

City Council Introduction: **Monday**, September 22, 2008
Public Hearing: **Monday**, September 29, 2008, at **5:30 p.m.**

Bill No. 08-132

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 08047**, from H-3 Highway Commercial District to I-1 Industrial District, requested by Casey's Retail Company, on property generally located at the northwest corner of North 56th Street and Superior Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 09/10/08
Administrative Action: 09/10/08

STAFF RECOMMENDATION: Approval.

RECOMMENDATION: Approval (7-0: Carroll, Cornelius, Esseks, Taylor, Larson, Partington, and Sunderman voting 'yes'; Gaylor Baird and Francis absent).

FINDINGS OF FACT:

1. This is a request by Mark Hunzeker on behalf of Casey's Retail Company to change the zoning on 0.925 acre, more or less, from H-3 to I-1 on property generally located at the northwest corner of North 56th Street and Superior Street, in order to construct a new, larger convenience store and service station.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3, concluding that the request for change of zone to I-1 is consistent with the Comprehensive Plan in that the proposed use is consistent with the "Commercial" land use designation in the Comprehensive Plan. The staff presentation is found on p.5.
3. The applicant's testimony is found on p.5.
4. Testimony in opposition by the owner of the property to the north is found on p.6. His concern is the zero setback requirement in the I-1 zoning district and the effect of such on the value of his property. The staff response and the applicant's response is found on p.6
5. On September 10, 2008, the Planning Commission agreed with the staff recommendation and voted 7-0 to recommend approval (Gaylor Baird and Francis absent).

FACTSHEET PREPARED BY: Jean L. Preister

DATE: September 15, 2008

REVIEWED BY: _____

DATE: September 15, 2008

REFERENCE NUMBER: FS\CC\2008\CZ.08047 text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT
for SEPTEMBER 10, 2008 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 08047

PROPOSAL: From H-3 to I-1.

LOCATION: N. 56th Street and Superior Street

LAND AREA: 0.915 acres, more or less

EXISTING ZONING: H-3 Highway Commercial District

CONCLUSION: The request for a change of zone from H-3 to I-1 for the construction of a service station is consistent with the Comprehensive Plan.

RECOMMENDATION:	Approval
------------------------	----------

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 2, Walker Addition

EXISTING LAND USE: Service station/convenience store

SURROUNDING LAND USE AND ZONING:

North: H-3 Highway Commercial District; storage
South: H-3 Highway Commercial District; tavern
East: H-3 Highway Commercial District; motel
West: I-1 Industrial District; trucking/warehouse

HISTORY:

June 6, 2007 Final Plat #07008 Walker Addition was approved by the Planning Director.

May 8, 1979 This land was designated as H-3 Highway Commercial District at the time of the 1979 zoning update.

COMPREHENSIVE PLAN SPECIFICATIONS:

This land is identified as "Commercial" in the Comprehensive Plan Future Land Use map. (p. 19)

Commercial: Areas of retail, office and service uses. Commercial uses may vary widely in their intensity of use and impact, varying from low intensity offices, to warehouses, to more intensive uses such as gas stations, restaurants, grocery stores or automobile repair. Each area designated as commercial in the land use plan may not be appropriate for every commercial zoning district. The appropriateness of a commercial district for a particular piece of property will depend on a review of all the elements of the Comprehensive Plan. The Future Land Use map is only one item to consider. (p. 16)

Superior Street is classified as an Urban Principal Arterial and N. 56th Street is classified as a Local Street. (p. 102)

UTILITIES: This site has public water and sanitary sewer services available.

TRAFFIC ANALYSIS: Superior Street is classified as an Urban Principal Arterial.
N. 56th Street is classified as a Local Street.

PUBLIC SERVICE: This site has full urban services available.

ALTERNATIVE USES: Remain zoned H-3 Highway Commercial District and construct new service station according to allowed setbacks.

Change the zone to I-1 Industrial as requested and utilize the lot for an industrial use.

ANALYSIS:

1. The 2030 Comprehensive Plan Future Land Use map shows this area as “Industrial”. The existing use is a service station, a commercial use. The applicant has stated that the proposed future use of this site is a new service station. A service station is not an industrial use, but is an allowed use in industrial zoning districts. The proposed use is consistent with the “Commercial” land use designation in the Comprehensive Plan.
2. The change of zone covers one lot that is approximately 0.915 acres. The adjacent property to the west is zoned I-1 Industrial District. Much of the area north of Cornhusker Highway in this area of the city is zoned I-1 Industrial District. Upon approval of this change of zone, approximately 1.5 acres will remain zoned H-3 northwest of N. 56th Street and Superior Street. In a meeting with the applicant, it was suggested that the remaining H-3 land northwest of N. 56th and Superior also be requested to be zoned I-1.
3. The change of zone will allow the applicant to construct buildings closer to the lot lines than with the existing H-3 zoning. I-1 allows zero side yard setbacks when adjacent to non-residential uses, while H-3 requires “15' or 10% of the lot width, minimum 5'.” The applicant has stated that the intention is to reconstruct the service station; the H-3 standards would not allow the planned redevelopment of the site.
4. The character of the general area is of industrial and industrial services. The change of zone to I-1 would allow a wide variety of uses, including industrial uses. The H-3 zoning district also allows many more-intensive industrial service types of uses. The stated purpose for the change of zone is for a new service station, which is a use that exists on the site today.
5. There is no residential property adjacent to this site.

