

**City of Lincoln**

**BOARD OF ZONING APPEALS**

**AGENDA**

**BOARD OF ZONING APPEALS**

Annette McRoy, Chair  
Steve Miller, Vice Chair  
Tracy Edgerton  
David Johnson  
Vickie McDonald

**May 29, 2020**

# CITY BOARD OF ZONING APPEALS

Notice is hereby given that the **CITY BOARD OF ZONING APPEALS** will hold a public hearing on **Friday, May 29, 2020** at **1:30 p.m.** in the **City Council Chambers** on the 1<sup>st</sup> Floor of the County-City Building, 555 South 10th Street, on the following item. For more information, please contact the Planning Department at (402) 441-7491.

## **AGENDA**

**May 29, 2020**

1. Approval of the minutes of the City Board of Zoning Appeals hearing, held March 29, 2019.

### **ADMINISTRATIVE ACTION**

4. BOARD OF ZONING APPEALS 20002, requested by Glacier Park, LLC, for a variance to height of Lincoln Municipal Code Airport Zoning 27.59.040, to allow installation of towers, which exceed the 150-foot maximum allowed height above elevation, on property generally located at 4201 NW 70th Street.

\* \* \* \* \*

The City Board of Zoning Appeals agenda may be accessed on the Internet at

<http://www.lincoln.ne.gov/city/plan/boards/cibza/cibza.htm>

### **ACCOMMODATION NOTICE**

The City of Lincoln complies with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 guidelines. Ensuring the public's access to and participating in public meetings is a priority for the City of Lincoln. In the event you are in need of a reasonable accommodation in order to attend or participate in a public meeting conducted by the City of Lincoln, please contact the Director of Equity and Diversity, Lincoln Commission on Human Rights, at 402 441-7624 as soon as possible before the scheduled meeting date in order to make your request.

**CITY BOARD OF ZONING APPEAL #20002**

**DATE SCHEDULED FOR PUBLIC HEARING:**

May 29, 2020

**ADDRESS:** 4201 NW 70<sup>th</sup> Street

**LEGAL DESCRIPTION:** Lot 37, located in the NE 1/4 of Section 11-10-5, and Lots 15 and 17 located in the SE 1/4 of Section 2-10-5, Lincoln, Lancaster County, Nebraska.

**EXISTING LAND USE AND ZONING:**

Acreage Residential                      AG Agriculture

**SURROUNDING LAND USE AND ZONING:**

North:	Agriculture	AG
South:	Agriculture	AG
East:	Agriculture	AG
West:	Agriculture	AG

**TYPE(S) OF APPEAL(S):**

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO A VARIANCE PER LINCOLN MUNICIPAL CODE 27.75.020(C).

A. Lincoln Municipal Code (LMC) Section 27.59.040(b) which prohibits structures in a turning zone from exceeding 150' above the elevation at the closest runway end, as shown on the Lincoln Airport Zoning Map. A variance to allow two 60''-tall recreational towers which exceeds the maximum elevation limit by 26.9' (from 1,349.5' to 1,376.4') is being requested.

**STAFF FINDINGS:**

1. The location of the proposed towers on the subject property is approximately 3 miles west of the Lincoln Municipal Airport at 4201 NW 70<sup>th</sup> Street. The property is approximately 159 acres in area, is largely undeveloped and used for personal recreation.
2. The petition is requesting a variance to allow two 60'-tall towers to be located on the property, which as proposed will exceed the Airport Zoning regulations. The towers also exceed the 35' maximum height of the AG zoning district, but that height can be exceeded by special permit. In 2019, Special Permit #19043 was approved allowing the towers to 60'. At that time it was noted that they exceeded the maximum allowed height of the turning zone as shown on the Airport Zoning Map., and that a variance would also be required.

3. The petition notes that the towers come from the former State Fairgrounds race track, where they stood at each end of the facility. The property owner acquired them and is seeking to locate them on the property. The report for the special permit noted that they were intended to be used for recreational purposes and could serve as deer stands.
4. This site lies within a Turning Zone of the Lincoln Municipal Airport as defined on the Lincoln Airport Zoning Map. Chapter 27.59 Airport Zoning Regulations contains the airport zoning regulations. Section 27.59.040(b) limits the height of structures within this turning zone to 150' above the closest runway end.
5. To determine the height of the towers in relationship to the end of the closest runway, the following elevations are used in the Federal Aviation Administration (FAA) and Lincoln Airport Authority (LAA) determinations. The following elevations relate to this request:
 

