

Lincoln City - Lancaster County

PLANNING COMMISSION AGENDA

PLANNING COMMISSION

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Shelli Reid: Administrative Officer
Jennifer McDonald: Administrative Aide
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January 25, 2023

NOTICE: The Lincoln/Lancaster County Planning Commission will hold a public hearing on Wednesday, January 25, 2023, at 1:00 p.m. in Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th St., Lincoln, Nebraska. For more information, call the Planning Department, (402) 441-7491.

****PLEASE NOTE:** The Planning Commission action is final action on any item with a notation of *FINAL ACTION*. Any aggrieved person may appeal Final Action of the Planning Commission to the City Council or County Board by filing a Notice of Appeal with the City Clerk or County Clerk within 14 days following the action of the Planning Commission.

The Planning Commission action on all other items is a recommendation to the City Council or County Board.

The Planning Commission will be allowing testimony on agenda items by videoconferencing. For those who wish to testify by video, you must register with the Planning Department Office to participate by calling 402-441-7491 or emailing Plan@lincoln.ne.gov by 10:00 a.m. the day of the meeting. You will be asked to provide your name, address, phone number and the agenda item(s) you wish to speak on, and your position on this item. On the day of the hearing, you will receive a link via email, which will be needed to join the hearing to provide your testimony.

AGENDA

WEDNESDAY, January 25, 2023

Approval of minutes of the regular meeting held January 11, 2023.

1. CONSENT AGENDA (Public Hearing and Administrative Action)

CHANGE OF ZONE:

- 1.1 CHANGE OF ZONE 22039, from R-2 (Residential District) and I-1 (Industrial District) to H-3 (Highway Commercial District) PUD (Planned Unit Development), on property generally located at 1100 SW 6th Street. Also, to review an amendment to the boundaries of the Conservation Easement lying within a portion of the same property for conformance with the Comprehensive Plan.

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Staff recommendation: Conditional Approval and Finding Conservation Easement Amendment in Conformance with the Comprehensive Plan

Staff Planner: Tom Cajka, 402-441-5662, tcajka@lincoln.ne.gov

SPECIAL PERMIT AND RELATED ITEMS:

- 1.2a SPECIAL PERMIT 22045, to allow the Hawley Corners CUP (Community Unit Plan) for up to 6 dwelling units, with associated waivers to setback requirements, minimum lot area requirements, and storm water detention, on property generally located at 26th and U Streets. The Planning Commission action is final, unless appealed to the Lincoln City Council. *** **FINAL ACTION** ***

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Staff recommendation: Conditional Approval

Staff Planner: Ben Callahan, 402-441-6360, bcallahan@lincoln.ne.gov

- 1.2b STREET AND ALLEY VACATION 22008, to vacate the south 20 feet of U Street ROW (Right-of-Way) between 25th and 26th Streets, on property generally located at 26th and U Streets.

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Staff recommendation: Conforms to Comprehensive Plan

Staff Planner: Ben Callahan, 402-441-6360, bcallahan@lincoln.ne.gov

2. REQUESTS FOR DEFERRAL

3. ITEMS REMOVED FROM CONSENT AGENDA

4. PUBLIC HEARING AND ADMINISTRATIVE ACTION

MISCELLANEOUS:

- 4.1 MISCELLANEOUS 22014, to allow for Reasonable Accommodation, under the Fair Housing Act and Section 1.28 of the Lincoln Municipal Code, to the zoning code definition of "family" to allow up to 12 unrelated persons to reside together as a family, on property generally located at 2648 Washington Street.

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Staff recommendation: Finding of Compliance with Requirements of Fair Housing Act with Conditions

Staff Planner: Steve Henrichsen, 402-441-6374, shenrichsen@lincoln.ne.gov

5. CONTINUED PUBLIC HEARING AND ADMINISTRATIVE ACTION

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**AT THIS TIME, ANYONE WISHING TO SPEAK ON AN ITEM
NOT ON THE AGENDA, MAY DO SO.**

* * * * *

Adjournment

PENDING LIST: *CHANGE OF ZONE 22037, from AG (Agricultural District) to R-3 (Residential District), on property generally located at South Folsom Street and Old Cheney Road.*

PRELIMINARY PLAT 22004, for a new Preliminary Plat, for 162 acres, on property generally located at South Folsom Street and Old Cheney Road.

ANNEXATION 22014, to annex approximately 162 acres, more or less, on property generally located at South Folsom Street and Old Cheney Road.

CHANGE OF ZONE 08041D, for an amendment to the Pine Woods PUD (Planned Unit Development for a change of zone from AGR (Agricultural Residential) to R-3 (Residential PUD), to add 9.78 acres, more or less for a 22,000 square foot Club, on property generally located at 6401 Pine Lake Road.

BOARD OF ZONING APPEALS 22006, an appeal of an administrative official's decision, associated with property generally located at 4575 South 1st Street.

PRELIMINARY PLAT 04011A, for a preliminary plat amendment to show a revised street layout, with associated waiver, on property generally located at Waterford Estates Drive and Linwood Lane.

Planning Department Staff Contacts:

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The Planning Commission meeting which is broadcast live at 1:00 p.m. every other Wednesday will be available for viewing on LNK City TV at <https://lnktv.lincoln.ne.gov/CablecastPublicSite/watch/3?channel=1>

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The Planning Commission agenda may be accessed on the Internet at <https://app.lincoln.ne.gov/city/plan/boards/pc/pc.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 Lincoln Commission on Human Rights at 402-441-7624, or the City Ombudsman at 402-441-7511, as soon as possible before the scheduled meeting date in order to make your request.*

LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Change of Zone #22039 Bison H-3 PUD	FINAL ACTION? No	DEVELOPER/OWNER IMS Properties, LLC
PLANNING COMMISSION HEARING DATE January 25, 2023	RELATED APPLICATIONS None	PROPERTY ADDRESS/LOCATION Sw. 6 th St. and West "B" St.

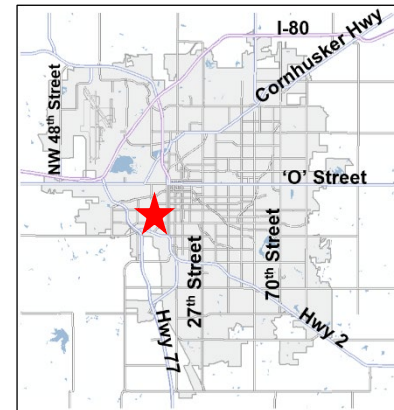
RECOMMENDATION: PUD: CONDITIONAL APPROVAL CONSERVATION EASEMENT: CONFORMANCE WITH THE COMPREHENSIVE PLAN

BRIEF SUMMARY OF REQUEST

This is a request for a change of zone from I-1 Industrial and R-2 Residential to H-3 Planned Unit Development (PUD) located northeast of the intersection of SW 6th Street and West "B" Street. The site is approximately 6.84 acres. The PUD proposes to expand the existing business by adding an additional building and parking to the site. The PUD also proposes a small modification in the boundary of the existing Conservation Easement.

The PUD will establish allowed uses, height and lot requirements, parking and signage. There are waivers to setbacks, height, parking, and signage.

This PUD does not require a site plan or grading and drainage plan. The site is mostly ready for building construction. Any grading and drainage plan would be submitted with a building permit.



JUSTIFICATION FOR RECOMMENDATION

The proposed H-3 PUD is appropriate as it will allow flexibility for uses and development of the site. It will allow for the expansion of the existing business while eliminating I-1 zoning and more intensive uses adjacent residential.

APPLICATION CONTACT

DaNay Kalkowski, 402-435-6000 or danay@sk-law.com

STAFF CONTACT

Tom Cajka, (402) 441-5662 or tcajka@lincoln.ne.gov

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan supports eliminating industrial adjacent residential and developing infill sites. The Comprehensive Plan also encourages retention and expansion of existing businesses. This PUD accomplishes all of these goals of the Comprehensive Plan.

WAIVERS

1. LMC 27.72.040 - reduce front yard setback from 20 feet to 15 feet. (Recommend Approval)
2. LMC 27.72.040- increase maximum height from 55 feet to 75 feet. (Recommend Approval)
3. LMC 27.69 to allow the entire PUD to be treated as one premises for purposes of signage. (Recommend Approval)
4. LMC 27.69.030 to allow directional signs to be 25 square feet and

6 feet in height.

(Recommend Approval)

5. LMC 27.67.020-adjust parking from one stall per 300 square feet to two stalls per three persons on the maximum shift for all uses.

(Recommend Approval)

KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

Introduction Section: Growth Framework

Figure GF.b: 2050 - This site is shown as future industrial, commercial and residential on the 2050 Future Land Use Plan.

Fundamentals of Growth in Lancaster County

The City of Lincoln's present infrastructure investment should be maximized by planning for well-designed and appropriately-placed residential and commercial development in existing areas of the city with available capacity. This can be accomplished by redeveloping underutilized commercial centers into areas that include a mix of uses, and encouraging higher-density residential redevelopment in appropriate locations, including missing middle housing. New infrastructure investments to serve growth areas can be maximized by encouraging a higher density of both residential and commercial uses in these areas.

New commercial and industrial development should be located in Lincoln and other incorporated communities. Lincoln has ample land area and infrastructure availability for commercial and industrial development. The situation is similar in most incorporated communities in the county. Rural areas of the county do not have access to urban infrastructure, and commercial or industrial development can add significant traffic and maintenance responsibilities to county roads.

Natural and environmentally sensitive areas should be preserved within and between neighborhoods. Conservation areas and open lands should be used to define and connect different neighborhoods. The natural topography and features of the land should be preserved by new development to maintain the natural drainageways and minimize land disturbance.

Goals Section

G3: High-Quality Workforce. Lincoln and Lancaster County will strive to remove barriers to economic stability and mobility in the community by supporting a skilled and educated workforce that is able to adapt to economic, technological, and cultural changes. A high-quality workforce benefits the entire community because it attracts quality employers and entrepreneurs, which helps to grow our population and tax base and facilitates quality of life investments across a variety of sectors, and it ensures that Lincoln and Lancaster County are well-positioned to compete in tomorrow's economy.

G4: Economic Opportunity. Lincoln and Lancaster County will have high-quality jobs in an economic environment that supports business creation, innovation, and expansion. Quality-of-life attributes, such as diverse and accessible housing, good shopping, restaurants and entertainment, quality schools and healthcare, a sense of safety, and amenities such as parks and trails are important to ensuring that skilled individuals want to remain or relocate to our community.

Elements Section

E3: Business, Economy, and Workforce

Commercial and Industrial Development

Commercial and Industrial Centers in Lancaster County should be located:

- Within the City of Lincoln or incorporated villages.

- Outside of saline wetlands, signature habitat areas, native prairie and floodplain areas (except for areas of existing commercial and industrial zoning).
- Where urban services and infrastructure are available or planned for in the near term. In sites supported by adequate road capacity – commercial development should be linked to the implementation of the transportation plan.
- In areas compatible with existing or planned residential uses.
- In existing underdeveloped or redeveloping commercial and industrial areas in order to remove blighted conditions and to more efficiently utilize existing infrastructure.
- In areas accessible by various modes of transportation (i.e. automobile, bicycle, transit, and pedestrian).
- So that they enhance entryways or public way corridors, when developing adjacent to these corridors.
- In a manner that supports the creation and maintenance of green space as indicated in the environmental resources section of this Plan.

Commercial Infill

Figure E3.f: Commercial Infill Design Strategies

1. Encourage additional vehicular access to an arterial street.
2. Encourage a Floor Area Ratio that exceeds to existing/previous commercial uses on the site.
3. Face existing residential uses with new residential uses rather than the backs of commercial buildings unless existing residential faces the opposite direction such as along an alley.
4. Discourage commercial driveways that interrupt the blockface of a residential street, especially when residences face the street.
5. Encourage shared driveways and interconnected parking lots where possible.
6. Orient buildings to the street, especially corners.
7. Maintain or adaptively reuse existing structures (especially historical structures) where possible.
8. Encourage a vertical mix of residential and commercial use types.
9. Encourage shared parking between land uses with different peak demand periods.
10. Maintain or enhance on-street parking resources, especially in established/historic commercial districts

Policies Section

P12: Economic Growth - Promote and foster appropriate, balanced, and focused future economic growth that maintains the quality of life of the community.

