

City Council Introduction: **Monday**, June 2, 2008  
Public Hearing: **Monday**, June 9, 2008, at **1:30 p.m.**

Bill No. 08-64

## **FACTSHEET**

**TITLE:** **CHANGE OF ZONE NO. 08019**, from R-3 Residential District to H-3 Highway Commercial District, requested by Robert and Victoria Rokeby and Larry Schmieding, on property generally located at N. 35<sup>th</sup> Street and Superior Street.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 05/21/08  
Administrative Action: 05/21/08

**STAFF RECOMMENDATION:** Approval

**RECOMMENDATION:** Approval (8-0: Gaylor Baird, Carroll, Cornelius, Esseks, Sunderman, Larson, Francis and Taylor voting 'yes').

**ASSOCIATED REQUESTS:** Annexation No. 08003 (08-63)

### **FINDINGS OF FACT:**

1. This change of zone request was heard by the Planning Commission in conjunction with the associated Annexation No. 08003 annexing approximately 63.13 acres, and the Superior Crescent Preliminary Plat No. 08004 for ten lots, one outlot for open space and one outlot for a private roadway.
2. The staff recommendation to approve the change of zone request is based upon the "Analysis" as set forth on p.3-4, concluding that the change of zone is generally in compliance with the Land Use Plan of the Comprehensive Plan. The adjacent property to the west along Superior Street is zoned H-3 and the adjacent property to the north is zoned I-3. The staff presentation is found on p.5.
3. The applicant's testimony is found on p.6.
4. There was no testimony in opposition. The record consists of a letter in support of the annexation but opposed to the associated change of zone and preliminary plat because of the floodplain (p.11).
5. On May 21, 2008, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval of the change of zone request.
6. On May 21, 2008, the Planning Commission also voted 8-0 to recommend approval of the associated Annexation No. 08003, and to adopt Resolution No. PC-01121, approving the associated Superior Crescent Preliminary Plat No. 08004. The preliminary plat site plan is attached for information purposes (p.12).

**FACTSHEET PREPARED BY:** Jean L. Preister

**DATE:** May 27, 2008

**REVIEWED BY:** \_\_\_\_\_

**DATE:** May 27, 2008

**REFERENCE NUMBER:** FS\CC\2008\CZ.08019+

**LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**  

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**for MAY 21, 2008 PLANNING COMMISSION MEETING**

**PROJECT #:** Change of Zone No. 08019  
**PROPOSAL:** From R-3 to H-3.  
**LOCATION:** N. 35<sup>th</sup> Street and Superior Street  
**LAND AREA:** 72.28 acres  
**EXISTING ZONING:** R-3  
**CONCLUSION:** The change of zone is generally in compliance with the Land Use Plan of the Comprehensive Plan.

<b>RECOMMENDATION:</b>	Approval
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**GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Lots 77, 78, 79 and 80, Irregular Tracts, located in the SE quarter of Section 6-10-7, Lancaster County, Nebraska.

**EXISTING LAND USE:** Undeveloped

**SURROUNDING LAND USE AND ZONING:**

North:	AG	Undeveloped, wetlands, floodplain, and stream corridor
	P	Undeveloped, wetlands, floodplain, and stream corridor
	R-3	Undeveloped, wetlands, floodplain, and stream corridor
	I-3	Undeveloped, commercial uses, and industrial uses
South:	R-3	Undeveloped, wetlands, floodplain, and stream corridor
	H-3	Undeveloped
East:	R-3	Boosalis Park
West:	R-3	Undeveloped, wetlands, floodplain, and stream corridor
	H-3	Undeveloped, and auto dealership
	I-3	Undeveloped, commercial uses, and industrial uses

**ASSOCIATED APPLICATIONS:**

Preliminary Plat #08004 Superior Crescent  
Annexation #08003

**HISTORY:**

1979: The southern portion of the proposed preliminary plat was annexed (Lots 77 and 78 Irregular Tracts).  
1979: The property was zoned A-A before the 1979 update that changed it to R-3.