-End of Nearest Runway	1,199.5'
-Max Height in Turning Zone (End of Nearest Runway + 150')	1,349.5'
-Ground Elevation of Proposed Tower Site	1,316.4'
-Elevation of Top of Proposed Tower	1,376.4'
6. Anything over 1,349.5' in this turning zone using the end of the same runway elevation exceeds the maximum allowed by the Airport Zoning Regulations. In this case, at 1,376.4', the height of the proposed tower exceeds the maximum allowed elevation in the turning zone by 26.9'.
7. The Federal Aviation Administration (FAA) is charged with maintaining air traffic safety to ensure there are no conflicts with aviation operations, and must approve such applications. That was done in this case, and the FAA issued a 'Determination of No Hazard to Air Navigation'. That was provided to the LAA, who in turn issued a statement noting they had no objection to the granting of this height waiver.
8. In the letter the LAA noted that the FAA found the towers would not exceed obstruction standards and would not be a hazard to air navigation. It was also stated that the FAA did not note any potential impacts to circling or straight-in approaches at the Airport. A copy of both the letter from the LAA and the FAA Determination on No Hazard to Air Navigation are attached to this report.
9. Chapter 27.57 Airport Zoning was adopted to promote appropriate land development in the airport environs to ensure safe air navigation. The chapter was written with the assistance and approval of the LAA. Both the LAA and their Federal counterpart, the FAA, do not object to the approval of this variance.
10. This request is different than those commonly considered by the BZA under Section 27.75.020(b)(1), which refers to powers relative to variances. Section

27.59.110 delineates the Board's powers with respect to the airport zoning regulations, and contains a different standard for granting variances under airport zoning.

11. The Board of Zoning Appeals is authorized to grant this variance per Section 27.59.110 and Neb. Rev. Stat. Section 3-312. Specifically, it shall allow variances where a literal application or enforcement of the regulations would result in a practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations.
12. If denied, the property owner will not be allowed to erect structures whose height exceeds 1,349.5' in maximum elevation at this location and the proposed towers will need to be lowered 26.9'.

Prepared by

---

Brian Will, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
May 11, 2020

**APPLICANT/  
CONTACT:**

Ann Post  
Baylor Evnen  
1248 O Street, Suite 600  
Lincoln, NE 68508  
402-475-1075  
apost@baylorevnen.com

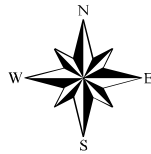
**PETITIONER:**

Glacier Park, LLC  
1 Talent Plus Way  
Lincoln, NE 68506



2018 aerial

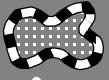


**Board of Zoning Appeals #: BZA20002**  
**NW 70th St & W Superior St**

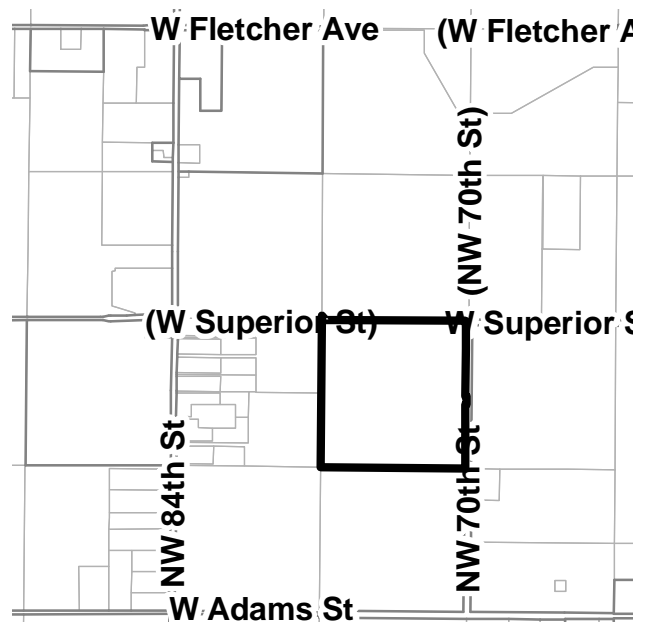


**Zoning:**

- 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

**Two Square Miles:**  
**Sec.02 T10N R05E**  
**Sec.11 T10N R05E**

	Area of Application
	Zoning Jurisdiction Lines
	Lancaster County Jurisdiction





Dallas D. Jones  
David A. Dudley  
Brenda S. Spilker  
Timothy E. Clarke [IA]\*  
Robert S. Lannin [KS, MO]\*  
Jenny L. Panko

Caroline M. Westerhold [IA]\*  
Jarrod P. Crouse  
Jennifer S. Caswell [CO]\*  
Paul T. Barta [IA]\*  
Torrey J. Gerdes [IA]\*  
Emily R. Motto [IA]\*

Thomas B. Shires [IA]\*  
Kate Q. Martz [IA]\*  
Michael D. Reisbig [IA]\*  
Susan M. Foster  
Andrew D. Weeks  
Ann K. Post

Christopher M. Schmidt  
Jenna M. Christensen  
J. Michael Hannon  
Micah Hawker Boehnke [IA only]