Action Steps

1. Offer incentives for “primary” employers - that is, for companies where the majority of their business and sales come from outside Lancaster County.
2. Locate all new commercial and industrial development within Lincoln or within the smaller incorporated communities in Lancaster County. Certain commercial uses that are compatible with agriculture and the rural environment, such as commercial wind and solar energy facilities, are allowed in rural areas of the county.
3. Continue to coordinate the City’s economic development efforts with research and development functions of the University of Nebraska-Lincoln, including continued development of Innovation Campus. The success of the University’s research and development is important to the future of the city.
4. Continue to fund the Lincoln Partnership for Economic Development (LPED) and promote business retention, recruitment, and workforce development strategies and outcomes for the City of Lincoln through this public/private partnership.
5. Encourage public-private partnerships, strategic alliances, and collaborative efforts as a means to accomplish future economic objectives.
7. Focus primarily on retention and expansion of existing businesses; attracting new businesses should also be encouraged.

P14: Commercial Infill - Develop infill commercial areas to be compatible with the character of the area.

Action Steps

1. Implement commercial infill redevelopment principles as discussed in the Business & Economy element.
2. Maintain and encourage businesses that conveniently serve nearby residents, while ensuring compatibility with adjacent neighborhoods.
3. Avoid encroachment into existing neighborhoods during expansion of existing commercial and industrial uses, and take steps to ensure expansions are in scale with the adjacent neighborhood, use appropriate screening, fulfill a demonstrated need, and do not hinder health and safety.
4. Prioritize retaining areas for continued residential development in older sections of the community by maintaining existing housing and supporting infill housing. Prior to approving the removal of housing to provide additional parking for existing centers, alternatives such as reduced parking requirements, shared parking, additional on-street parking, and/or the removal of other commercial structures should be explored. Maintain and encourage ethnically diverse commercial establishments that are beneficial to existing neighborhoods.

P15: Infrastructure and Economic Development - Seek to efficiently utilize investments in existing and future public infrastructure to advance economic development opportunities.

Action Steps

1. Continue to provide adequate sites with associated infrastructure to serve the community's economic development needs.
2. Continue the County's support for road improvements that accommodate commercial and other development within the smaller incorporated areas.
4. Continue incentive-based (residential, commercial, or industrial) programs promoting the installation of renewable energy systems. Incentives may include offering rebates on purchasing equipment, attractive net metering pricing, tax incentives, height allowances, setback, and area-based incentives, expedited permitting, and others.

P17: Predictability - Strive for predictability for neighborhoods and developers.

Action Steps

1. Continue to make updates as needed to zoning and subdivision ordinances, along with design standards, to support economic development, complete neighborhoods, and other PlanForward initiatives.
2. Support timely and efficient implementation of the growth tiers framework through the Capitol Improvement Program and other coordinated infrastructure enhancements.

P18: Conservation Design - Promote conservation design principles with both new growth and redevelopment projects.

Action Steps

1. Encourage conservation design principles as part of the development process. Developments that incorporate conservation design principles should be eligible for greater densities, height, lot, and area adjustments. Examples of conservation design best practices include:
 - a. Development setbacks beyond the minimum floodplain corridor in order to help preserve riparian habitat.
 - b. Land area within new developments that is designated specifically for trees and/or prairie.
 - c. Sustainable landscape design that includes native and drought-tolerant plantings, limited use of turf grass, rain gardens, bioswales, infiltration beds, and constructed wetlands.
 - d. Cluster subdivision design that protects flood-prone areas by grouping new development in less-sensitive areas within a subdivision while maintaining a high overall building density.
 - e. Dedication of a portion or all of a building's roof space as a green roof.
 - f. Minimizing disturbance of the natural topography on a development site.
2. Incorporate conservation design principles into public projects and development projects utilizing public

funds (such as TIF) as appropriate.

3. Incorporate conservation design into new subdivisions with the initial steps of completing an inventory of existing and future land uses, natural resource evaluation, and a build out map. Utilize goals of the Lincoln Climate Plan as a guide for developing conservation design recommendations.
4. Promote development of conservation design standards of new subdivisions that maximize open space conservation and interconnected network of such open spaces while being sensitive to overall building density.
5. Develop project approaches which view stormwater as an asset, by working with the natural topography and using wetlands, floodplains, and natural drainage corridors as natural ways to manage flood flows and stormwater runoff.

P61: Industrial Zoning and Pipelines - Discourage residential land uses and buildings with vulnerable populations from locating near high-pressure pipelines and industrial zoning districts. Provide adequate separation between vulnerable populations and hazardous materials to protect and promote the public's health.

Action Steps

1. Land uses with vulnerable populations should not be located within pipeline planning areas. For large high-pressure pipelines, pipeline planning areas are established based upon pipeline metrics or the United States Department of Transportation's Emergency Response Guidebook. Most high-pressure pipelines have a planning area of approximately 150-250 feet from either side of the pipeline.
2. Land uses with vulnerable populations should not be located within 300 feet of an industrially-zoned district or heavy industrial use such as a rail line. Even if a given industrial site does not include hazardous materials at present, a hazardous use could be added in the future.
3. Do not support expansion of existing residential uses currently located within a pipeline planning area or within 300 feet of an industrial zoning district unless the pipeline is decommissioned, or downzoning is planned for the industrial area.
5. Continue strategic re-zonings of legacy industrial districts to less intensive commercial zoning districts when near residential uses.

ANALYSIS

1. This request is for a change of zone from R-2 Residential and I-1 Industrial to H-3 Highway Commercial PUD on approximately 6.84 acres. The site is located northeast of SW. 6th Street and West "B" Street. The site currently has an existing warehouse building.
2. The proposed PUD will eliminate industrial zoning being adjacent to residential. The PUD shall conform to the H-3 District except as modified by the PUD. The PUD modifies uses allowed under H-3 by permitting manufacturing and changes assembly facilities and warehouse from conditional use to permitted use.
3. The purpose of the PUD is to allow the expansion of the existing business for IMS Property. The plan is to add an additional building south of the existing building. The business will include warehousing and manufacturing. A small portion of the new building would encroach into the existing R-2 district. After discussion with Planning staff and the owner a PUD over the property rather than a change of zone from R-2 to I-1 was determined to be the preferred option.
4. The PUD proposes two areas. Area A covers most of the site. Area B covers the west 100 feet of the site that currently includes some residential zoning. Area B is adjacent SW 6th Street and includes a 15' setback that will be maintained as green space. Area B prohibits extremely hazardous substances from being stored, manufactured, or processed on site.

Both areas allow the same uses, setbacks, height, and parking. Area A shall follow the I-1 district for signs and Area B shall follow the H-3 district for signs.

5. Associated with the PUD is to amend the boundary of a Conservation Easement. The Easement is for the preservation of wetlands, drainageways, and flood plain storage capacity. The Easement was originally approved in July, 1999. The amendment would release 650 sq. ft. that provides 63 cubic yards of flood storage and add 31,743 sq. ft. that provides 263 cubic yards of flood storage. The amendment is necessary to allow access from West "B" St. to the new expansion. The Conservation Easement Agreement does not allow construction within the easement area. Lincoln Transportation & Utilities - Watershed Management recommends approval of the amendment.

6. Transportation improvements related to the PUD include the paving of West “B” Street from SW 6th street to the furthest east driveway entrance into the site. No additional drives are allowed on to SW 6th Street.
7. Waivers are requested:
 - a. To allow the setbacks to follow the I-1 District. The I-1 district has a 15’ front yard setback and no setback for the rear or side yard. The H-3 district has a 20’ front yard, 15’ side yard and 5’ rear yard. The reduced setbacks will allow for the development of this infill site while having minimal impact on the residential on the west side of SW 6th Street.
 - b. To allow the height limit to increase from 55’ to 75’. The existing building was built under the I-1 height limit of 75 feet. This waiver will allow any additional buildings to match the height limit allowed for the existing building.
 - c. To allow required parking at a ratio of 2 stalls per 3 persons on the largest shift. The H-3 district requires parking at one stall per 300 sq. ft. for uses other than warehouse. For a warehouse with a floor area of 50,000 sq. ft. or less, one space per 1,000 sq. ft. is required. For warehouse over 50,000 sq. ft, one space per 1,000 sq. ft. is required.

The existing building is currently in the I-1 district and is required to have 2 stalls per 3 persons on the largest shift. This waiver would allow that parking ratio to continue for the existing building and any new building.
 - d. Allow directional signs outside the front yard setback to be 25 sq. ft. and 6’ in height. The site has two entrances and an office, warehouse, receiving and manufacturing areas. The additional sign area will help in locating the various uses. The site is surrounded on three sides by commercial and industrial uses, so there won’t be any significant impact on residential uses. The larger directional on the southern end will also hopefully keep some truck traffic from using SW 6th Street, which has residential uses on the west side, and instead turn on West B Street and enter Bison at the correct point.
 - e. Allow the entire PUD to be treated as one premises. This request is reasonable as it will allow for the site to be considered as one property for signage and building permits even though there are currently multiple lots of record. All of the lots are owned by the same entity. This will also remove the requirement of a final plat to consolidate all lots into one lot to acquire a building permit.

EXISTING LAND USE & ZONING: Warehouse and vacant land

I-1 Industrial and R-2 Residential.

SURROUNDING LAND USE & ZONING

North: Manufacturing	I-1 Industrial
South: Mini Storage	I-1 Industrial
East: Vacant, Salt Creek	I-1 Industrial
West: Residential	R-2 Residential

APPLICATION HISTORY

December 10, 2014: Special Permit #14048 for a parking lot in a residential district was approved by the Lincoln-Lancaster County Planning Commission.

APPROXIMATE LAND AREA: 6.84 acres, more or less

LEGAL DESCRIPTION: Lot 2, IMS 2nd Addition; Lots 7-13, Block 5 and remaining portion of Lot A, Elmwood Addition; and vacated south half of the vacated east-west alley adjacent Lots 7-12, Block 5, Elmwood Addition; all located in the SE1/4 of Section 27-10-06, Lancaster County, NE.

Prepared by Tom Cajka, Planner
402-441- 5662 or tcajka@lincoln.ne.gov

Date: January 12. 2023

Applicant: IMS Properties, LLC
603 "L" St.
Lincoln, NE 68508
402-770-0523
ncusick@bisoninc.com

Contact: DaNay Kalkowski
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508
402-435-6000
danay@sk-law.com

Owner: Same as applicant

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/CZ/22000/CZ22039 Bison PUD.tjc.docx>

CONDITIONS OF APPROVAL - CHANGE OF ZONE #22039

This approval permits finds the revision to the conservation easement in conformance with the Comprehensive Plan and approves a change of zone from R-2 and I-1 to H-3 Planned Unit Development with the attached notes and associated waivers.

1. LMC 27.72.040 to reduce front yard setback from 20 feet to 15 feet.
2. LMC 27.72.040 to increase maximum height from 55 feet to 75 feet.
3. LMC 27.69 to allow the entire PUD to be treated as one premises for purposes of signage.
4. LMC 27.69.030 to allow directional signs outside of the 15' front yard setback to be 25 square feet and 6 feet in height.
5. LMC 27.67.020 to adjust parking from one stall per 300 square feet to two stalls per three persons on the maximum shift for all uses.

Site Specific Conditions:

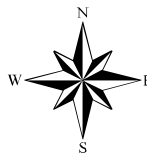
1. Before receiving building permits the developer shall cause to be prepared and submitted to the Planning Department revised PUD General Notes with all required revisions and documents as listed below upon approval of the planned unit development by the City Council.
 - 1.1 Add to Note #4c that directional signs over two square feet are not allowed within the 15' front yard setback.
 - 1.2 Add to Note 5b that a final plat is not required as long as all lots within the PUD are owned by the same entity.
2. Before receiving building permit the revised Conservation Easement must be approved by City Council.
3. Before receiving building permit an administrative amendment to Special Permit #14048 must be approved.
4. Before receiving building permit provide a surety or construct West "B" Street from SW 6th Street to the east side of the eastern most driveway to City standards.

Standard Conditions:

5. The following conditions are applicable to all requests:
 - 5.1 Before occupying the buildings, all development and construction shall substantially comply with the approved plans.
 - 5.2 The terms, conditions, and requirements of the ordinance shall run with the land and be binding upon the developer, its successors and assigns.
 - 5.3 The applicant shall sign and return the letter of acceptance to the City Clerk. This step should be completed within 60 days following the approval of the special permit. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefore to be paid in advance by the applicant. Building permits will not be issued unless the letter of acceptance has been filed.