## **COMPREHENSIVE PLAN SPECIFICATIONS:**

**Page 16** - Green Space: Areas predominately used for active recreational uses, such as parks, golf courses, soccer or ball fields, and trails. Green space areas may be either public or privately owned. While some isolated environmentally sensitive features may be within these areas, they are predominately for active recreation, with some passive recreation uses also possible.

Industrial: Areas where railroads, manufacturing, trucking and transportation facilities are the dominant land use. Some commercial activities may also take place in predominately industrial districts, such as office, retail or warehouses.

Lakes and Streams: This category includes the larger stream corridors, lakes, and ponds.

Environmental Resources: Land and water masses which are of particular importance for maintenance and preservation, such as saline wetlands, native prairie, and some floodway and riparian corridors. Such areas may be either publicly or privately owned.

**Page 19** - This site is designated for green space, industrial, lakes and streams, and environmental resources in the Land Use Plan.

**UTILITIES:** City sanitary sewer and water service is available to serve this site.

**TOPOGRAPHY:** Relatively flat land within the floodplain and floodway of Salt Creek. Salt Creek runs south to north through the east side of the property.

**TRAFFIC ANALYSIS:** The development will take primary access from Superior Street. A future extension of Schworer Drive will provide additional circulation to N. 33<sup>rd</sup> Street.

**ENVIRONMENTAL CONCERNS:** This property is entirely within the 100 year floodplain. Part of the property is in the floodway. There are wetlands identified on the property. Salt Creek runs through a portion of the property.

**ALTERNATIVE USES:** Leave the land zoned for residential and develop the area with a community unit plan and use the wetlands, creek, and floodway for a density bonus.

## **ANALYSIS:**

1. The Comprehensive Plan Land Use Plan identifies this area as "Industrial". The H-3 Highway Commercial District is not an industrial zone. The H-3 does, however, offer opportunities for more intensive commercial and industrial service uses such as printing shops, miniwarehouses, bottling works, warehouses, sale barns, contractor's offices, lumber yards, and motor truck terminals.
2. The adjacent property to the west along Superior Street is zoned H-3, but is designated in the Comprehensive Plan Future Land Use map as "Commercial".
3. The adjacent property to the north is zoned I-3 and is designated in the Comprehensive Plan Future Land Use map as "Industrial".

4. A future bike trail is shown through this area on the Comprehensive Plan Future Land Use map.

Prepared by:

Brandon M. Garrett, AICP  
Planner

**DATE:** May 13, 2008

**OWNER:** Robert and Victoria Rokeby  
150 Jackson Cove Crescent  
Eureka Springs, AR 72631

Larry Schmieding  
8101 N. 1<sup>st</sup> Street  
Lincoln, NE 68531

**CONTACT:** Robert L. Dean  
RD Engineering, Inc.  
6801 Crooked Creek Drive  
Lincoln, NE 68516

**ANNEXATION NO. 08003,  
CHANGE OF ZONE NO. 08019  
and  
PRELIMINARY PLAT NO. 08004, SUPERIOR CRESCENT**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 21, 2008

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

Ex Parte Communications: None.

Staff presentation: **Brandon Garrett of Planning staff** noted that the letter the Commission received in opposition related to concerns about the floodplain issues in this area and development in the floodplain.

The subject property is located at N. 35<sup>th</sup> and Superior. Garrett acknowledged that part of this preliminary plat includes 100-year floodplain, floodway and the actual creek of Salt Creek. All of that property is included in Outlot B. Most of the buildable lots have been platted to be outside of the floodway. There are two lots near the southern edge along Superior Street where they extend into the floodway, but there is a note on the site plan that says any property located in the floodway would be for parking only, with no structures in the floodway.

Carroll observed that some of the property has already been filled. Garrett agreed. The developer already received the proper permits to do fill in the floodplain. This area was zoned R-3 previously so the floodplain regulations for new growth areas do not apply.