Of Counsel:  
Robert T. Gमित  
Donald R. Witt  
Walter E. Zink II  
W. Scott Davis  
Peter W. Katt  
Mark A. Hunzeker  
Randall L. Goyette [IA]\*  
Stephen S. Gealy

April 3, 2020

Lincoln/Lancaster County Planning Department  
C/O Dessie Redmond  
555 S. 10<sup>th</sup> Street, Suite 213  
Lincoln, NE 68508

RE: Application for Variance of Airport Zoning Height Restrictions

Dear Ms. Redmond:

Our firm represents Glacier Park LLC (“Glacier Park”) owner of a 159.04 acre parcel of property located at 4201 NW 70<sup>th</sup> Street (“Property”). Glacier Park is seeking a variance of LMC 27.59.040 to allow installation of tower, which exceeds 150 feet in height above the elevation at the closest runway end.

Glacier Park acquired two towers which were originally constructed in the 1940s and stood on each end of the State Fair Racetrack. Each tower is 60 ft. tall including a semi-enclosed seat to protect race officials from the elements as they watched the races. From the towers workers could watch and verify if a jockey or their horse interfered with the other horses and riders. The towers stood until the State Fair Grounds began their conversion into Innovation Campus, at which point Glacier Park LLC acquired the towers, had them removed by crane to keep them intact, and transported to their current location at 4201 NW 70th Street.

Glacier Park desires to install one of these towers at 4201 NW 70<sup>th</sup> Street and has applied for and received a special permit for this permitted use that exceeds the maximum height in the AG zoning district. However, this location is also located in an Airport Hazard Area as defined by LMC 27.59.020 and subject to Height Restrictions contained in 27.59.040 (b).

We have discussed the proposed tower location with the Lincoln Airport Authority, which represents that the proposed tower will not interfere with air traffic or its operations and it has no objections to the proposed tower construction.

Therefore, as required by 14 C.F.R. part 77.9 and LMC 27.59.067 Glacier Park has submitted Form 7460-1 to the FAA requesting approval of the proposed tower and location, confirmation of this application is attached. In addition, Glacier Park requests the Board of Zoning Appeals grant a variance allowing installation of the tower at the proposed location which will exceed 150 ft. in height above the elevation of the closest runway end.

Enclosed you will find:

1. Application Form
2. Application Fee (\$412)
3. Proof of Submission of Form 7460-1 to the FAA
4. Map of proposed tower location

If you require any additional information, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Ann K. Post".

Ann K. Post  
For the Firm  
APost@bayloreven.com

APO/apo

2816509



Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
10101 Hillwood Parkway  
Fort Worth, TX 76177

Aeronautical Study No.  
2020-ACE-1565-OE

Issued Date: 04/03/2020

Doug Rath  
Glacier Park LLC  
1 Talent Plus Way  
Lincoln, NE 68506

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Tower Observation Tower
Location:	Lincoln, NE
Latitude:	40-51-07.88N NAD 83
Longitude:	96-49-27.57W
Heights:	1316 feet site elevation (SE) 60 feet above ground level (AGL) 1376 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)  
 Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 L Change 2.

This determination expires on 10/03/2021 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (816) 329-2527, or [marla.wierman@faa.gov](mailto:marla.wierman@faa.gov). On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2020-ACE-1565-OE.

**Signature Control No: 432472390-435472513**

( DNE )

Marla Wierman  
Technician

Attachment(s)  
Map(s)

cc: FCC



Street Address 4201NW 70th Street Height Permit No. \_\_\_\_\_

Building Permit No. \_\_\_\_\_

# Application for HEIGHT PERMIT

**Building and Safety Department**  
555 S. 10th St., Suite 203 Lincoln, NE 68508  
Main: 402-441-7521 Fax: 402-441-8214  
24HR Inspection Line: 402-441-8213