Change of Zone #: CZ22039
Bison H-3 PUD
SW 6th St & W B St

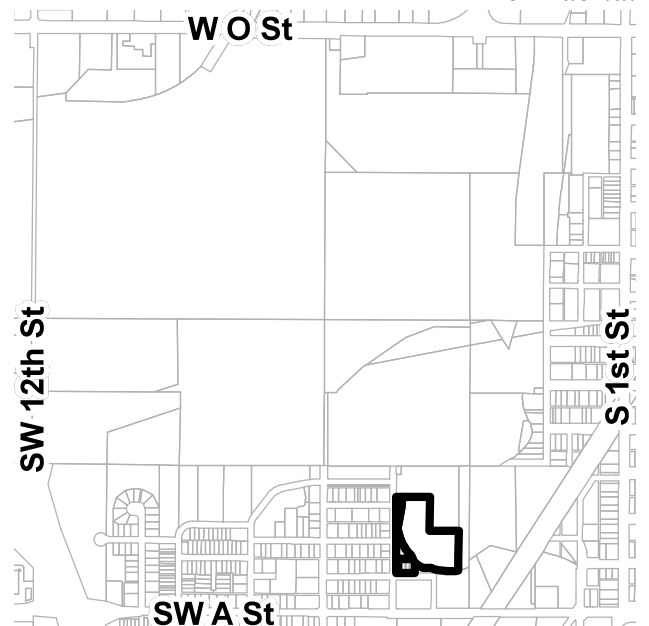
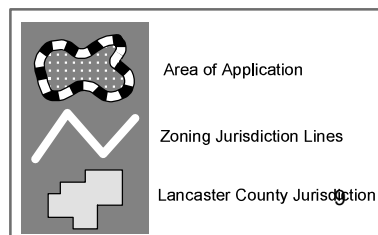


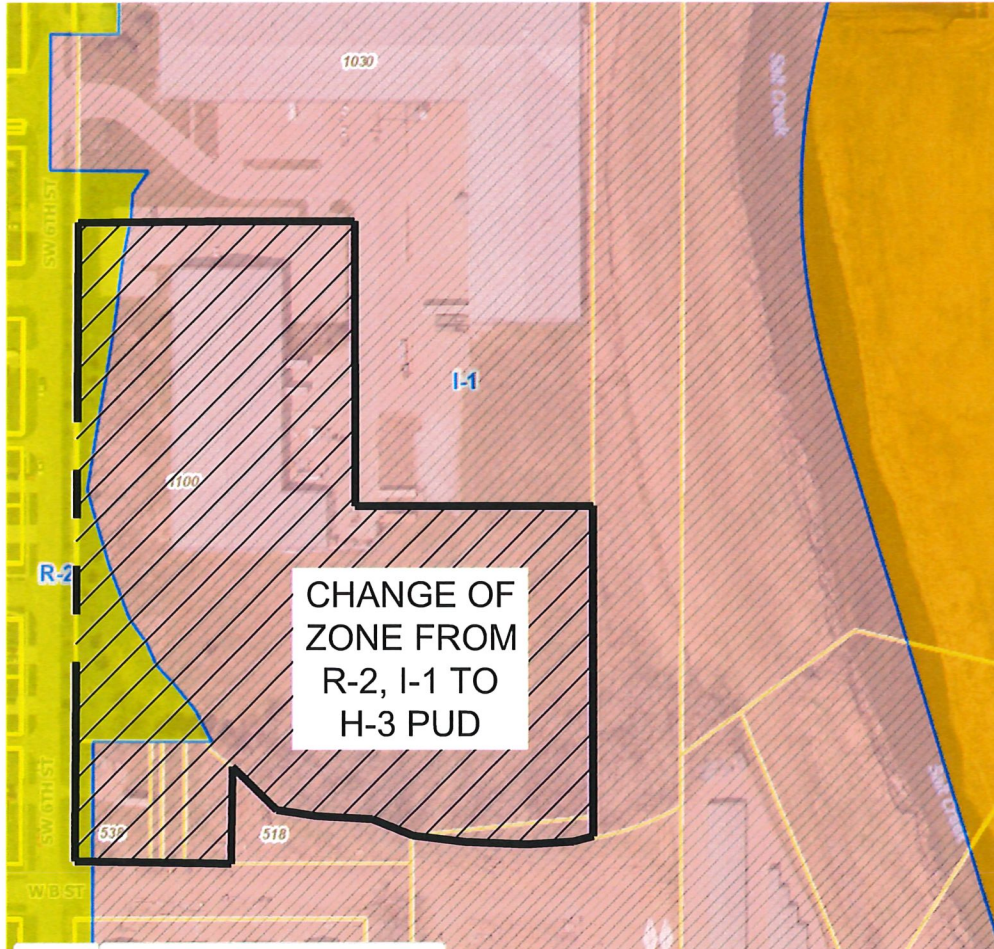
2022 aerial

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.27 T10N R06E





LEGEND
 AREA OF ZONE CHANGE



CHANGE OF ZONE FROM
R-2, I-1 TO H-3 PUD
EXHIBIT
IMS PROPERTY
LINCOLN, NE

REGA
ENGINEERING
GROUP, INC.

601 OLD CHENEY RD.
SUITE 'A'
LINCOLN, NE 68512
(402) 484-7342
 ● ENGINEERING
 ● PLANNING
 ● LANDSCAPE
 ● ARCHITECTURE
 ● LAND SURVEYING

DATE:
12/19/2022

PROJECT
221047
SHEET NO.

1 of 1

A parcel of Land being all of block 5, Lots 7-13 and the south half of the adjoining alley to the North as shown on Elmwood Addition and all of Lot 2, IMS Second addition, located in the Southwest Quarter of the Southeast Quarter of Section 27, Township 10 North, Range 6 East, of the 6th P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

BEGINNING at the Northwest Corner of said Lot 2;

Thence on the Northerly, Easterly, and Southerly boundaries of said Lot 2 the following fourteen (14) courses:

S89°42'08"E a distance of 305.10 feet;

S00°18'49"W a distance of 313.57 feet;

S89°37'10"E a distance of 263.74 feet;

S00°13'59" W a distance of 330.56 feet;

S84°04'08"W a distance of 200.25 feet;

N66°32'08"W a distance of 27.45 feet;

N70°12'25"W a distance of 26.55 feet;

N89°28'29"W a distance of 25.09 feet;

N84°56'55"W a distance of 24.65 feet;

N85°55'50" W for a distance of 22.61 feet;

N82°36'55" W a distance of 4.84 feet;

N79°20'56"W a distance of 23.50 feet;

N49°36'10"W a distance of 32.60 feet;

N45°05'32"W a distance of 35.14 feet to the Easterly boundary of said Lot 13, Elmwood Addition;

Thence on said Easterly boundary, S00°13'05"W for a distance of 105.11 feet to the Southerly Boundary of Block 5, as shown on said Elmwood Addition;

Thence on said Southerly boundary, N89°59' 24"W a distance of 169.77 feet to the Westerly boundary of said Lot 7;

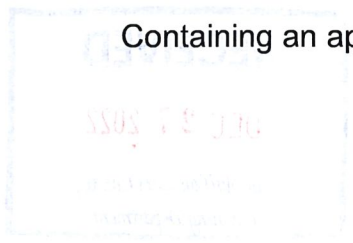
Thence on said Westerly boundary, N00°11'30"E a distance of 133.66 feet to the Southwest Corner of said Lot 2;

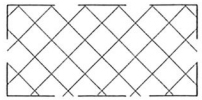
Thence on the Westerly boundary of said Lot 2, N00°18'52"E a distance of 564.75 feet to the POINT OF BEGINNING.

Containing a calculated area of 294,295 square feet or 6.76 acres.

Together with a parcel of land being the remaining portion of Elmwood Addition, Lot A, except the East 100'.

Containing an approximate area of 3,364 square feet or 0.08 acres.

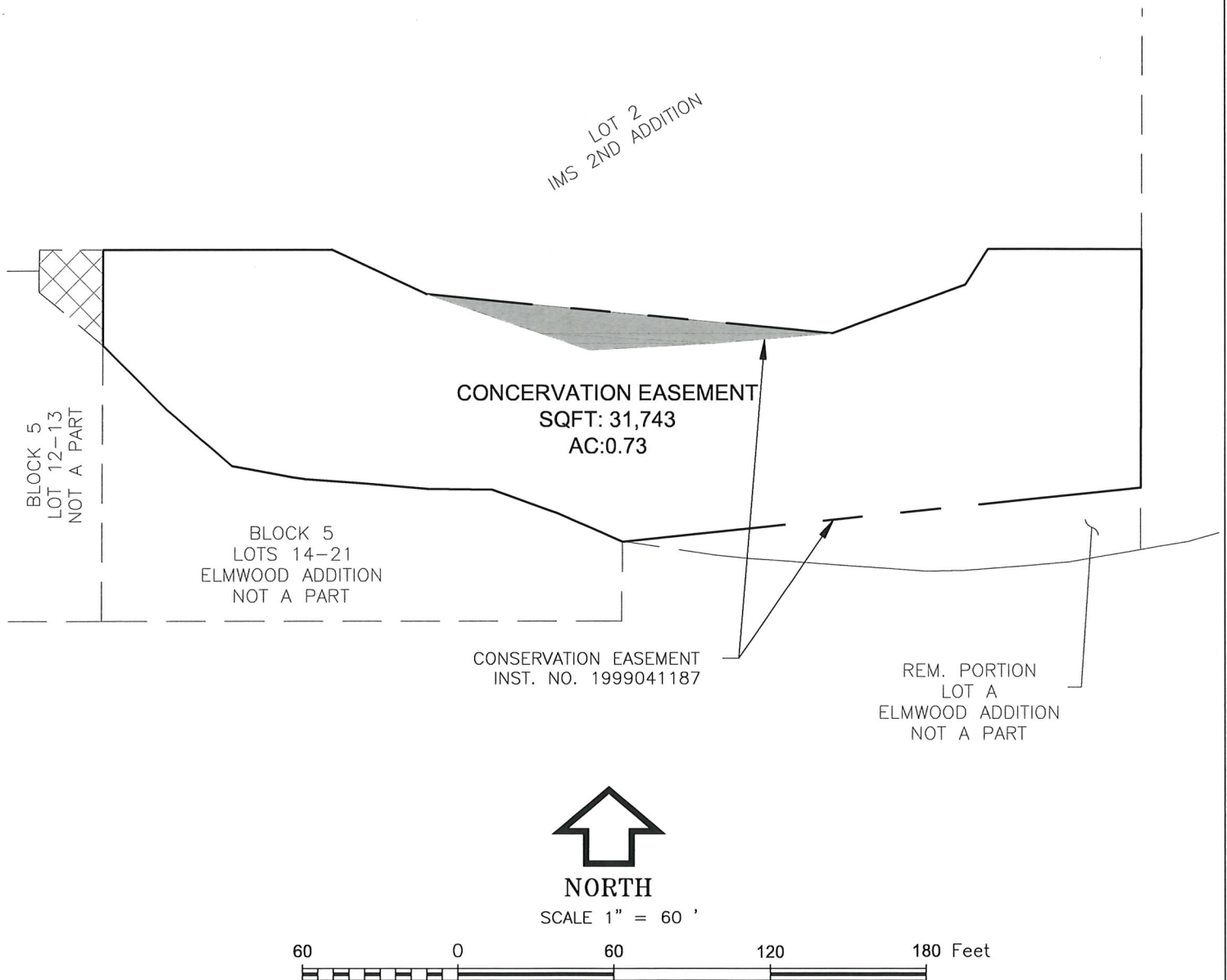




PORTION TO BE VACATED
(63 CY OF FLOOD STORAGE)



PORTION TO BE DEDICATED
(263 CY OF FLOOD STORAGE)



CONSERVATION EASEMENT
OVERALL EXHIBIT
LOT 2, IMS 2ND ADDITION
LINCOLN, NE

REGA
ENGINEERING
GROUP, INC.