Prepared by:
Brandon M. Garrett, AICP
Planner

DATE: September 2, 2008

APPLICANT: Casey's Retail Company
PO Box 3001
Ankeny, IA 50021

CONTACT: Mark Hunzeker
1248 O St., Ste. 600
Lincoln, NE 68508
402-475-1075

CHANGE OF ZONE NO. 08047

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 10, 2008

Members present: Taylor, Cornelius, Esseks, Partington, Sunderman, Larson and Carroll; Gaylor Baird and Francis absent.

Ex Parte Communications: None.

Staff recommendation: Approval.

This application was removed from the Consent Agenda and had separate public hearing.

Staff presentation: **Brandon Garrett of Planning staff** presented the proposal for change of zone at the northwest corner of N. 56th & Superior, currently occupied by a service station. The applicant requested a meeting with staff, indicating that the plans for this property included razing the existing building and constructing a new, larger facility, also a service station, perhaps with more pumps and more floor area. In developing the site plan, the applicant realized that H-3 required a 15' side yard setback and in this development they were wanting a 5' side yard setback. Thus the request for a change of zone to I-1 industrial, which has zero setbacks when adjacent to another commercial or industrial property. The other option would have been a text amendment to H-3 to reduce the side yard setback.

Proponents

1. Mark Hunzeker appeared on behalf of **Casey's General Stores**. Casey's has acquired the Gas N Shop locations in Lincoln and is in the process of upgrading and modernizing all of its stores in Lincoln. This location is not a nonconforming use because it is on commercial zoned land which is not within 100 feet of any of the uses affected by the alcohol special permit. As they planned for the improvements on this site and reconstruction of a new building, the changes in the setback and landscaping requirements at the front of the site do affect the ability to fit the new store and canopies in front of the store that are necessary to modernize the location. Staff was also comfortable with a text amendment to change the H-3 setback, but the applicant believes it to be a lesser change to go with the rezoning of this site inasmuch as the zoning to the west, south and east is all I-1. Hunzeker suggested that the likely use of this area in the future is probably going to be heavy commercial to industrial type use. Therefore, a rezoning to I-1 appears to be more appropriate.

Esseks inquired whether this applicant needs the zero setback. Hunzeker indicated that they can develop the site with a 5' setback. A text change would have affected all the property in the City zoned H-3. The applicant chose I-1 knowing there would be enough room to build this site without necessarily affecting other sites.

Opposition

1. David Walker testified in opposition. He sold 40 feet to Casey's Stores, but when he sold them the property he assumed there would be a 15' setback, keeping the buildings 30 feet apart. They knew that they had the 15' setback when he sold them the property and he sold it to them as H-3. If they are allowed to butt up to the property line, he believes it will have an effect on his commercial property. His property is not industrial. He believes it will hurt the resale value of his property in the future. Walker's property is owner-occupied. Casey's entered into an agreement to purchase the building and Walker evicted the tenants. Then Casey's pulled out of the sale so it is currently vacant and he is trying to either sell it or re-rent it. His property is the building directly to the north.

Staff questions

Esseks asked staff for direction. He believes Mr. Walker has a legitimate concern. Garrett stated that from a pure land use perspective, the proposed use by the applicant is the same physical use as what exists today. He understands that the applicant is proposing a building that would be closer to the building to the north; however, due to the recent subdivision with the Walker Addition final plat last year, it shifted the property line, maintaining a 15' setback from the building and the property line for the property to the north. Now the property to the south stands on its own and this change of zone from H-3 to I-1 would allow a building setback of zero.

