 North 117th Street Omaha, NE 68154
Phone: 402.895.4700 Fax: 402.895.3599
www.eacg.com



This instrument prepared by and upon recordation should be returned to:
Paul J. Halbur, Esq., 409 South 17th Street, Suite 500, Omaha NE 68102; 402.341.6000

GILES CORNER COMMON IMPROVEMENTS MAINTENACE AGREEMENT

This Common Improvements Maintenance Agreement ("Agreement"), dated for reference purposes _____, 2012, is made by and between KANNE KORP LP, an Iowa limited partnership ("Kanne"), and SIMMONDS PROPERTIES LTD, LLP, a Nebraska limited liability partnership ("Simmonds").

Recitals

A. Kanne is the owner of the following described real estate:

- (i) Lot 80B, Giles Corner, a subdivision in Sarpy County, Nebraska ("Lot 80B"); and
- (ii) Lot 2, Giles Corner Replat 2, in Giles Corner, a subdivision in Sarpy County, Nebraska ("Lot 2" and together with Lot 80B, the "Kanne Real Estate").

B. Simmonds is the owner of the following described real estate:

Lot 1, Giles Corner Replat 2, in Giles Corner, a subdivision in Sarpy County, Nebraska ("Lot 1").

C. The Kanne Real Estate and Lot 1 share a common boundary and certain common ingress and egress easement, sanitary sewer easement and storm sewer and drainage easement right as set forth in the plat recorded as Instrument Number 2008-05947 in the real estate records of Sarpy County, Nebraska (the "Easements").

D. A sanitary sewer line, a storm sewer system and private streets (collectively, "Common Improvements") have been previously constructed on the Kanne Real Estate and Lot 1 pursuant to the Easements. Kanne has agreed that the owner of Lot 80B will maintain and repair the Common Improvements, and Simmonds, as the owner of Lot 1, and Kanne, as the owner of Lot 2, have agreed to share in the future cost of maintenance and repair of the Common Improvements (See Attached Exhibit A).

NOW THEREFORE, in the context of and with reference to the foregoing facts, which facts are incorporated herein as a contractual part of this Agreement, and in consideration of the mutual covenants and agreements of the parties hereinafter set forth, the receipt and sufficiency of which consideration are hereby acknowledged, Simmonds and Kanne agree as follows:

1. Maintenance, Repair and Replacement of Common Improvements. Except to the extent that all or some of the Common Improvements are hereafter operated and maintained by public authorities or utilities, Kanne agrees that the owner of Lot 80B will maintain the Common Improvements in sound structural and operating condition, and all expenses incurred in connection therewith, including without limitation, maintenance, repair, replacement and operating costs, shall be shared thirteen percent (13%) by Simmonds, as owner of Lot 1, twenty-seven percent (27%) by Kanne, as the owner of Lot 2 and sixty percent (60%) by Kanne, as the owner of Lot 80B. The owner of Lot 80B agrees to periodically deliver to the owner of Lot 1 and the owner of Lot 2 reasonably satisfactory proof that maintenance, repair or replacement costs have been incurred in connection with the Common Improvements. Simmonds, as the owner of Lot 1, agrees to pay, within fifteen (15) business days, thirteen percent (13%) of the amount so incurred for private street maintenance, repair and replacement and sanitary sewer line and/or storm sewer system repair, maintenance and replacement. Kanne, as the owner of Lot 2, agrees to pay, within ten (10) business days, twenty-seven percent (27%) of the amount so incurred for private street maintenance, repair and replacement and sanitary sewer line and/or storm sewer system repair, maintenance and replacement. If either Simmonds or the owner of Lot 2 fails to pay the entire amount payable by them to the owner of Lot 80B within such fifteen (15) business day period, the amount not paid shall bear interest at the rate of twelve percent (12%) per annum and shall be secured by a lien on either the Lot 1 or Lot 2, as the case may be. Such lien may be perfected by recording an affidavit stating the amount unpaid and that the same is secured by a lien on either the Simmonds Real Estate or Lot 2, as applicable, with the Sarpy County, Nebraska Register of Deeds. In the event owner of Lot 2 fails to maintain the Common Improvements in sound structural and operating condition, and such failure continues for a period of thirty (30) days after written notice thereof to the owner of Lot 2, either Simmonds or the owner of Lot 2 may, in their discretion, perform such maintenance, repair and replacement obligations, and the owner of Lot 80B agrees to pay, within fifteen (15) business days of its receipt of satisfactory proof of the incurrence of such costs and the amount thereof, sixty percent (60%) of the amount so incurred for private street maintenance, repair and replacement and sanitary sewer line and/or storm sewer system repair, maintenance and replacement. If the owner of Lot 80B fails to pay the entire amount payable within such fifteen (15) business day period, the amount not paid shall bear interest at an annual rate of twelve percent (12%) per annum and shall be secured by a lien on Lot 80B. Such lien may be perfected by a recording of an affidavit stating the amount unpaid and that the same is secured by a lien on the Lot 80B with the Sarpy County, Nebraska Register of Deeds.

2. Legal Effect. Each of the agreements and rights created by this instrument are appurtenant to the real estate to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such real estate. Each of such agreements evidenced by this instrument are made for the direct, mutual and reciprocal benefit of each of the Simmonds Real Estate and the Kanne Real Estate, constitute covenants running with the land, bind every person or entity now having or hereafter acquiring any interest in such real estate, and will inure to the benefit of the successors, assigns and mortgagees of Simmonds and Kanne.

3. No Dedication. Nothing contained in this instrument will be deemed to constitute a gift, grant or dedication of any portion of the Simmonds Real Estate or the Kanne Real Estate to the general public or for any public purpose whatsoever. This instrument is intended to benefit only Simmonds and Kanne and their respective successors, assigns and mortgagees, and is not intended to benefit any other party or to give any other party any rights hereunder.

4. Severability. If any provision of this instrument is declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this instrument (or the application of

such provisions to persons or circumstances in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this instrument shall be deemed to be valid and enforceable to the fullest extent permitted by law.

5. Governing Law. This instrument shall be construed in accordance with the laws of the State of Nebraska. This instrument may be executed in counterparts.

KANNE:

KANNE KORP LP, an Iowa limited partnership

By _____
Title:

SIMMONDS:

SIMMONDS PROPERTIES LTD, LLP, a Nebraska limited liability partnership

By _____
Title:

STATE OF NEBRASKA)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, the _____ of KANNE KORP LP, an Iowa limited partnership, on behalf of the limited partnership.

WITNESS my hand and notarial seal at _____, in said county and state, the day and year last above written.

[SEAL]

Notary Public

STATE OF NEBRASKA)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, the _____ of SIMMONDS PROPERTIES LTD, LLP, a Nebraska limited liability partnership, on behalf of the limited liability partnership.

WITNESS my hand and notarial seal at _____, in said county and state, the day and year last above written.

[SEAL]

Notary Public

54

73RD
AVENUE
CIRCLE

ILES CORNER

50.

74TH STREET

80.00'

EXISTING SANITARY SEWER EASEMENT
RECORDED AS INSTR. No. 2008-05947

LOT 2, GILES CORNER
REPLAT 2
0.930 AC.

STORM SEWER AND DRAINAGE EASEMENT
RECORDED AS INSTR. No. 2008-05947

LOT 1, GILES CORNER
REPLAT 2
0.540 AC.

FF = 28.40

— EXISTING IN
RECORDED

GILES ROAD