601 OLD CHENEY RD.
SUITE 'A'
LINCOLN, NE 68512
(402) 484-7342
● ENGINEERING
● PLANNING
● LANDSCAPE
ARCHITECTURE
● LAND SURVEYING

DATE:
12/21/2022

PROJECT
221047

SHEET NO.
1 of 1

A parcel of Land being a portion of Lot 2, IMS 2nd Addition, located in the Southwest Quarter of the Southeast Quarter of Section 27, Township 10 North, Range 6 East, of the 6th P.M., City of Lincoln, Lancaster County, Nebraska and more particularly described as follows:

COMMENCING at the Southwest corner of said Lot 2;

Whence the Southerly boundary of said Lot 2 bears, S89°56'49"E a distance of 145.00 feet, all bearings hereon are relative thereto;

Thence S88°15'06"E a distance of 294.18 feet to the Northerly boundary of a conservation easement from Instrument No. 1999041187 in the official records of the register of deeds office in said county and state and to the POINT OF BEGINNING;

Thence departing said Northerly boundary, S84°31'52"E a distance of 157.08 feet to the Northerly boundary of said conservation easement;

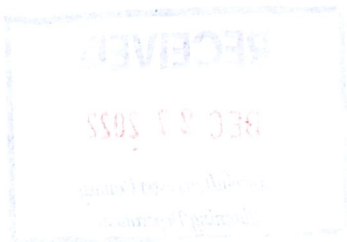
Thence along said Northerly boundary the following three (3) courses:

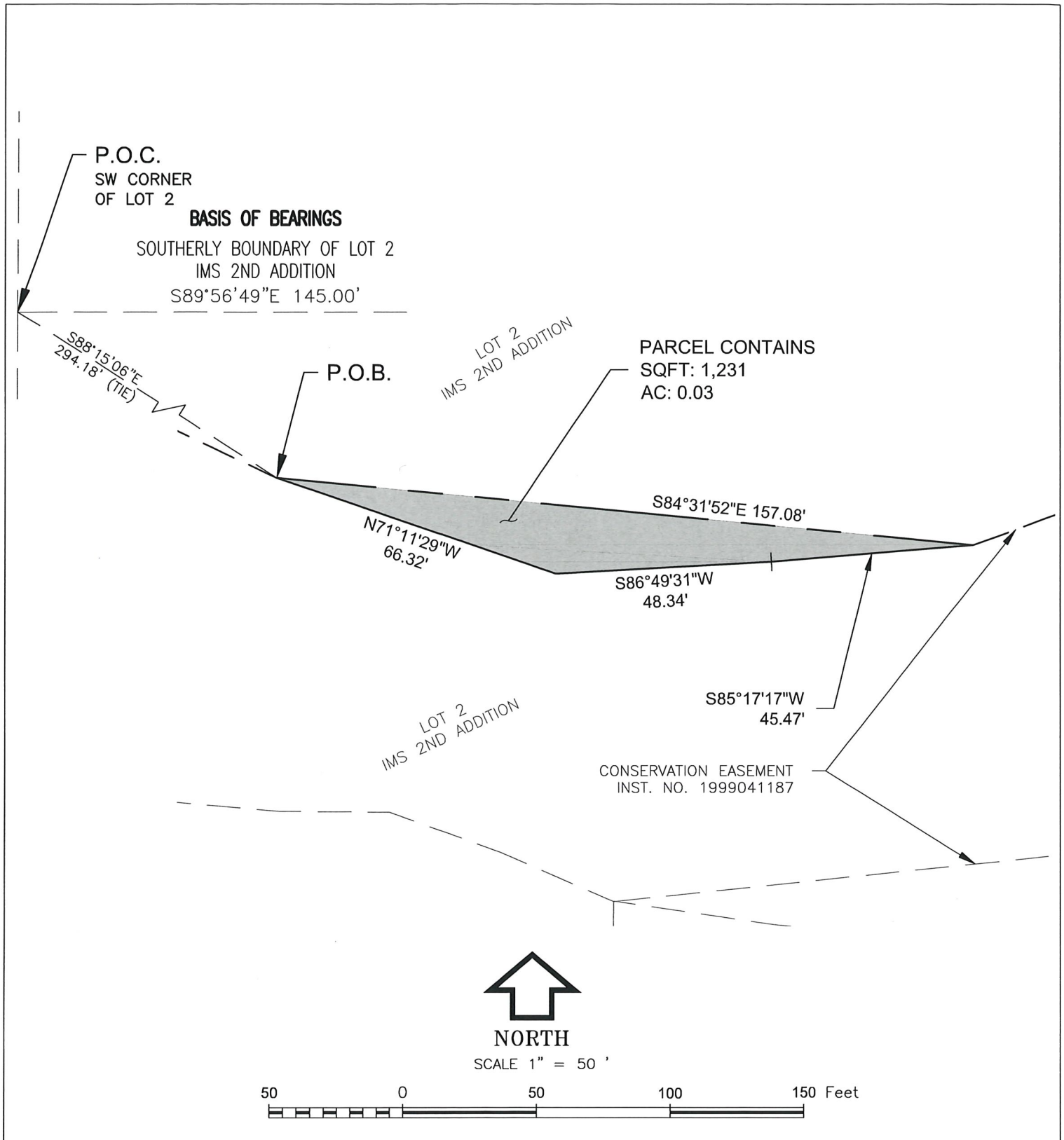
S85°17'17"W a distance of 45.47 feet;

S86°49'31"W a distance of 48.34 feet;

N71°11'29"W a distance of 66.32 feet to the POINT OF BEGINNING.

Containing a calculated area of 1,231 square feet or 0.03 acres.





CONSERVATION EASEMENT LOT 2, IMS 2ND ADDITION LINCOLN, NE	REGA ENGINEERING GROUP, INC. 601 OLD CHENEY RD. SUITE 'A' LINCOLN, NE 68512 (402) 484-7342 ● ENGINEERING ● PLANNING ● LANDSCAPE ARCHITECTURE ● LAND SURVEYING	DATE: 12/21/2022
		PROJECT 221047
		SHEET NO. 2 of 2

A parcel of Land being a portion of a conservation easement dedicated on IMS Addition from instrument no. 1999041187 in the Lancaster County, Nebraska Register of Deeds being a part of Lot 2, IMS 2nd Addition, located in the Southwest Quarter of the Southeast Quarter of Section 27, Township 10 North, Range 6 East, of the 6th P.M., City of Lincoln said county and state and more particularly described as follows:

COMMENCING at the Southwest corner said Lot 2;

Thence along the Southerly boundary of said Lot 2, S89°56'49"E a distance of 145.00 feet to the POINT OF BEGINNING, all bearings hereon are relative thereto;

Thence on the Westerly and Northerly boundaries of said conservation easement the following two (2) courses:

N01°44'49" E a distance of 8.00 feet;

N89°57'33"E a distance of 24.61 feet;

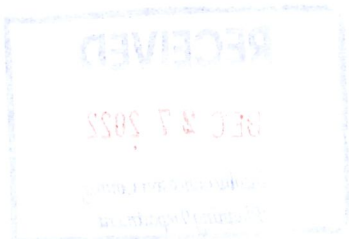
Thence departing said Northerly boundary, along the Northerly prolongation of the Easterly boundary of Lot 13, Elmwood Addition, S00°13'05"W a distance of 36.46 feet to the Southwesterly boundary of said conservation easement also being the Northeast corner of said lot 13;

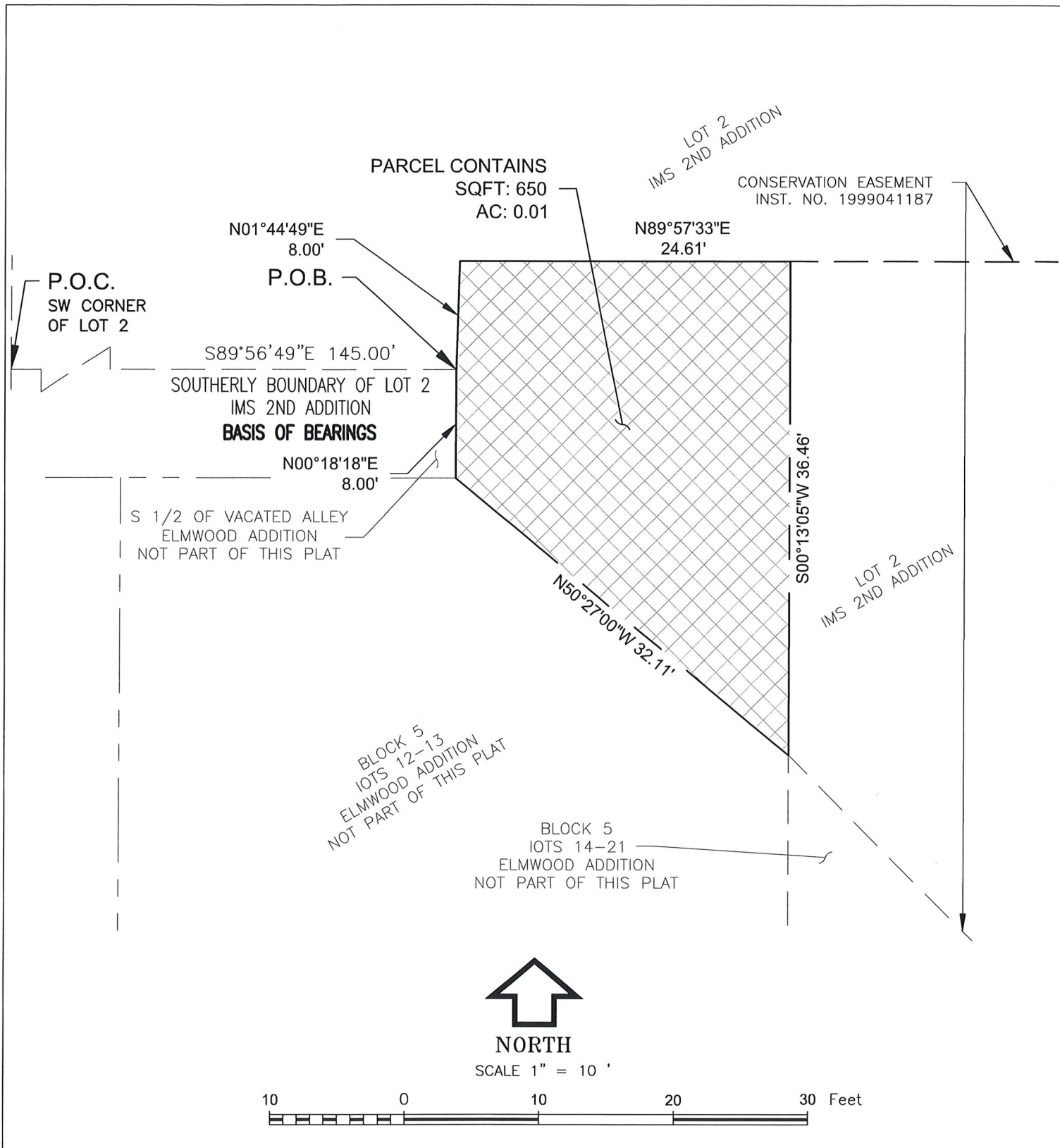
Thence on the Southwesterly and Westerly boundaries of said conservation easement the following two (2) courses:

N50°27'00"W a distance of 32.11 feet;

N00°18'18"E a distance of 8.00 feet to the POINT OF BEGINNING.

Containing a calculated area of 650 square feet or 0.01 acres.





CONSERVATION
EASEMENT VACATION
LOT 2, IMS 2ND ADDITION
LINCOLN, NE

REGA
ENGINEERING
GROUP, INC.

601 OLD CHENEY RD.
SUITE 'A'
LINCOLN, NE 68512
(402) 484-7342

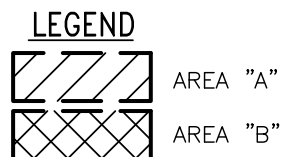
- ENGINEERING
- PLANNING
- LANDSCAPE
- ARCHITECTURE
- LAND SURVEYING

DATE:
12/21/2022

PROJECT
221047

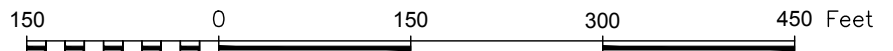
SHEET NO.

2 of 2



NORTH

SCALE 1" = 150'



**PUD EXHIBIT
LOT 2, IMS 2ND ADDITION
LINCOLN, NE**

REGA
ENGINEERING
GROUP, INC.

601 OLD CHENEY RD.
SUITE 'A'
LINCOLN, NE 68512
(402) 484-7342

- ENGINEERING
- PLANNING
- LANDSCAPE
- ARCHITECTURE
- LAND SURVEYING

DATE:
12/15/2022

PROJECT
221047

SHEET NO.
1 of 1

Bison Planned Unit Development

DRAFT December 27, 2022

General Notes

The purpose of the Planned Unit Development (PUD) is to permit the expansion and long-term growth of the existing business that will include warehousing and manufacturing, while protecting the health and safety of the adjacent residential uses. This PUD supersedes Special Permit No. 14048 on the Property. The PUD boundary is divided into two areas as shown on the attached PUD Exhibit. Area A covers the majority of the site. Area B covers the western 100 feet of the site that currently includes some residential zoning. Area A will primarily be rezoned from I-1 Industrial to H-3 Highway Commercial PUD. Area B will be rezoned from R-2 Residential and I-1 Industrial to H-3 Highway Commercial PUD.