Response by the Applicant

Hunzeker believes this is an improvement because the existing canopy is literally out at the corner of 56th & Superior Streets. The improvement will bring the canopy back to the front of the building, moving the building to the north. He is perplexed by the argument that a zero setback on this property is going to adversely affect commercial property to the north. An intense use is permitted and encouraged all the way through the commercial zoning districts in Lincoln. The Comprehensive Plan has numerous references to encouraging higher intensity commercial uses. We are in a mode in Lincoln of needing to maximize the use of existing commercial areas and this will be some small step in that direction. Hunzeker does not believe that this change will adversely affect the value of the property to the north and probably enhances the value in that it makes it almost a matter of right if he chose to rezone to industrial. The industrial zoning of the property expanding the uses available and reducing the setbacks would do more to enhance the value of Mr. Walker's property. He does not believe this is a matter of property value. It enables this property owner to make a good use of this property and improve what exists today.

Hunzeker did not have a sketch of the new building, although it is a fairly standard convenience store layout with the building to the north and canopies to the front. There is a landscaping strip along both Superior and 56th Street in accordance with design standards. The building will be approximately 40' deep by 90' long. The east/west dimension of the property is 200+ feet. The new building will move about 25-35 feet to the north with a 5' setback.

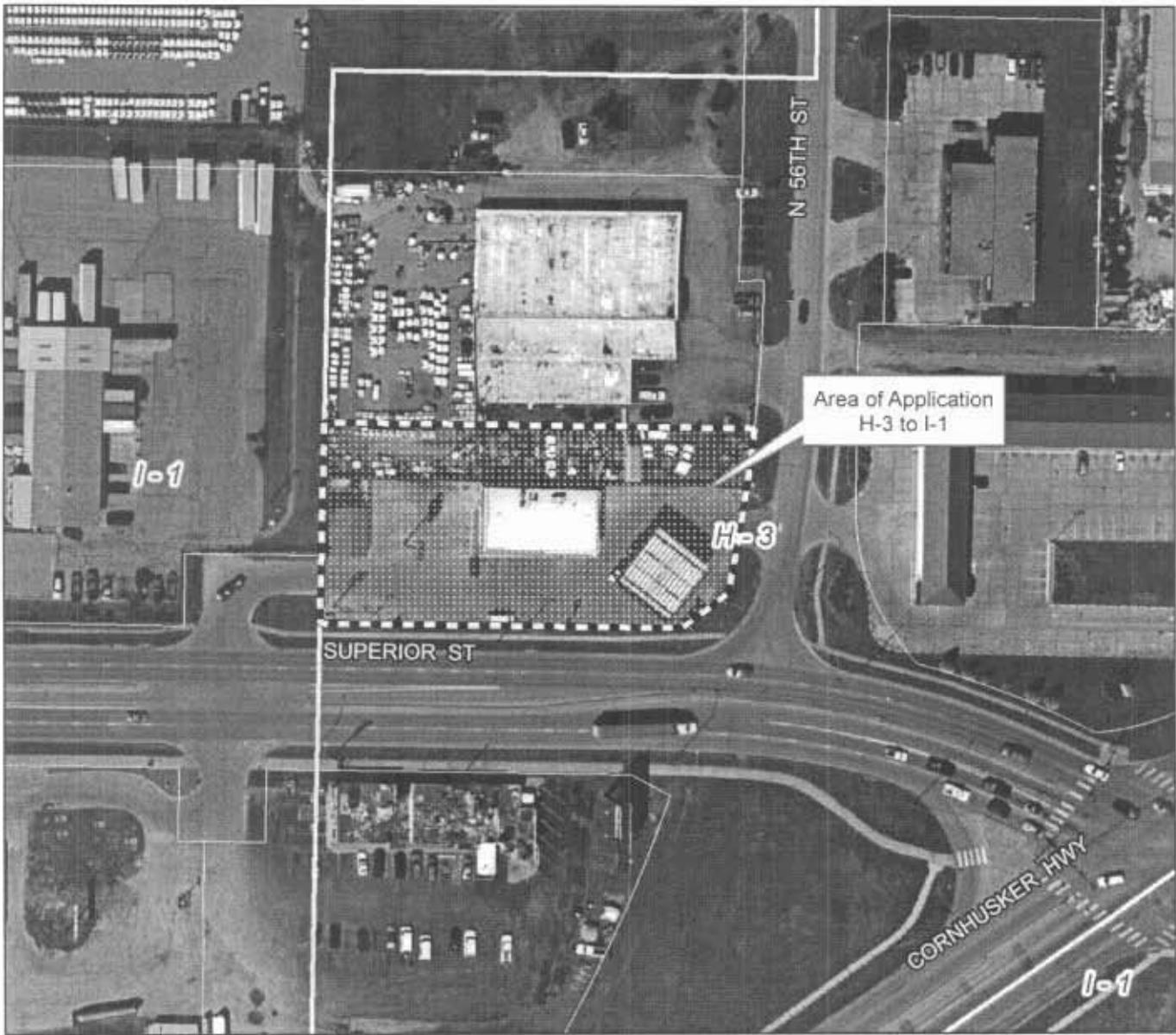
ACTION BY PLANNING COMMISSION:

September 10, 2008

Larson moved approval, seconded by Sunderman.