Esseks inquired about the policies which specify how much of a parcel can be filled. Garrett believes that the boundary for the storage cells stops at Superior Street. **Ben Higgins of Public Works, Watershed Management**, clarified that the subject property is outside the storage cell area. Esseks wondered about the effect of filling here on properties downstream. Higgins explained that this property is located in an existing urban area. The Floodplain Task Force divided the city into a "new growth area" and an "urban area". This property is in the urban area so it follows the local state and federal floodplain standards. The difference here is that along Salt Creek it is channelized with the levees put in by the Corps of Engineers. It is an artificial floodway along Salt Creek between Superior Street and Calvert Street to the south. We could either have a real wide floodway through there or narrow it with the Salt Creek storage areas. Since the levee ends at Superior Street, that was the natural place to not have the storage anymore. Esseks inquired whether there is anything in process for the area north of Superior Street to minimize the negative effects of development along the floodplain. Higgins advised that there is a local project being done now and they are doing a feasibility study to help offset and mitigate flooding in these areas. They are considering widening the stream channel on Turner Ditch.

Carroll inquired as to what has been filled on this site. Higgins showed what has been filled on the map. It is a locally adopted map that is now before FEMA for adoption. The fill that is out there has already been taken into account on that map.

### Proponents

1. **Charlie Humble**, 301 S. 13<sup>th</sup>, Suite 400, appeared on behalf of the applicants, **Robert and Vickie Rokeby and Larry Schmieding**. The staff report notes that all utilities are available and the property is adjacent to the city and ready to be urbanized.

Humble also pointed out that the staff finds that the change of zone is in compliance with the land use plan; the surrounding property is a mix of I-3 and H-3; the H-3 here would offer opportunity for more intensive commercial and industrial uses which would be in character with the surrounding uses in the area.

With regard to the preliminary plat, Humble noted that the property is in the Tier I priority area of the city's future service limit, and sanitary sewer and water can be extended. In connection with the waivers, Humble pointed out that the staff finds the requests to be justified and acceptable, i.e. stormwater detention because of proximity to Salt Creek; and the waiver to allow sanitary sewer depth less than 9' is justified because of commercial development.

Humble advised that the conditions of approval are acceptable to the applicant.

Humble acknowledged that the developer does have a current floodplain permit through August of 2008, which allows the applicant to fill according to the plan and this plat does not change that. The fill that has been done is in accordance with the permit.

Esseks inquired about the wetlands on the property and whether they will be protected. **Bob Dean of RD Engineering** showed the floodway on the map. The area to the south and west of the floodway has already been filled. The area to the north is currently being filled in accordance with the floodplain permit that was issued. The site will likely be filled about one foot lower than the permit shows. They are proposing to generate fill for this site to go into the floodway area to excavate and generate some dirt, which will help increase the storage capacity in the floodway. As far as the wetlands, they will be filling around the wetlands. None of the wetlands will be taken out. The wetlands will be protected during construction operations.

There was no testimony in opposition.

### **ANNEXATION NO. 08003**

### **ACTION BY PLANNING COMMISSION:**

May 21, 2008

Taylor moved approval, seconded by Larson and carried 8-0: Cornelius, Sunderman, Gaylor Baird, Larson, Esseks, Francis, Taylor and Carroll voting 'yes'. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 08019**  
**ACTION BY PLANNING COMMISSION:**

May 21, 2008

Larson moved approval, seconded by Taylor.

Cornelius commented that this appears to be consistent with the Comprehensive Plan and the surrounding uses, so it seems appropriate.

Carroll also commented that the property is surrounded by the city, so it is a good choice to annex and change the zone.

Motion for approval carried 8-0: Cornelius, Sunderman, Gaylor Baird, Larson, Esseks, Francis, Taylor and Carroll voting 'yes'. This is a recommendation to the City Council.