Area A and B are subject to the following regulations and shall conform with the underlying H-3 zoning except where modified by the PUD as follows:

1. Land Uses:

Area A and B shall follow allowed H-3 zoning uses with the addition of allowed uses:

- (a) Manufacturing facilities are a permitted use. This includes all accessory uses to the manufacturing facility, including but not limited to, office, warehouse, indoor and outdoor storage, chemical and product storage, powder coating and assembly portions of the various buildings.
- (b) Assembly Facilities are a permitted use, not a conditional use.
- (c) Warehouses are a permitted use, not a conditional use.

The chemicals used within Area B shall be subject to the following:

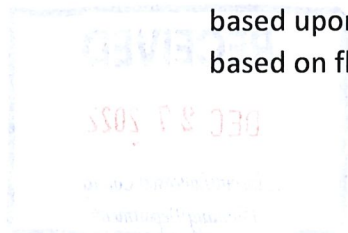
- (a) Extremely hazardous substances, in accordance with 40 Code of Federal Regulations Part 355, and Risk Management Plan Program regulated substances, in accordance with 40 CFR Part 68 shall not be stored, manufactured, or processed in Area B at any given time.

2. Height and Lot Requirements

- (a) Areas A & B shall follow the I-1 zoning setbacks. The 15 foot front yard setback on SW 6th Street and West B Street shall be maintained as green space.
- (b) Area A and B shall have a height limit of 75 feet.

3. Parking:

- (a) Parking shall follow the I-1 zoning requirements, except that parking for all uses shall be calculated based upon 2 stalls per 3 persons on the maximum shift and not based upon building floor area. Parking is not required to be reserved for parking based on floor area.



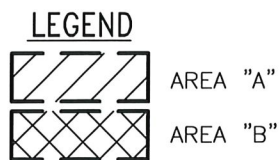
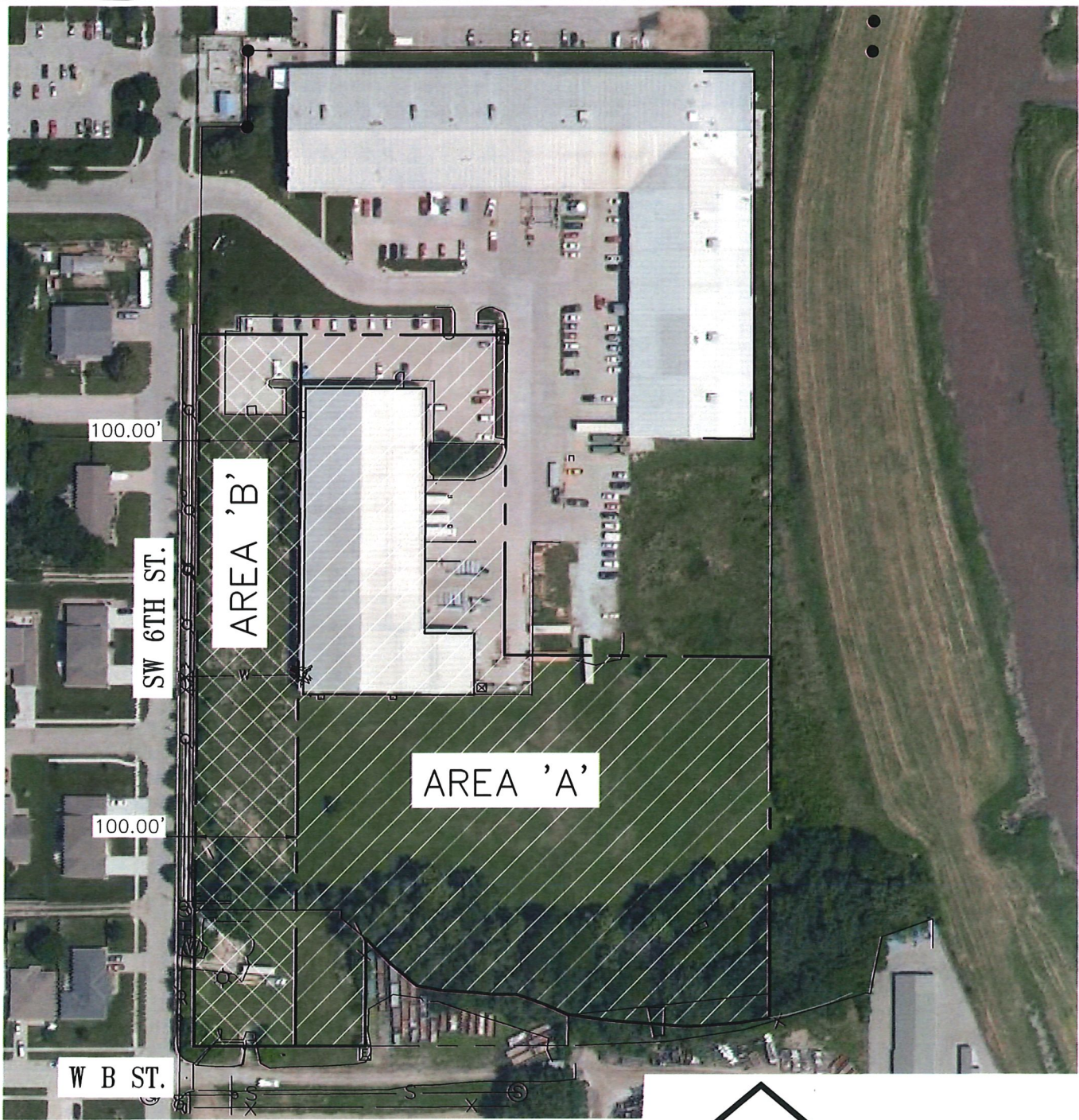
4. Signs

- (a) Signage within Area A shall follow the I-1 zoning sign requirements.
- (b) Signage within Area B shall follow the H-3 zoning sign requirements.
- (c) Directional signs in Area A and B are allowed up to six feet in height and 25 square feet. Directional signs may include the name and logo of the business. (Additional directional signage is permitted to facilitate traffic movement and deliveries to the appropriate location rather than in the residential neighborhood.)
- (d) For signage purposes, the property within the PUD shall be considered a "Center" along with Lot 1, IMS 2nd Addition. The existing sign on Lot 1, IMS 2nd Addition can be converted to a center sign, after receiving sign permit approval and modifications to the sign as needed.

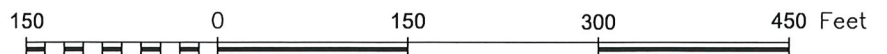
5. Development Requirements

- (a) Both Area A & B are located within the floodplain.
- (b) A final plat to consolidate lots is not required for any building permit in Area A and B as they are being developed as a whole.
- (c) All of the property included within the PUD shall be considered one premise.
- (d) West B Street shall be paved from SW 6th Street to the further east driveway entrance into the facility.





NORTH
SCALE 1" = 150'



**PUD EXHIBIT
IMS PROPERTY
LINCOLN, NE**

REGA
ENGINEERING
GROUP, INC.

601 OLD CHENEY RD.
SUITE 'A'
LINCOLN, NE 68512
(402) 484-7342

- ENGINEERING
- PLANNING
- LANDSCAPE
- ARCHITECTURE
- LAND SURVEYING

DATE:
12/15/2022

PROJECT
221047

SHEET NO.
1 of 1



SEACREST & KALKOWSKI, PC, LLO

KENT@SK-LAW.COM | DANAY@SK-LAW.COM

December 27, 2022

HAND DELIVERY

David Cary, Director
Planning Department
555 South 10th Street
Lincoln, NE 68508

RE: Bison Planned Unit Development and Amendment to Conservation Easement

Dear David:

Our office represents IMS Properties, LLC ("IMS"), owner of Lot 2, IMS 2nd Addition, Lots 7-13, Block 5, Elmwood Addition and the South Half of the vacated east/west alley adjacent, and the remaining portion of Lot A, Elmwood Addition except the east 100' that was not platted into IMS Addition, consisting of approximately 6.84 acres (the "Property"). The Property is located east of SW 6th Street between West E Street and West B Street. A portion of the Property along SW 6th Street is zoned R-2 with the remaining Property zoned I-1.

IMS desires to expand its business on the Property with the construction of an additional building to the south of the existing building. A small portion of the proposed building expansion would extend into the R-2 zone. Rather than pursue a change of zone from R-2 to I-1 to accommodate the building expansion, City staff has proposed and IMS has agreed to request a change of zone for the entire Property that would change the zoning from R-2 and I-1 to H-3 PUD. The H-3 PUD General Notes and accompanying site plan will permit the expansion and long term growth of the existing business, while protecting the health and safety of adjacent residential uses.

IMS is also requesting an amendment to the Conservation Easement Agreement it entered into with the City in 1999 to preserve wetlands, drainage ways and flood storage capacity. The Conservation Easement Agreement is filed as Instrument No. 1999041187. The requested amendment would release 0.01 acres that provides 63 CY of flood storage from the Easement Area and add 0.03 acres that would provide 263 CY of flood storage to the Easement Area. The amendment is necessary to allow access from West B Street to the new expansion.

Enclosed please find the following:

- a. City of Lincoln Zoning Application for Change of Zone;
- b. Change of Zone Exhibit and Legal Description;
- c. PUD General Notes and Site Plan;
- d. Application fee of \$2,266.68; and
- e. Exhibits showing the proposed Easement Area to be removed and added to the Conservation Easement Agreement.

We look forward to working with you on these requests and appreciate the input we have received from the City team to date. If you have any questions regarding the enclosed or need any additional information, please feel free to contact me or Nate Burnett at REGA Engineering Group, Inc.

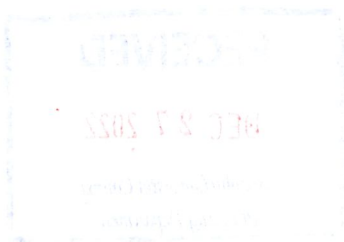
Very truly yours,



DANAY KALKOWSKI

For the Firm

Enclosures



Return filed document to:
Seacrest & Kalkowski Law Firm
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

**FIRST AMENDMENT TO CONSERVATION EASEMENT
(Preservation of Wetlands)**

WHEREAS, on July 16, 1999, IMS Properties, LLC, a Nebraska limited liability company, successor in interest to IMS Properties, a Nebraska general partnership (“Owner”), granted the CITY OF LINCOLN, NEBRASKA, a municipal corporation (“City”), a Conservation Easement for the preservation of wetlands pursuant to the terms of the Conservation Easement Agreement (Preservation of Wetlands) which was approved by the City Council by Resolution A-79596 and is filed of record with the Lancaster County Register of Deeds as Instrument No. 1999041186 (the “Easement Agreement”); and

WHEREAS, the Owner now desires to adjust the boundaries of the Easement Area, defined in the Easement Agreement, to allow development in the area and City has no objection the requested adjustment; and

WHEREAS, the Lincoln Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. §76-2, 112, reviewed this First Amendment to Conservation Easement and found the same to be in conformance with the City of Lincoln Comprehensive Plan; and

WHEREAS, the City of Lincoln City Council has approved and accepted this First Amendment to Conservation Easement and has authorized the Mayor to execute the same on behalf of the City.

NOW THEREFORE, in consideration of the above and the covenants and conditions contained herein, the undersigned parties hereby agree to amend the Easement Area, as defined in the Easement Agreement, as follows:

1. City hereby removes the real property shown and described in the attached Exhibit A from the Easement Area and releases it from the Easement Agreement.
2. Owner hereby adds the real property shown and described in the attached Exhibit B to the Easement Area making it subject to the terms and conditions of the Easement Agreement.
3. The Parties agree that the new resulting boundaries of the Easement Area are reflected on the attached Exhibit C.
4. All other terms of the Easement Agreement, except as expressly modified by the terms of this First Amendment to Conservation Easement, are hereby reconfirmed by Owner and City.

IN WITNESS WHEREOF, the Parties execute this First Amendment to Conservation Easement as of

the latest signature date below.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2023, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

Notary Public

My commission expires: _____

“OWNER”

IMS PROPERTIES, LLC, a Nebraska limited liability

By: _____
Nick Cusick, Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2023, by Nick Cusick, Managing Member of **IMS Properties, LLC**, a Nebraska limited liability company, on behalf of the company.