FEE \$ \_\_\_\_\_

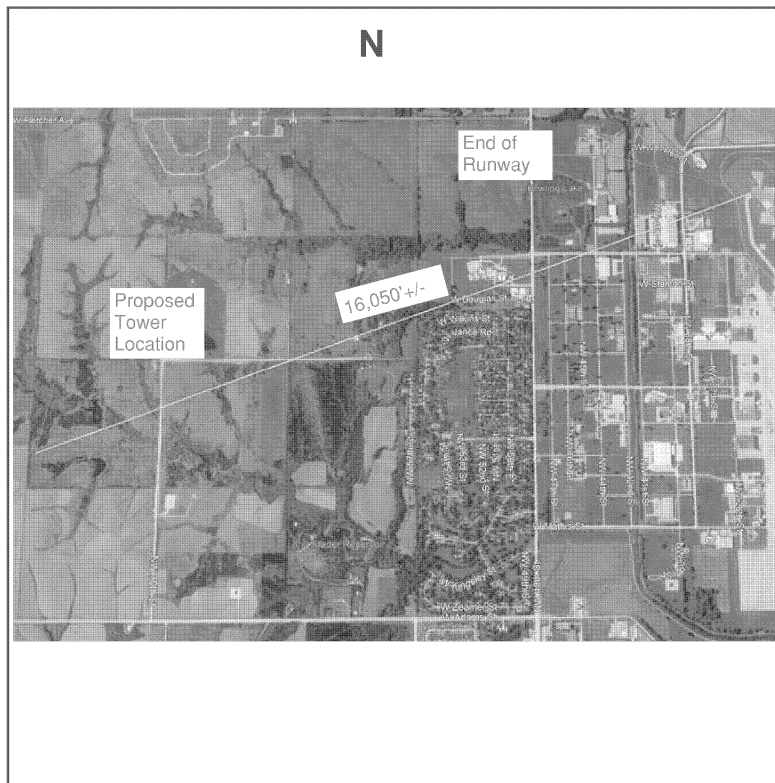
Date 4-16, 2020

The undersigned hereby applies for a permit to:  Construct  Building  Alter  Sign  Enlarge  Structure on the following described premises:

**PLEASE PRINT/TYPE**

Lot 37, Section 11-10-05 Block \_\_\_\_\_

Addition \_\_\_\_\_



1. Show approximate outline of property or premises at left.
2. Show location of building, sign or structure on property or premises.
3. Attach to this application, elevation plan of building, sign or structure.
4. Attach to this Application, Certified Elevation Data by a Land Surveyor, registered by the State of Nebraska.

**Supply data below from above mentioned Certification:**

5. Elevation of closest point on a runway:  
1199.5 NAVD88
6. Elevation of highest ground point upon which proposed building, sign or structure is to be located:  
1316.4 NAVD88
7. Height of building, sign or structure above ground:  
60'
8. Distance of building, sign or structure to nearest runway:  
16,050'+/-

Owner Glacier Park, LLC. Land Surveyor Lyle L Loth L.S 314

Contractor/  
Builder Talent Plus/Dennis Gifford Office Phone 402-730-6000 Cell Phone \_\_\_\_\_

Address One Talent Plus Way, Lincoln, NE 68506

**APPLICANT**

I hereby certify that if the use of a crane or other lifting device is necessary, I will contact the Deputy Director of Operations for the Lincoln Airport Authority regarding the operation of said device and I hereby further certify that the above statements are correct and that if a Height Permit is issued, all work will be done in accordance with the Ordinances of the City of Lincoln.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**BUILDING & SAFETY APPROVAL:** \_\_\_\_\_ Date: \_\_\_\_\_

55C

NW 36th St

NW 37th St

NW 38th St

NW 39th St

NW 40th St

W Stanton St

NW 41st St

NW 42nd St

NW 44th St

NW 45th St

NW 46th St

NW 47th St

W Mathis St

Bowling Lake

IS 418th / MN

NW 49th St

NW 50th St

IS 51st MN

IS 51st St

NW 52nd St

NW 53rd St

NW 54th St

NW 54th St

IS 57th / MN

W Douglas St

W Wilkins St

N Vance Rd

W Kinley St

W Zeamer St

W Adams St

Flader Reservoir

NW 70th St

Proposed Tower Location

W Fletcher Ave



**ProjectFlow - Review Details Report**

<b>Project Name:</b>	BZA20002
<b>Workflow Started:</b>	04/07/2020 10:33 AM
<b>Report Generated:</b>	05/14/2020 09:34 AM

**PLAN REVIEW COMMENTS**

Cycle	Department	Reviewer	Review Status	Comments	Additional Reviewer Comments	Coordinator Comments	Comment Date	Changemark Snapshot	Applicant Response	Comment Status
<b>Department Review</b>										
1	Airport Authority	c.lay@LincolnAirport.c Review Comments	No Review Required	The proponent has already submitted the necessary FAA form 7460 and the FAA has subsequently issued a determination of no hazard to air navigation. The Airport Authority has reviewed the details of the FAA's determination and concurs that the proposed tower does not interfere with air traffic or its operations. However, the Lincoln Airport hasn't the authority to approve a waiver nor a variance and will defer to the Board of Zoning Appeals.			#####			
	Building and Safety	rrehtus@lincoln.ne.go Review Comments	No Review Required	27.75.020(c), 27.75.050: Can neither recommend approval nor denial. RER 5/07/2020			#####			
	Development Review Manager	shenrichsen@lincoln.n Review Comments	Recommend Approval	ok 4-29-20			#####			
	Planner Review	bwill@lincoln.ne.gov Review Comments					#####			
	Planning Dept	bthomas@lincoln.ne.g Review Comments	No Review Required				#####			