

AGENDA ITEM 5A

**Public Hearing for an Amendment to Conditional
Use Permit—Casey's General Stores, Inc.**

**CITY OF LA VISTA
PLANNING DIVISION**

RECOMMENDATION REPORT

CASE NUMBER: 2014-CUP-01

FOR HEARING OF: February 20, 2014
Report Prepared on February 12, 2014

I. GENERAL INFORMATION

- A. APPLICANT:** Casey's General Store
- B. PROPERTY OWNER:** Casey's General Store
- C. LOCATION:** 9542 Giles Road
- D. LEGAL DESCRIPTION:** Lot 179 Southwind
- E. REQUESTED ACTION(S):** Update Special Use Permit to a Conditional Use Permit and to allow for store to stay open 24-hours.
- F. EXISTING ZONING AND LAND USE:**
C-1 Shopping Center Commercial and Gateway Corridor District (Overlay District); the property contains one existing building which houses the convenience store and a canopy over six gas pumps.
- G. PROPOSED USES:** Owner wishes to continue operation of a convenience store with limited motor fuel sales, expanding the hours of operation to 24-hours.
- H. SIZE OF SITE:** 1.10 acres

II. BACKGROUND INFORMATION

- A. EXISTING CONDITION OF SITE:** The property has been developed and maintained in accordance with the existing Special Use Permit.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
 - 1. North:** WalMart Neighborhood Market; C-1 Shopping Center Commercial and Gateway Corridor District (Overlay District)
 - 2. East:** WalMart Neighborhood Market; C-1 Shopping Center Commercial and Gateway Corridor District (Overlay District)
 - 3. South:** Single Family Residential; R-2 Single Family Residential (Medium Density) - Papillion
 - 4. West:** Alegent Health Clinic; C-1 Shopping Center Commercial and Gateway Corridor District (Overlay District)

C. RELEVANT CASE HISTORY: The original Special Use Permit was approved on December 18, 2001.

III. ANALYSIS

A. COMPREHENSIVE PLAN: The Future Land Use Map of the Comprehensive Plan designates this property for commercial uses.

B. OTHER PLANS: N/A

C. TRAFFIC AND ACCESS:

1. Two access points currently exist on the property. One from 96th Street through an easement on the Walmart Neighborhood Market property. The other access is through a right-in/right-out on Giles Road via an easement on the Walmart Neighborhood Market property.

D. UTILITIES: All utilities are available to the site.

E. PARKING REQUIREMENTS:

1. The existing parking layout was reviewed at the time of initial development and a site plan depicting the parking has been included as an exhibit to the Special Use Permit. This original site plan has been included with the Conditional Use Permit as an exhibit. No additional parking is anticipated to be needed.

F. LANDSCAPING:

1. The existing landscaping plan was reviewed at the time of initial development and included as an exhibit to the Special Use Permit. This original landscaping plan has been included with the Conditional Use Permit as an exhibit.

IV. REVIEW COMMENTS:

1. A site review determined that the existing facility is not in conformance with the existing landscaping plan.

V. STAFF RECOMMENDATION:

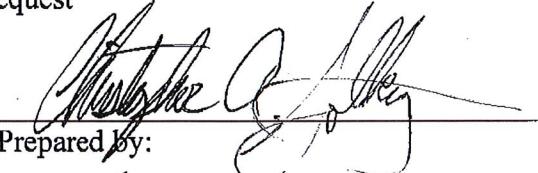
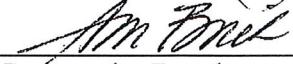
Approval of the Conditional Use Permit for Casey's General Store, conditional on the site coming into conformance with the landscaping plan within six months of the approval of the CUP.