Notary Public

EXHIBIT A

A parcel of Land being a portion of a conservation easement dedicated on IMS Addition from instrument no. 1999041187 in the Lancaster County, Nebraska Register of Deeds being a part of Lot 2, IMS 2nd Addition, located in the Southwest Quarter of the Southeast Quarter of Section 27, Township 10 North, Range 6 East, of the 6th P.M., City of Lincoln said county and state and more particularly described as follows:

COMMENCING at the Southwest corner said Lot 2;

Thence along the Southerly boundary of said Lot 2, S89°56'49"E a distance of 145.00 feet to the POINT OF BEGINNING, all bearings hereon are relative thereto;

Thence on the Westerly and Northerly boundaries of said conservation easement the following two (2) courses:

N01°44'49" E a distance of 8.00 feet;

N89°57'33"E a distance of 24.61 feet;

Thence departing said Northerly boundary, along the Northerly prolongation of the Easterly boundary of Lot 13, Elmwood Addition, S00°13'05"W a distance of 36.46 feet to the Southwesterly boundary of said conservation easement also being the Northeast corner of said lot 13;

Thence on the Southwesterly and Westerly boundaries of said conservation easement the following two (2) courses:

N50°27'00"W a distance of 32.11 feet;

N00°18'18"E a distance of 8.00 feet to the POINT OF BEGINNING.

Containing a calculated area of 650 square feet or 0.01 acres.



EXHIBIT A

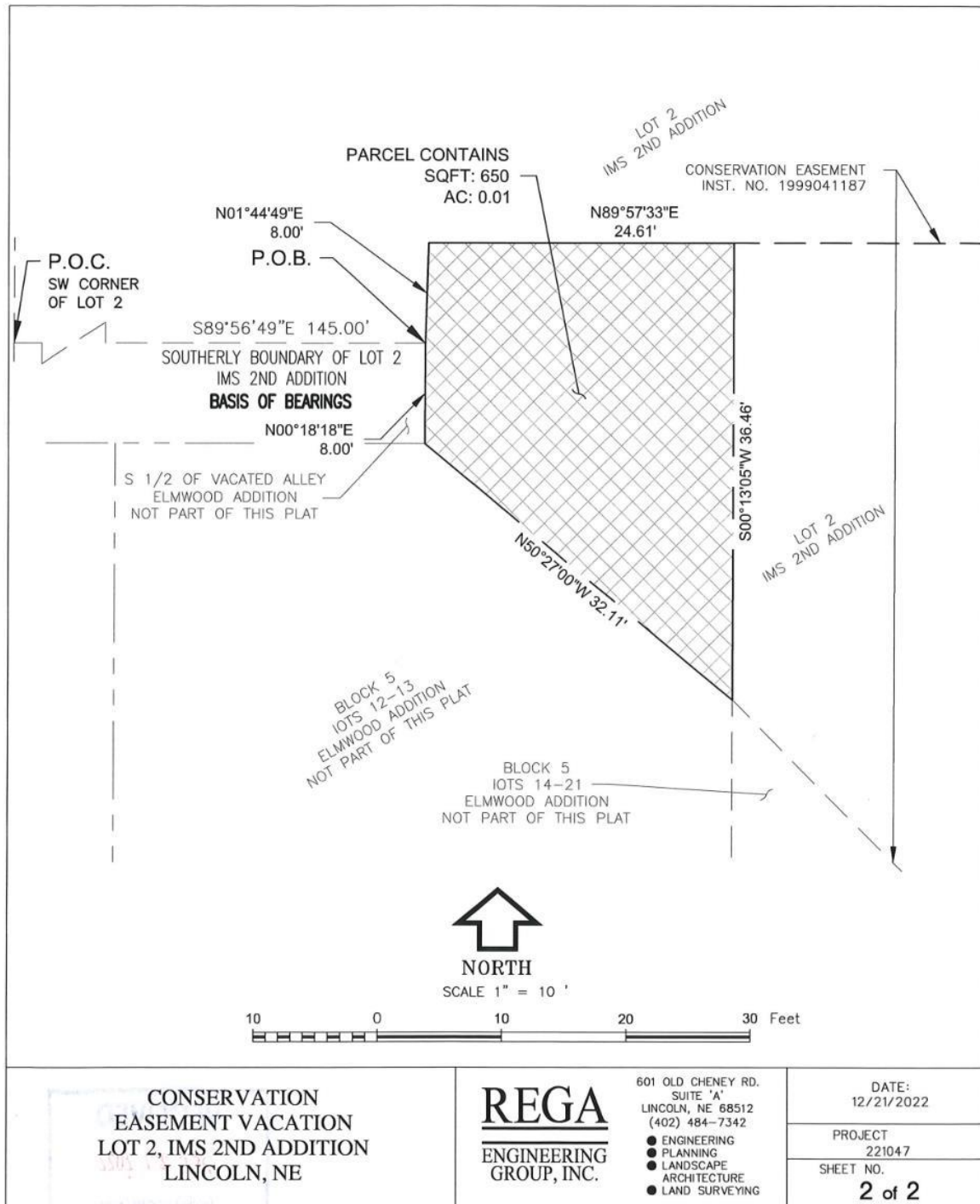


EXHIBIT B

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COMMENCING at the Southwest corner of said Lot 2;

Whence the Southerly boundary of said Lot 2 bears, S89°56'49"E a distance of 145.00 feet, all bearings hereon are relative thereto;

Thence S88°15'06"E a distance of 294.18 feet to the Northerly boundary of a conservation easement from Instrument No. 1999041187 in the official records of the register of deeds office in said county and state and to the POINT OF BEGINNING;

Thence departing said Northerly boundary, S84°31'52"E a distance of 157.08 feet to the Northerly boundary of said conservation easement;

Thence along said Northerly boundary the following three (3) courses:

S85°17'17"W a distance of 45.47 feet;

S86°49'31"W a distance of 48.34 feet;

N71°11'29"W a distance of 66.32 feet to the POINT OF BEGINNING.

Containing a calculated area of 1,231 square feet or 0.03 acres.



EXHIBIT B

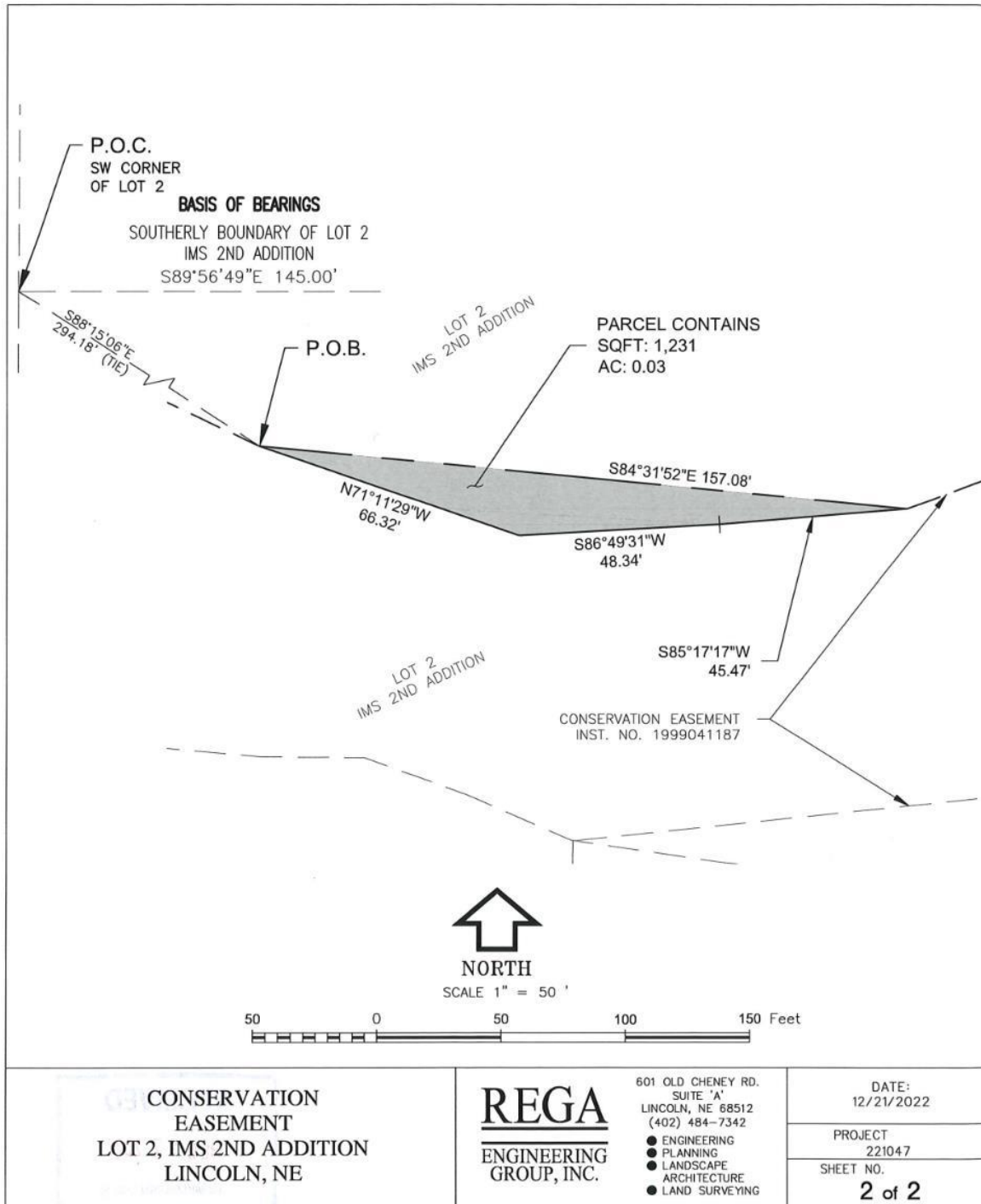
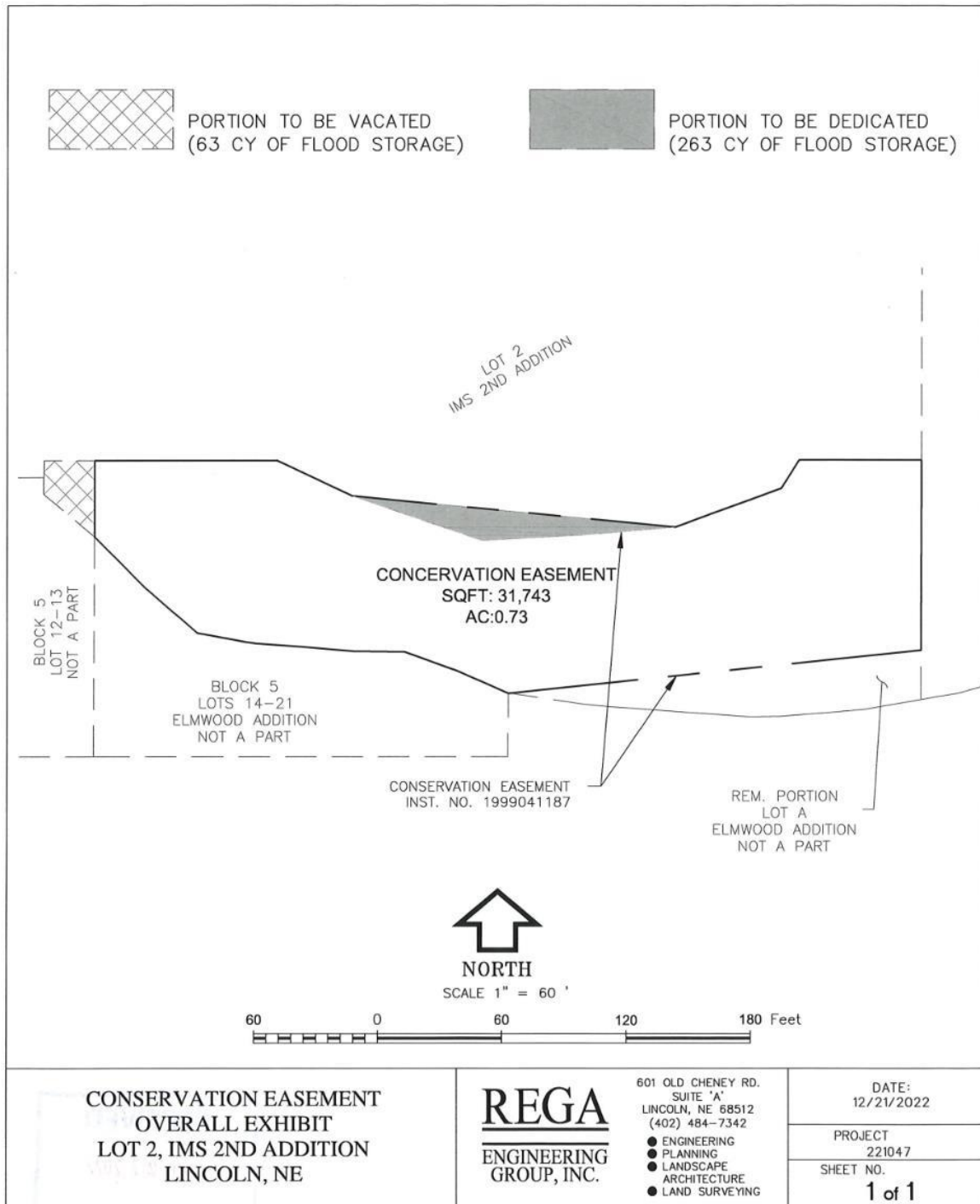