**PRELIMINARY PLAT NO. 08004**  
**ACTION BY PLANNING COMMISSION:**

May 21, 2008

Cornelius moved to approve the staff recommendation of conditional approval, seconded by Francis and carried 8-0: Cornelius, Sunderman, Gaylor Baird, Larson, Esseks, Francis, Taylor and Carroll voting 'yes'. This is final action, unless appealed to the City Council within 14 days.



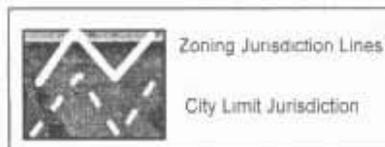
**Preliminary Plat #08004 & Change of Zone # 08019**  
**Superior Crescent**  
**N 35th & Superior St**

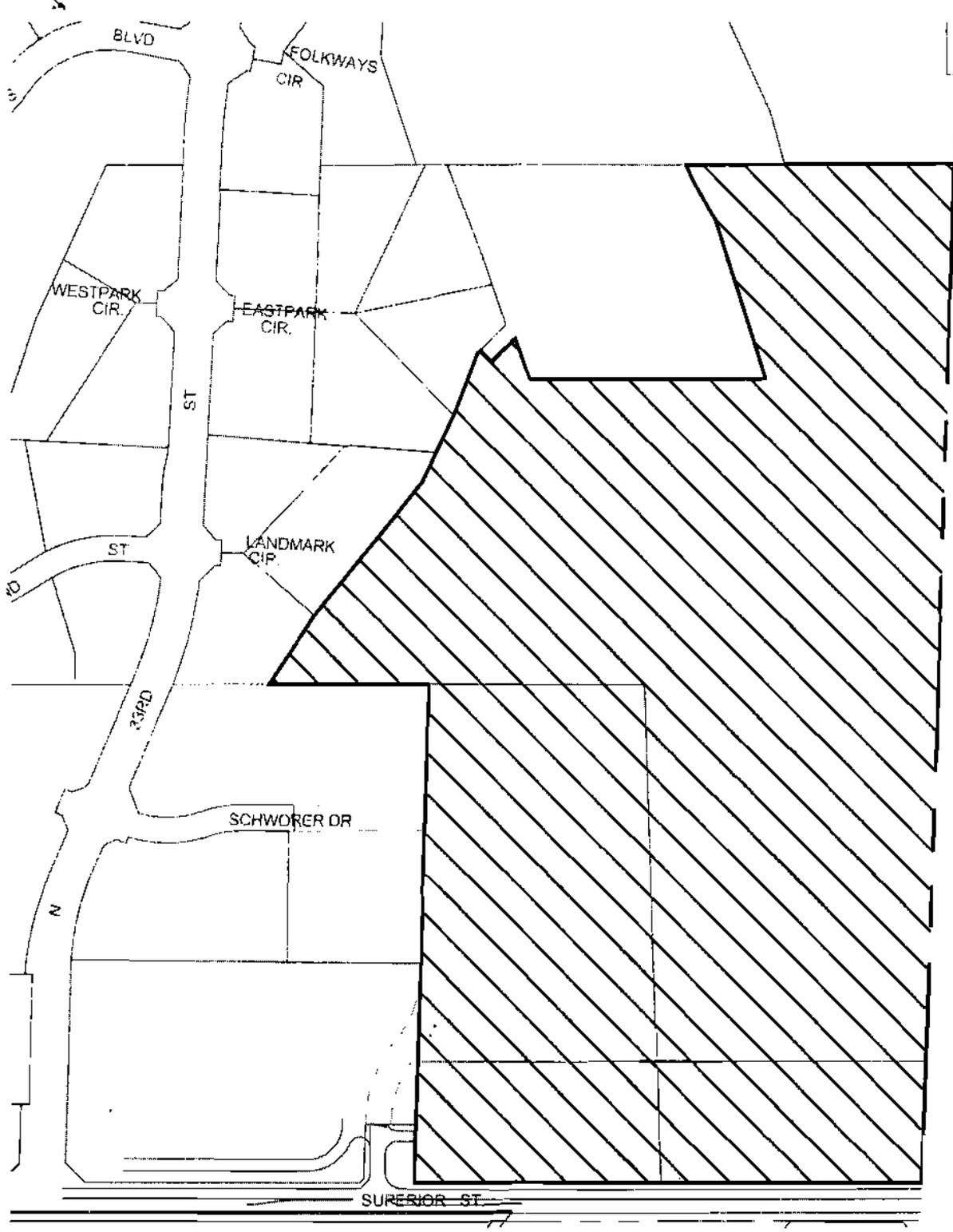
2007 aerial

**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. 6 T10N R7E





**E&A CONSULTING GROUP, INC.**  
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 330 NORTH 117TH STREET, OMAHA, NE 68154 PHONE: (402) 995-4700

**ZONING EXHIBIT**

See sheet 2 of 2 for Legal Description

009

Drawn by: RPF

Job No.: P2008.179.001

Date: 04/21/2008

Sh: 1 of 2

## LEGAL DESCRIPTION

A PARCEL OF LAND BEING ALL OF LOTS 77 I.T. THROUGH 80 I.T. ALL LOCATED IN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 77 I.T., SAID POINT ALSO BEING ON NORTH RIGHT OF WAY LINE OF SUPERIOR STREET; THENCE ALONG SAID NORTH RIGHT OF WAY LINE AND ALONG THE SOUTH LINE OF SAID LOT 77 I.T. AND ALONG THE SOUTH LINE OF SAID LOT 78 I.T., N90°00'00"W (ASSUMED BEARING), 1317.50 FEET TO THE SOUTHWEST CORNER OF SAID LOT 78 I.T.; THENCE ALONG THE WEST LINES OF LOTS 78 I.T. AND 79 I.T. AND ALONG THE EAST LINE OF SCHWORER ADDITION, AS SURVEYED PLATTED AND RECORDED IN SAID COUNTY, N01°45'10"E, 1277.01 FEET TO THE NORTHWEST CORNER OF SAID LOT 79 I.T. AND THE NORTHEAST CORNER OF SAID SCHWORER ADDITION, SAID POINT ALSO BEING ON THE SOUTHERLY BOUNDARY LINE OF SAID LOT 80 I.T.; THENCE ALONG SAID SOUTHERLY BOUNDARY LINE AND ALONG THE NORTH LINE OF SAID SCHWORER ADDITION, S89°54'35"W, 415.29 FEET TO A POINT ON THE EAST BOUNDARY LINE OF LANDMARK CORPORATE CENTER 1ST ADDITION, AS