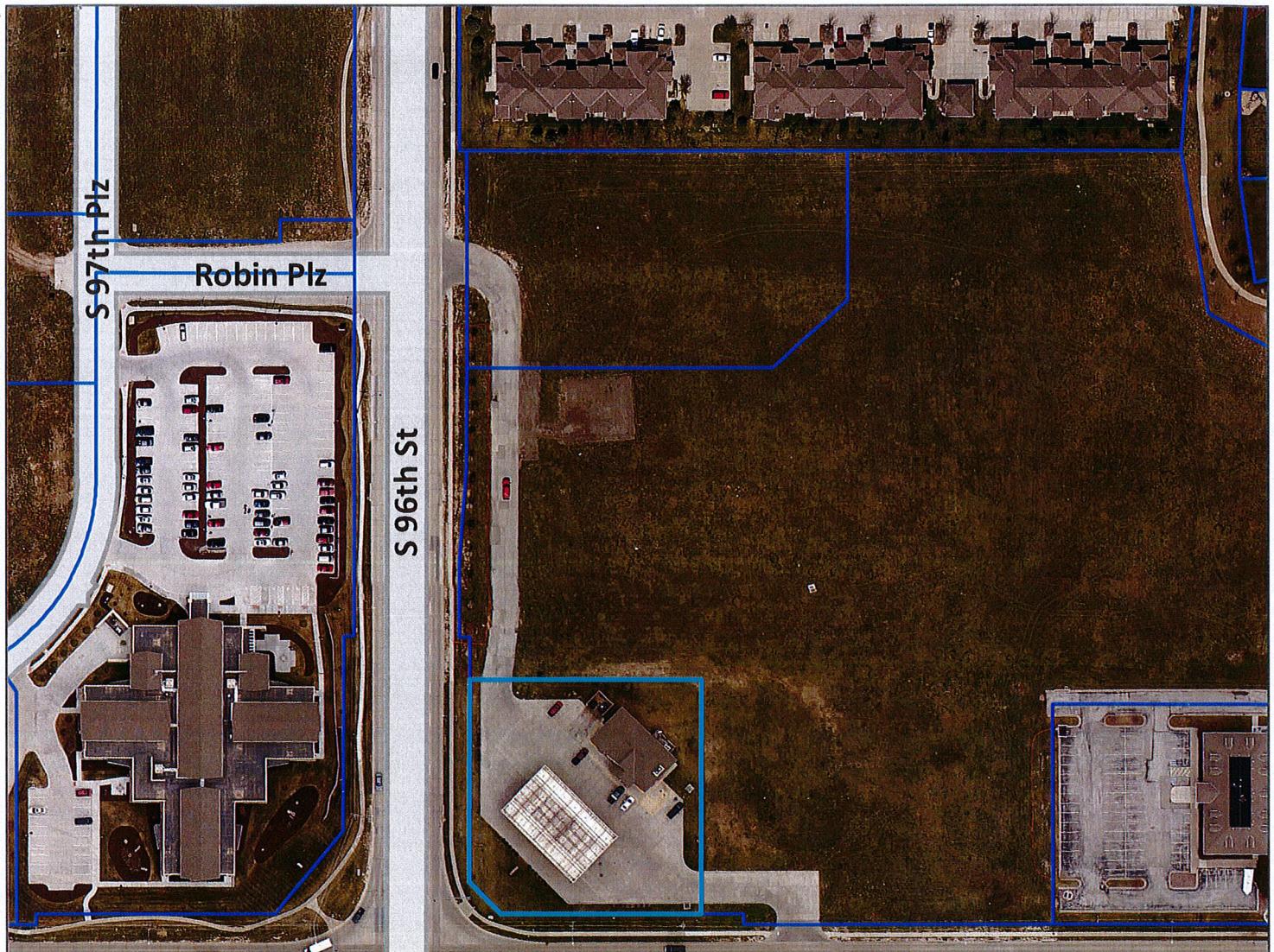
VI. ATTACHMENTS TO REPORT:

1. Vicinity Map
2. Draft CUP

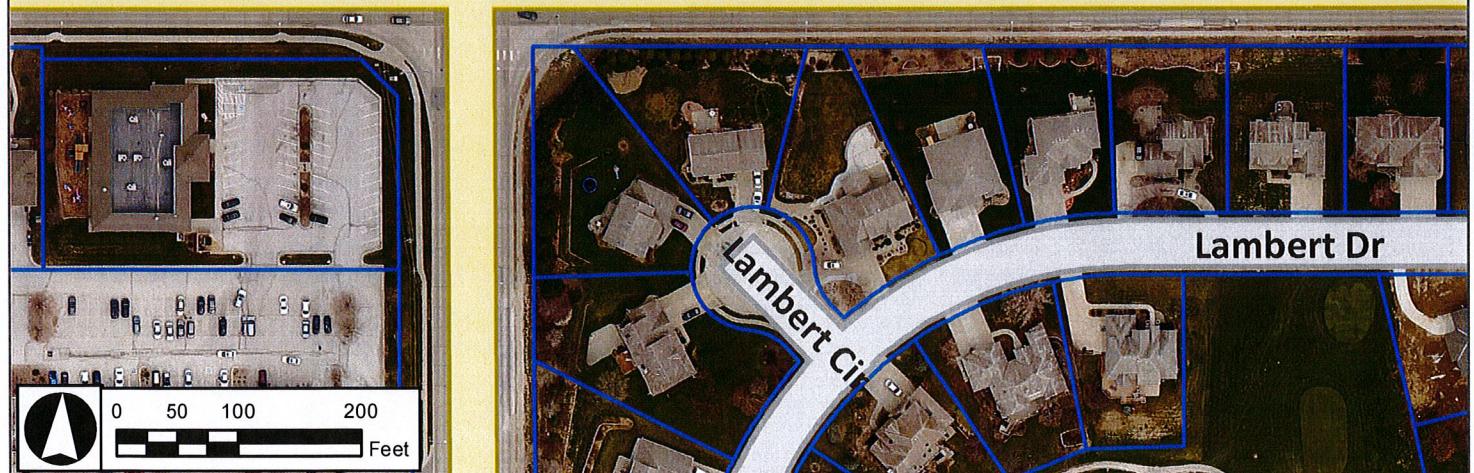
VII. COPIES OF REPORT TO:

1. Debbie Crew, Casey's Retail Company; Applicant
2. Public Upon Request


Prepared by: _____

Community Development Director Date
Am Brink 2-13-14



Giles Rd



Vicinity Map

Casey's General Store CUP

February 12, 2014
CAS



City of La Vista Conditional Use Permit

Conditional Use Permit for Convenience Store with Limited Fuel Sales

This Conditional Use Permit issued this _____ day of _____, 2014, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska (“City”) to, Casey’s General Store (“Owner”), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to expand the operating hours of a convenience store with limited motor fuel sales (and motor fuel storage and dispensing related to said sales) upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 179, Southwind, a subdivision located in the SW ¼ of Section 15, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska.

WHEREAS, Owner has applied for an amendment to convert their existing special use permit to a conditional use permit to continue operating a convenience store with limited motor fuel sales (and motor fuel storage and dispensing related to said sales); and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to Owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to Owner to use the area designated on Exhibit “A” hereto for a convenience store with limited motor fuel sales (and motor fuel storage and dispensing related to said sales), said uses hereinafter being referred to as “Permitted Use or Use”.

Conditions of Permit

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed use:
 - a. A surveyor’s certificate for the site shall be provided to the City and attached to the permit as “Exhibit C”.
 - b. Hours of operation for convenience store will be 24 hours a day, seven days a week.
 - c. Gasoline islands will have pay at pump (credit card) service and will be open 24hours a day, seven days a week.
 - d. Fuel deliveries must correspond with convenience store business hours.
 - e. The premises shall be developed and maintained in accordance with the site plan (Exhibit A) as presented to the City Council on _____ and incorporated herein

by this reference. Any modifications must be submitted to the Building Inspector for approval.