EXHIBIT C



LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER
Special Permit #22045

FINAL ACTION?
Yes

DEVELOPER/OWNER
NeighborWorks Lincoln
Katherine Walter / Timothy Rinne

PLANNING COMMISSION HEARING DATE
January 25, 2023

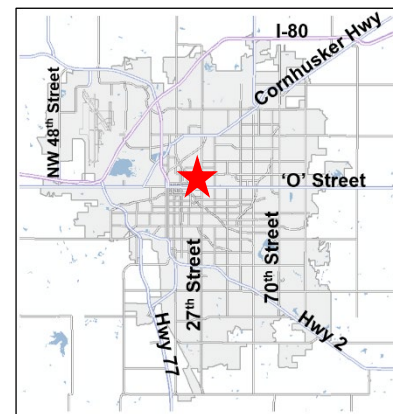
RELATED APPLICATIONS
SAV #22008 Vacation of U Street

PROPERTY ADDRESS/LOCATION
Generally located at the southwest corner of N. 26th Street and U Street.

RECOMMENDATION: CONDITIONAL APPROVAL

BRIEF SUMMARY OF REQUEST

This is a request for a Special Permit for the Hawley Corners Community Unit Plan (CUP) to allow up to 6 dwelling units under the current R-6, Residential zoning. This proposed CUP is being submitted by NeighborWorks Lincoln in an effort to develop and provide new affordable housing units within the city. The proposed CUP is approximately 1.04 acres and located on an existing city block between North 25th & 26th Streets, and between T & U Streets. A related application, Street and Alley Vacation #22008 was submitted to request the vacation of 15 feet along the south side of U Street between 25th and 26th Streets based on the large and unutilized right-of-way for a local street. If vacated, this area would be included within the CUP boundary and increase the buildable land area.



JUSTIFICATION FOR RECOMMENDATION

The proposed Community Unit Plan (CUP) following the R-6 zoning is consistent with the surrounding land use which is primarily residential in nature with varying densities from single family dwellings to multifamily apartment buildings. The proposed site plan is requesting five waivers related to reduced setbacks, lot area, parking, and required detention on site. The density of only 6 dwellings within the CUP area is far under the density allowed by the R-6 zoning.

APPLICATION CONTACT

David Tull, (402) 431-6237 or
dtull@schemmer.com

STAFF CONTACT

Ben Callahan, (402) 441-6360 or
bcallahan@lincoln.ne.gov

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan designates this location as Future Urban Residential. This designation is defined as areas with varying residential densities ranging from more than fifteen dwelling units per acre to less than one dwelling unit per acre. This proposal will also be compatible with goals for additional infill development and by providing affordable housing units within existing neighborhoods.

WAIVERS

1. Pre/Post Development Storm Water Detention. (Recommend Approval)
2. Allow a front yard setback of 10 feet along North 26th Street and 5 feet along U Street. (Recommend Approval)
3. Allow a side yard setback of 2.5 feet. (Recommend Approval)
4. Allow a rear yard setback of 10 feet. (Recommend Approval)
5. To allow a minimum lot area of 2,400 square feet. (Recommend Approval)
6. Allow 1 parking space per dwelling unit. (Recommend Approval)

7. To allow unenclosed porches to extend no closer than 2 feet front the front property line. (Recommend Approval)

KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

Introduction Section: Growth Framework

Figure GF.b: 2050 - This site is shown as future urban residential on the 2050 Future Land Use Plan.

Fundamentals of Growth in Lancaster County

The City of Lincoln's present infrastructure investment should be maximized by planning for well-designed and appropriately-placed residential and commercial development in existing areas of the city with available capacity. This can be accomplished by redeveloping underutilized commercial centers into areas that include a mix of uses, and encouraging higher-density residential redevelopment in appropriate locations, including missing middle housing. New infrastructure investments to serve growth areas can be maximized by encouraging a higher density of both residential and commercial uses in these areas.

The Community in 2050

The following assumptions provide the framework for growth in the 2050 plan.

Lancaster County is projected to add approximately 53,000 households by 2050, with 48,000 of those new households in Lincoln (roughly 1,600 new households per year).

25 percent of all new dwelling units in Lincoln will be infill, meaning they will be located within the existing city. This equates to roughly 12,000 infill units over the next 30 years.

The population age 65 and above is projected to increase from 45,600 (14.2 percent of total) in 2020 to 74,900 (17 percent of total) in 2050.

Benefits of Well-Planned Growth

Continued investment within the city ensures that our existing neighborhoods and commercial areas remain vibrant and desirable locations. More "rooftops" near existing commercial areas help to support continued commercial investment.

Goals Section

G1: Safe, Affordable, and Accessible Housing. Lincoln and Lancaster County will support the development of safe, affordable, and accessible quality housing that meets the diverse needs of the community. PlanForward understands the ongoing need for affordable housing and supports development of 5,000 affordable units by the year 2030.

G2: Complete Neighborhoods. Lincoln and Lancaster County will support complete neighborhoods within both developing and redeveloping areas of Lincoln. A complete neighborhood is one where residents are able to get the goods and services to meet daily needs within 15 minutes of their residence including a variety of housing options, grocery stores and other commercial services, quality public schools, public open spaces and recreational facilities, affordable active transportation options, and civic amenities. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and even small lot single-family.

Elements Section

E2: Infill and Redevelopment

Infill and Redevelopment Approach

PlanForward identifies the potential for 12,000 new dwelling units to be located within the existing built-out

portion of the City, roughly 25 percent of the projected 48,000 new dwelling units to be built citywide by 2050.

Greater Downtown

The Plan envisions an additional 5,000 dwelling units in Greater Downtown by 2050. This area is the main hub of employment, entertainment, and higher education. Over the years, there have been significant public and private investments in new building construction, renovations, and infrastructure. In order to capitalize on these collective investments, further development in the Greater Downtown should be realized.

Existing Neighborhoods

Infill of housing in existing neighborhoods should respect the existing pattern of development. Infill redevelopment should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.

Policies Section

P1: Housing Affordability - Make available a safe residential dwelling for all residents.

Action Steps

1. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated and Annual Action Plans and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
2. Distribute and preserve affordable housing throughout the community to be near job opportunities and public transit and to provide housing choices within existing and developing neighborhoods.
3. Encourage public/private partnerships with housing entities such as Lincoln Housing Authority, Affordable Housing Initiatives, Habitat for Humanity, and NeighborWorks Lincoln.
4. Provide for more education of the public about affordable housing and code enforcement.
5. Promote the preservation, maintenance and renovation of existing housing and neighborhoods throughout the city, with special emphasis on low and moderate income neighborhoods.
6. Preserve the existing affordable housing stock, increase the supply of affordable owner and renter units, and add more variety in housing types.

P2: Existing Neighborhoods - Continue our commitment to strong, diverse, and complete neighborhoods.

Action Steps

1. Promote the preservation, maintenance, and renovation of existing housing and supporting neighborhood uses throughout the City, with special emphasis on low and moderate income neighborhoods.
2. Maintain and enhance infrastructure and services, commensurate with needs, in existing neighborhoods.
3. Encourage well-designed and appropriately placed density, including within existing apartment and group living complexes and in redeveloping commercial or industrial centers, where there is land available for additional buildings or expansions. Provide flexibility to the marketplace in siting future residential development locations. This includes appropriately placed infill in prioritized Nodes and Corridors, neighborhood edges, and underutilized commercial or industrial sites.
4. Recognize that broad economic diversity within existing neighborhoods encourages reinvestment and improves quality of life for all residents while acknowledging the need for affordable housing.
5. Preserve, protect and promote the character and unique features of urban neighborhoods, including their historical and architectural elements.
6. Promote the continued use of residential dwellings and all types of buildings, to maintain the character of neighborhoods and to preserve portions of our past. Building code requirements for the rehabilitation of existing buildings should protect the safety of building occupants, while recognizing the need for flexibility that comes with rehabilitating existing buildings.
7. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated, Annual Action Plans, and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.

8. Retain and encourage a mix of housing in existing and new neighborhoods in order to provide a mix of housing types at a variety of price points.
9. Implement elements of Complete Neighborhoods for existing neighborhoods.
10. Develop and utilize a measurement tool to evaluate neighborhoods in terms of how well they achieve PlanForward's goals for design, sustainability, and Complete Neighborhoods goals.
11. Encourage public and private investment in neighborhood infrastructure and services to support economic diversity that improves the quality of life for all residents.
12. Balance expanding housing options and neighborhood character. Infill development should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.
13. Preserve areas designated for multi-family and group living housing in approved plans to support a distributed choice in affordable housing.
15. Develop and propose zoning text amendments that will allow platted, nonconforming lots to be buildable.
17. Promote neighborhood and community design that supports healthy and active lifestyles.
20. Examine current residential zoning districts and propose modifications to encourage 'missing middle' units (single-family attached, cottage courts, townhomes, live-work, and a variety of three- and four-plex configurations), including affordable units, to people with a range of incomes. Neighborhood edges in particular present an opportunity for missing middle housing.
21. Encourage a variety of housing types including townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and small lot single-family units.

P5: Downtown - Continue to make Greater Downtown a major focus for mixed-use reuse, infill, and redevelopment.

Over 1,600 dwelling units were permitted in Greater Downtown from 2011 to 2020. The Plan envisions an additional 5,000 dwelling units in this core area by 2050.

A strong downtown is important to the economic future of the community. Downtown is the main hub of employment, entertainment, government agencies and higher education.

Action Steps

1. Support development and implementation of the Downtown Master Plan, South Haymarket Neighborhood Plan, Antelope Valley Redevelopment Plan, Lincoln Center Redevelopment Plan, and South of Downtown Redevelopment & Strategic Plan.
2. Ensure that new development is compatible with the existing Downtown and is pedestrian-oriented.
3. Maintain the urban environment, including a mix of land uses with a major focus on residential uses, including a variety of types and affordable to diverse income levels.
4. Encourage higher density development with parking areas at the rear of buildings, below grade, or on upper floors of multi-use parking structures.
6. Continue to support Downtown as the entertainment center of the community through development of the Music District proposed in the Downtown Master Plan, continued enhancements and programming for public spaces such as the Railyard, Tower Square, Union Plaza and the future South Haymarket Park, along with maintaining Lincoln's successful Theater Policy.
8. Continue to preserve and enhance Downtown's role as the community's major office and employment center.

ANALYSIS

1. This is a request for a special permit for a Community Unit Plan (CUP) to allow up to 6 dwelling units within an approximately 1.04 acres CUP boundary area that will be located on an existing city block, between North 25th and North 26th Streets, and bounded by U Street on the north and T Street along the south. All properties within the CUP will remain with the existing R-6, Residential zoning that exists today. This request is also associated with SAV #22008 to vacate a portion along the south side of U Street that would be included within the CUP boundary. This proposal will be reviewed by the Historic Preservation Commission (HPC) on January 19th as it is located within the Hawley Neighborhood, which is a designated historic district. The review of the HPC will be forwarded to the

Planning Commission separately prior to the January 25th public hearing.