SURVEYED PLATTED AND RECORDED IN SAID COUNTY; THENCE ALONG SAID EAST BOUNDARY LINE AND ALONG THE WESTERLY BOUNDARY OF SAID LOT 80 I.T., THE FOLLOWING THREE (3) COURSES: 1) N34°01'53"E, 211.58 FEET; 2) N38°58'43"E, 441.81 FEET; 3) AND ALONG THE EASTERLY BOUNDARY OF LANDMARK CORPORATE CENTER 3RD ADDITION, AS SURVEYED PLATTED AND RECORDED IN SAID COUNTY, N25°29'02"E, 189.53 FEET TO THE MOST SOUTHERLY CORNER OF LANDMARK CORPORATE CENTER 2ND ADDITION, AS SURVEYED PLATTED AND RECORDED IN SAID COUNTY; THENCE ALONG THE EASTERLY BOUNDARY OF SAID LANDMARK CORPORATE CENTER 2ND ADDITION AND ALONG THE WESTERLY BOUNDARY OF SAID LOT 80 I.T., N21°24'38"E, 166.64 FEET; THENCE CONTINUING ALONG THE EASTERLY BOUNDARY OF SAID LANDMARK CORPORATE CENTER 2ND ADDITION AND ALONG THE WESTERLY BOUNDARY OF SAID LOT 80 I.T., N45°09'12"E, 11.82 FEET TO A CORNER ON THE SOUTHERLY BOUNDARY OF LANDMARK CORPORATE CENTER 1ST ADDITION, AS SURVEYED PLATTED AND RECORDED IN SAID COUNTY; THENCE CONTINUING ALONG THE BOUNDARY OF SAID LOT 80 I.T. AND ALONG THE BOUNDARY OF SAID LANDMARK CORPORATE CENTER 1ST ADDITION, THE FOLLOWING SEVEN (7) COURSES: 1) S46°27'55"E, 40.20 FEET; 2) N46°05'13"E, 86.32 FEET; 3) S19°23'25"E, 110.44 FEET; 4) N89°50'32"E, 612.32 FEET; 5) N17°42'40"W, 425.16 FEET; 6) N30°15'37"W, 112.47 FEET; 7) N24°48'18"W, 45.04 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 6, SAID POINT BEING ON THE NORTH LINE OF SAID LOT 80 I.T., SAID POINT ALSO BEING ON THE SOUTH LINE OF LANDMARK CORPORATE CENTER ADDITION, AS SURVEYED PLATTED AND RECORDED IN SAID COUNTY, THENCE ALONG SAID SOUTH LINE AND ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 6 AND ALONG THE NORTH LINE OF SAID LOT 80 I.T. N89°36'22"E, 692.56 FEET TO THE NORTHEAST CORNER OF SAID LOT 80 I.T.; THENCE ALONG THE EAST LINE OF SAID LOT 80 I.T., S01°47'31"W, 2607.90 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 72.28 ACRES, MORE OR LESS.