Esseks asked the Chair his opinion because of his background in development. Carroll stated that he will vote in favor of the motion. He does not believe it affects the property owner to the north. Industrial zoning would probably benefit the property to the north. The new lot line does not affect the property to the north. Carroll thinks it is a great change for this site and an improvement for this site.

Motion for approval carried 7-0: Taylor, Cornelius, Esseks, Partington, Sunderman, Larson and Carroll voting "yes"; Gaylor Baird and Francis absent. This is a recommendation to the City Council.



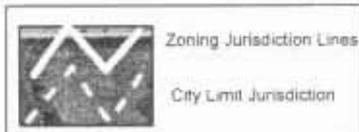
2007 aerial

Change of Zone #08047 N 56th & Superior St

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile
Sec. 5 T10N R07E





Status of Review: Active

Reviewed By

ANY

Comments:

Status of Review: Active

Reviewed By 911

ANY

Comments:

Status of Review: Active

Reviewed By Alltel

ANY

Comments:

Status of Review: Complete

Reviewed By Building & Safety

Terry Kathe

Comments:

Status of Review: Approved

08/19/2008 11:00:50 AM

Reviewed By Building & Safety

ANY

Comments: approved

Status of Review: FYI

08/22/2008 3:18:02 PM

Reviewed By Fire Department

ANY

Comments: We have no issues from the perspective of our department.

Status of Review: **Approved**

08/21/2008 2:00:50 PM

Reviewed By **Health Department**

ANY

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

TO: **Brandon Garrett** DATE: **August 21, 2008**

DEPARTMENT: **Planning** FROM: **Chris Schroeder**

ATTENTION: DEPARTMENT: **Health**

CARBONS TO: **EH File** SUBJECT: **N. 56th & Superior**

EH Administration Casey's

CZ #08047

The Lincoln-Lancaster County Health Department has reviewed the change of zone application and does not object to the approval of this application.

Status of Review: **Active**

Reviewed By **Law Department**

ANY

Comments:

Status of Review: **Active**

Reviewed By **Lincoln Electric System**

JIM HENNESSY

Comments:

Status of Review: **Active**

Reviewed By **Lincoln Police Department**

ANY

Comments:

Status of Review: **Complete**

Reviewed By **Planning Department**

RAY HILL

Comments:

Status of Review: **Active**

Reviewed By **Planning Department**

PLANNER

Comments:

Status of Review: **Routed**

Reviewed By **Planning Department**

BRANDON GARRETT

Comments:

Status of Review: Complete

08/18/2008 10:44:49 AM

Reviewed By Public Works - Development Services

SIETDQ

Comments: Memorandum□□

□

To:□Brandon Garrett, Planning Department

From:□Charles W. Baker, Public Works and Utilities

Subject:□North 56th and Superior Street - Casey's Change of Zone #08047

Date:□August 18, 2008

cc:□Randy Hoskins

□

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the North 56th and Superior Street Casey's Change of Zone #08047. Public Works has no objections for the Change of Zone from H-3 to I-1. A site plan for the future changes has not been submitted with this application.

Status of Review: No Rev Req

Reviewed By Public Works - Long Range Planning

NCSBMG

Comments:

Status of Review: Active

Reviewed By School District

ANY

Comments:

Mr. Garrett,

The Lincoln Police Department does not object to the N. 56th & Superior-Casey's Change of Zone (PUD) #08047.

Sergeant Don Scheinost
Management Services
Lincoln Police Department
575 South 10th Street
Lincoln, NE 68508
402.441.7215
mail to: lpd798@cjis.lincoln.ne.gov

011

INTER-DEPARTMENT COMMUNICATION



DATE August 22, 2008

TO: Brandon Garrett, City Planning

FROM: Sharon Theobald (Ext. 7640) *Net*

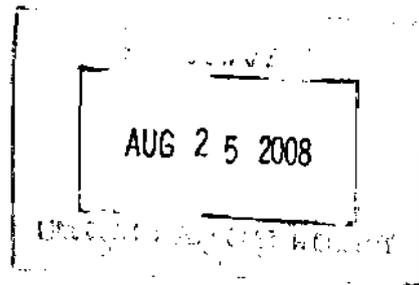
SUBJECT: DEDICATED EASEMENTS
DN #44N-55E

CZ #08047

Attached is the Change of Zone Request for N. 56th & Superior.

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.

Lincoln Electric System will offer no objections to the rezoning application request for Casey's property at 56th & Superior.



ST/nh
Attachment
c: Easement File