- f. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the convenience store, except as approved in writing by the City.
- g. The City acknowledges that the use will involve the construction, placement and maintenance of underground motor fuel storage tanks and gasoline dispensing pumps (permitted structures) on the premises. The structures shall be constructed, maintained and operated in a safe and responsible manner, and in accordance with any applicable laws, rules or regulations, including, but not limited to, applicable environmental or safety laws, as amended or in effect from time to time, and shall not cause, or create risk of injury or damage to, or loss of life, property or the environment. The owner shall make annual inspections of the premises and structures, and the operation thereof for any hazard or risk, including, but not limited to, those of an environmental or safety nature. The owner shall take immediate action to protect persons, property and the environment from any damage, injury or loss, or risk thereof, arising out of or resulting from any hazard or risk on the premises, including, but not limited to, hazard or risk involving the permitted structures, that is discovered or should be discovered (including, but not limited to, those of an environmental or safety nature) and to abate any hazard or risk and remove it from the premises in accordance with any applicable laws, rules or regulations, as amended or in effect from time to time.
- h. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the City Planner.
- i. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
- j. Owner hereby indemnifies the city against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the Owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.

3. In respect to the special commercial corridor building design criteria:

- a. Building Exterior
 - i. The reddish brown brick (per sample submitted) is approved. If another type of brick is preferred, a sample must be submitted for approval.
 - ii. The type of glass is noted and should be clear or tinted.
- b. Gas Pump Canopy
 - i. The vertical canopy supports shall be clad with the same brick as the building.
 - ii. The standard height canopy is permitted provided that the lights underneath result in little or no glare.
- c. Monument Sign
 - i. The reddish brown brick (per sample) is approved.
- d. Trash Enclosure
 - i. The trash enclosure is acceptable. The three sides of the trash enclosures shall be constructed of the same brick as used on the building. Gate material on the fourth side shall be of material approved by the City.

- e. Exterior Light Fixtures
 - i. Any exterior light fixtures used on this project shall be similar to the light fixtures at the new LaVista Public Library.
 - ii. All exterior light fixtures must be submitted for approval.
- f. Landscaping
 - i. The landscaping plan as submitted (Exhibit B) is acceptable.
- g. Signage
 - i. All signs shall comply with the City's sign regulations.

4. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:

- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
- b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
- c. All obsolete or unused structures and accessory facilities and any remaining environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the special use.

5. Notwithstanding any other provision herein to the contrary, this Permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:

- a. Owner's abandonment of the Permitted Use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
- b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Conditional Use.
- c. Owner's construction or placement of a storage tank, structure or other improvement on the premises not specified in this permit.
- d. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.

6. If the Permitted Use is not commenced within one (1) year from _____, 2014, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to Owner's right to file for an extension of time pursuant to Section 11-710 of the La Vista Municipal Code.

7. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove the permitted structures or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the Owner shall reimburse the city the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.

8. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Miscellaneous

The conditions and terms of this Permit shall be binding upon Owner, his successors and assigns.

1. Delay of City to terminate this Permit on account of breach of Owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the Owner as follows:

Contact Name and Address: Jill Reams-Widder
EPA Dept.
Casey's General Stores, Inc.
P.O. Box 3001
One Convenience Blvd.
Ankeny, IA 50021-8045

Effective Date:

This Permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By _____
Douglas Kindig, Mayor

Attest:

Pam Buethe, CMC
City Clerk
CONSENT AND AGREEMENT

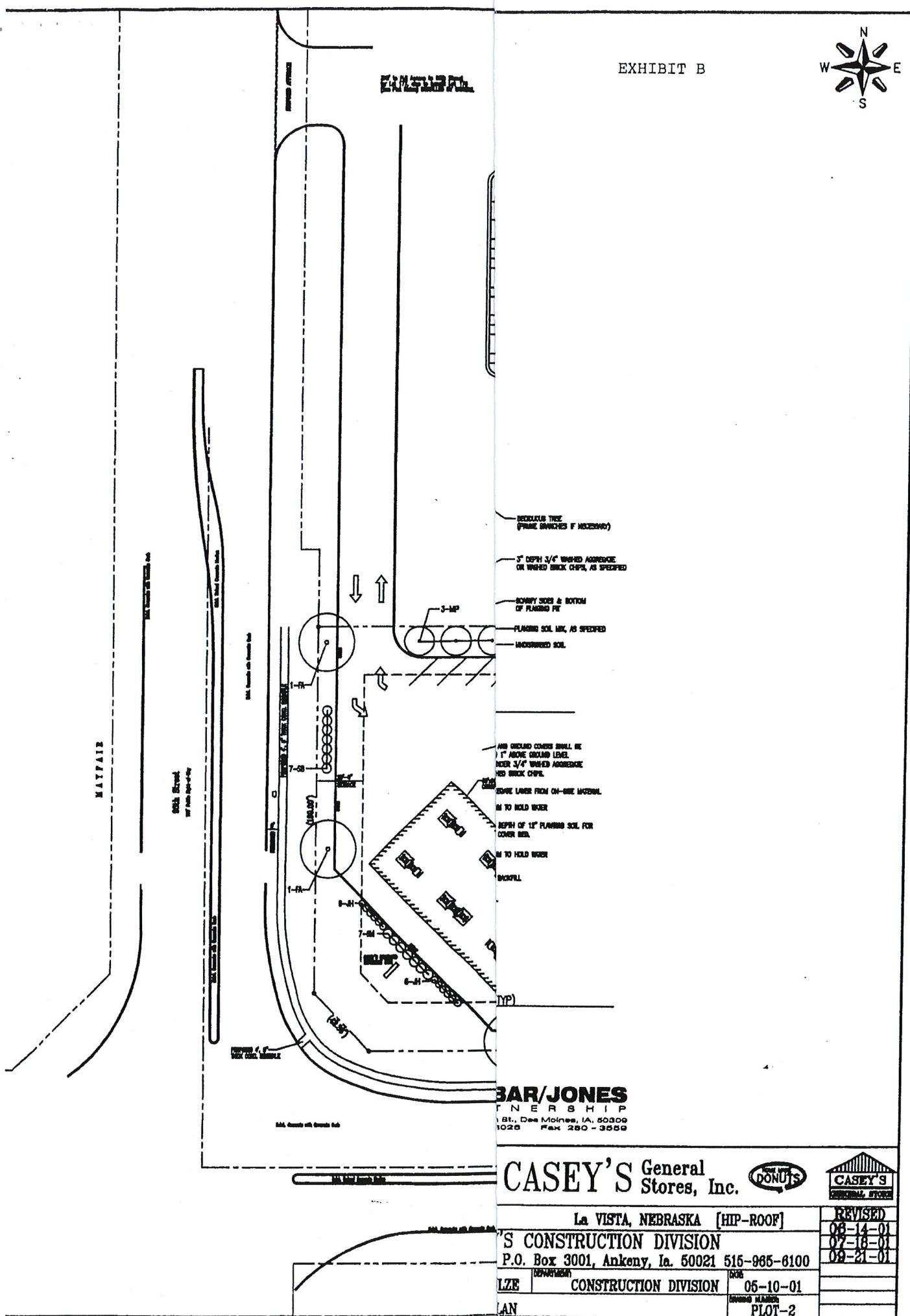
The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by Owner to be performed or discharged.

Owner:

By: _____

Title: _____

Date: _____



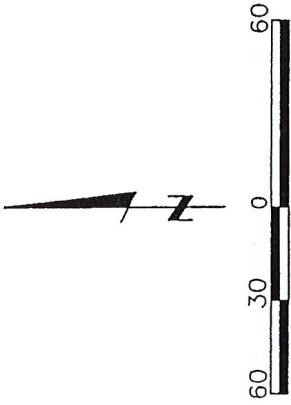
LAND SURVEYOR'S CERTIFICATE

EXHIBIT C

I hereby certify that this plat, map, survey or report was made by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

LEGAL DESCRIPTION:

Lot 179, SOUTHWIND, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.



LEGEND

- CORNERS FOUND (5/8" REBAR)

Lot dimensions as shown hereon
are as measured and platted.