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Drawn by: RPF

**ZONING EXHIBIT**

See sheet 2 of 2 for Legal Description

010

Job No.: P2008.179.001

Date: 04/21/2008

Sht. 2 of 2

SUPPORT for Annexation  
OPPOSITION to Change of Zone  
and Preliminary Plat

ITEM NO. 1.2a,b,c: ANNEXATION NO. 08003  
CHANGE OF ZONE NO. 08019  
PRELIMINARY PLAT NO. 08004

(p.11 Public Hearing - 5/21/08)



tedandphyllis72@aol.com

05/15/2008 07:57 PM

To bgarrett@lincoln.ne.gov, plan@lincoln.ne.gov

cc

bcc

Subject RE: Annexation No. 08003, Change of Zone No. 08019 and  
Preliminary Plat No 08004

Mr. Garrett,

I am contacting you regarding the proposed changes at 35th and Superior. First I am in favor of the annexation and opposed to the Change of Zone and the Preliminary Plat. I have in the past noted, most recently during the discussion about the 100 year flood plain, that we continue to take actions which long term are detrimental to our community.

The history of this particular property is that the current ownership has filled in the land to raise the overall grade by 4-6 feet. This in my opinion contributed to a change in the 100 year flood plain. Now that the land has been raised up any flooding in the area, and this IS a Flood Plain, will flow over the same land that was lower prior to being filled in. Where does this water go? It flows into the homes adjacent to and now in the Flood Plain and into any Business built in the Flood Plain and overall will be as a higher level than would have been experienced if we had not filled in the area.

Why do we continue to develop our Flood Plains? The reason is we have not had a record flood in the area for over 35 years (I have lived in Lincoln for about 34 years and do not recall any big flood in this area.) and as a result we have an Institutional Blind Spot. At some point this area will flood, the dikes and levees will not hold this water out, and the losses to businesses and home owners will be substantial.

Why learn the consequences of this shortsighted action after the fact? People in other communities have heeded the need for effective Flood Ways and have stopped development of flood plains and in some cases taken back areas that were developed previously.

Maybe it is time we said "No" to continued development of these areas before it is too late.

Sincerely,

Ted Ericson, 4130 N 42nd St. Circle, Lincoln, NE 68504

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