2. For the R-6 zoning district the Design Standards allow a maximum of 48.4 dwelling units per acre. This CUP density will be much lower than the allowed 50 dwelling units with a density of only 6 units within the 1.04-acre boundary. This project is being developed by NeighborWorks-Lincoln in an attempt to provide 3 new small lot residential structures within the northeast corner of the site at U Street and North 26th Street. Three existing homes will remain within the CUP boundary for a total of 6 allowed dwelling units. The new structures are proposed as single family dwelling units on individual lots, with a goal of constructing them as an affordable housing option.
3. The CUP boundary will include the eastern portion of the proposed vacated area of U Street, between North 25th and North 26th Streets. This application, SAV #22008, is requesting the southern 15 feet of the existing U Street right-of-way be vacated as it is not used for U Street vehicular traffic, as U Street was platted in 1884 with a 90-foot right-of-way which is much larger than required today for this local residential street. The current area being requested within this vacation visually appears as a portion of the existing residential lots today. If vacated, a new final plat would be required for the development and allow the existing two lots on the south side of U Street to increase in size. This will allow the existing lot within the CUP boundary to include the vacated area and further divide into three new lots for the three dwelling units.
4. The main area that would undergo new development within this current request would be the existing lot today, as it would allow for the three proposed dwelling units. As this CUP intends to offer affordable, single family dwelling units, the associated waivers related to decreased front and rear yard setbacks, side yard setbacks, parking, along with a decrease in the minimum lot area from 4,000 square feet to 2,400 square feet will assist in keeping the dwelling units more affordable with flexibility to maximize buildable area on the lot. The waivers for reduced lot size, front and rear setbacks are found to be appropriate as they will work with the overall intent of smaller, single family dwellings on small lot development.
5. The applicant has requested seven waivers to the Lincoln Municipal Code:

- a. Zoning Ordinance 28 to waive the requirement for Pre and Post Development Storm Water Detention.

This request is appropriate as LTU-Watershed requires review when the subject site is one acre or more in size. Although the CUP is 1.04 acres, the area being disturbed will be approximately 10,000 square feet or .22 acres for the 3 small residential lots and one outlot.

- b. Zoning Ordinance, Table 27.72.020(b) to allow a front yard setback to be reduced from 20 feet to 10 feet along North 26th Street and reduced to 5 feet along U Street.

This request is appropriate as the intention of the CUP is to provide affordable residential units on smaller lots. The reduction in the front yard setback will relate to the additional waivers requested including a smaller lot area requirement. This waiver will allow for greater flexibility for the structures within the proposed lots and is also following the existing character of the neighborhood, as many of the existing homes were built with a front yard setback below today's standard of 20 feet. A 5 foot front yard setback is being requested as only 15 feet is supported for the vacation of U Street, causing the loss of 5 feet in the proposed front yards. This reduction is supported based on the surrounding neighborhood and reduced setbacks for existing homes. The proposed homes and lots are of a smaller nature and will not adversely affect the character of the neighborhood.

- c. Zoning Ordinance, Table 27.72.020(b) to reduce the required side yard setback from 5 feet to 2.5 feet.

This request is appropriate to provide additional flexibility for maximizing the small lot size. This reduction is needed the vacation of U Street was initially requested at 20 feet, but reduced to 15 feet, causing the buildable lot area to be reduced. The reduced side yard setback will be utilized for the three new units within the CUP.

- d. Zoning Ordinance, Table 27.72.020(b) to reduce the rear yard setback to 10 feet.

This request is appropriate with the site layout by allowing smaller lots for affordable housing options. The

proposed reduction is being requested for only the three new dwelling units and will not affect or change the setback of the existing units within then CUP boundary. The site layout is not intended to provide large lots, but smaller lots with an associated common space for the surrounding owners. Currently the R-6 zoning requires a rear yard of 30 feet or 20% of the lot depth, whichever is smaller. In this case, with the associated waivers, the proposed lots will be decreased in size, requiring a smaller rear yard setback. The three proposed lots will have a 10-foot rear yard setback, just shy of meeting the 20% minimum requirement at approximately 12.75 feet.

- e. Zoning Ordinance, Table 27.72.020(b) to reduce the minimum lot area from 4,000 square feet to 2,400 square feet.

This waiver is appropriate as it will allow for smaller lots within the CUP and overall intent to provide more affordable lots and residential units and increase density. Allowing smaller lots with the associated waivers for reduced front and rear yard setbacks, the lot size can be reduced to assist with flexibility and smaller, single family residential units.

- f. Zoning Ordinance, Table 27.67.020 to reduce the minimum parking requirement from 1.75 to 1 parking space per dwelling unit.

This waiver is being requested and deemed appropriate based on the concept for affordable housing units with smaller footprints and lot sizes. Each proposed dwelling unit will provide one parking space that will be accessed with each lot having driveway access to the local street.

- g. Zoning Ordinance, Table 27.72.020(b) to allow an unenclosed front porch to extend no closer than 2 feet from the front property line along U Street.

This waiver is being request as a result of only 15 feet being supported for the vacation of U Street and causing a 5-foot front yard setback request. Each dwelling unit intends to provide front porches which are encouraged with the existing character of the neighborhood. This waiver will allow a front porch to extend 3 additional feet within the 5 foot front yard setback. This waiver has previously been approved within similar residential developments in older and established neighborhoods to allow flexibility with design that encourage compatibility with the surrounding neighborhood and the Neighborhood Design Standards.

- 6. The proposed CUP and associated waivers are consistent with the comprehensive plan and surrounding neighborhood as the future land use map shows this area as urban residential. The density within the CUP will not exceed the density allowed by the Design Standards, while the waivers to lot size, setbacks, and parking standards will assist with flexibility for the single-family lots and affordability. The Comprehensive Plan details the need and supports the ongoing effort to provide additional dwelling units and affordable housing options within the existing city limits to meet a growing population. The plan also supports residential infill within existing neighborhoods around the city with a variety of residential unit options being provided, including small lot residential and increased density.

CONDITIONS OF APPROVAL: See attached.

EXISTING LAND USE & ZONING: Single family dwellings; R-6, Residential

SURROUNDING LAND USE & ZONING

North: Multifamily Dwellings	R-6, Residential
South: Single Family Dwellings	R-6, Residential
East: Single & Multifamily Dwellings	R-6, Residential
West: Single & Multifamily Dwellings	R-6, Residential

APPROXIMATE LAND AREA: 1.04 acres, more or less

LEGAL DESCRIPTION: See Attached

Prepared by

Ben Callahan, Planner

Date: January 12, 2023

Applicant: NeighborWorks Lincoln
2530 Q Street
Lincoln, NE 68503
(402) 431-6237
Charlie.wesche@nwlincoln.org

Contact: Schemmer Associates
David Tull
333 S. 21st Street, Ste 102
Lincoln, NE 68503
(402) 431-6237
dtull@schemmer.com

Owner: Katherine Walter and Timothy Rinne
645 N. 26th Street
Lincoln, NE 68503
(402) 613-4305
Kaywalter19@gmail.com

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/SP/22000/SP22045 Hawley Corners CUP.bmc.docx>

CONDITIONS OF APPROVAL - SPECIAL PERMIT #22045

Per Section 27.63.320 this approval permits the Hawley Corners Community Unit Plan for up to 6 dwelling units with the following waivers:

1. Lincoln Municipal Code Chapter 28 to waive the requirement for Pre and Post Development Storm Water Detention.
2. Lincoln Municipal Code Chapter 27.72.020(b) to reduce the front yard setback to 10 feet for the three new dwelling units.
3. Lincoln Municipal Code Chapter 27.72.020(b) to reduce the rear yard setback to 10 feet for the three new dwelling units.
4. Lincoln Municipal Code Chapter 27.72.020(b) to reduce the minimum lot area to 2,400 square feet for the three new dwelling units.
5. Lincoln Municipal Code Chapter 27.67.020 to reduce the required parking to 1 space per dwelling unit for the three new dwelling units.
6. Lincoln Municipal Code Chapter 27.67.060 to allow an unenclosed front porch to extend no closer than 2 feet from the front property line for the three new dwelling units.

Site Specific Conditions:

1. The City Council approves associated request:
 - 1.1 Street and Alley Vacation #22008
2. Before receiving building permits or before a final plat is approved the permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 2 copies with all required revisions and documents as listed below:
 - 2.1 Make revisions to the legal description as per GIS.
 - 2.2 Revise site plan to show 15 feet of U Street vacation.
 - 2.3 Add the requested parking waiver as the site plan only shows 1 parking space per unit.
 - 2.4 Revised Waiver #3 to state a 2.5-foot side yard setback.
 - 2.5 Add waiver to state unenclosed porches may extend up to 2 feet from the front property line along U Street.
 - 2.6 Remove General Note #1 regarding number of dwelling units.
 - 2.7 Correct name of CUP on right side of sheets as it states "NeighborWorks Lincoln" as the CUP project name.

- 2.8 Number sheets "1 of 3, 2 of 3, and 3 of 3"
- 2.9 Delete the landscape plan shown as sheet 4 as it is not needed.
- 2.10 Include a waiver to the Design Standards to allow driveway approaches to cross lot lines and meet the satisfaction of LTU.
- 2.11 Revise the site plan to show construction of a public water main along U Street to serve Lot 3 to the satisfaction of LTU.
- 2.12 Revise the site plan to show construction of a public wastewater main to serve Lot 1 to the satisfaction of LTU or a non-abutting agreement must be approved by LTU to serve Lot 1.
- 2.13 Revise drainage plan as grate inlets are not allowed per LTU-Watershed when in the right-of-way and in the roadway and sidewalks.
- 2.14 Include drainage arrows to clarify drainage path is sufficient for proposed grading.
- 2.15 Add to the General Notes, "Signs need not be shown on this site plan, but need to be in compliance with chapter 27.69 of the Lincoln Zoning Ordinance, and must be approved by Building & Safety Department prior to installation".
3. Before receiving building permits (if no final plat is required) or before a final plat is approved (if final plat is required) provide the following documents to the Planning Department:
 - 3.1 Verification from the Register of Deeds that the letter of acceptance as required by the approval of the special permit has been recorded.
4. Final plat(s) is/are approved by the City.

If any final plat on all or a portion of the approved community unit plan is submitted five (5) years or more after the approval of the community unit plan, the city may require that a new community unit plan be submitted, pursuant to all the provisions of section 26.31.015. A new community unit plan may be required if the subdivision ordinance, the design standards, or the required improvements have been amended by the city; and as a result, the community unit plan as originally approved does not comply with the amended rules and regulations.

Before the approval of a final plat, the public streets, private roadway improvements, sidewalks, public sanitary sewer system, public water system, drainage facilities, land preparation and grading, sediment and erosions control measures, storm water detention/retention facilities, drainageway improvements, street lights, landscaping screens, street trees, temporary turnaround and barricades, and street name signs, must be completed or provisions (bond, escrow or security agreement) to guarantee completion must be approved by the City Law Department. The improvements must be completed in conformance with adopted design standards and within the time period specified in the Land Subdivision Ordinance.

No final plat shall be approved until the Permittee, as subdivider, enters into an agreement with the City whereby Permittee agrees:

to complete the public water distribution system to serve this plat within two (2) years following the approval of the final plat.

to complete the public wastewater collection system to serve this plat within two (2) years following the approval of the final plat.

to complete the enclosed public drainage facilities shown on the approved drainage study to serve this plat within two (2) years following the approval of the final plat.

to complete land preparation including storm water detention/retention facilities and open drainageway improvements to serve this plat prior to the installation of utilities and improvements but not more than two (2) years following the approval of the final plat

to complete the planting of the street trees along streets within this plat within six (6) years following the approval of the final plat.

to complete the installation of the permanent markers prior to construction on or conveyance of any lot in the plat.

to complete any other public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Land Subdivision Ordinance in a timely manner which inadvertently may have been omitted from the above list of required improvements.

to submit to the Director of Public Works a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land for approval.

to comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.

to complete the public and private improvements shown on the ***Community Unit Plan***.

to keep taxes and special assessments on the outlots from becoming delinquent.

to maintain the outlots on a permanent and continuous basis.

to maintain the private improvements in good order and condition and state of repair including the routine and reasonable preventive maintenance of the private improvements on a permanent and continuous basis.

to maintain the private facilities which have common use or benefit in good order and condition and state of repair, including the routine and reasonable preventive maintenance of the private facilities, on a permanent and continuous basis.

to recognize that there may be additional maintenance issues or costs associated with the proper functioning of storm water detention/retention facilities as they were designed and construction within the development and that these additional maintenance issues or costs are the responsibility of the Permittee.

to retain ownership of and the right of entry to the outlots in order to perform the above-described maintenance of the outlots and private improvements on a permanent and continuous basis. However, Permittee(s) may be relieved and discharged of such maintenance obligations upon creating in writing a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance subject to the following conditions:

- (1) Permittee shall not be relieved of Permittee's maintenance obligation for each specific private improvement until a registered professional engineer or nurseryman who supervised the installation of said private improvement has certified to the City that the improvement has been installed in accordance with approved plans.
- (2) The maintenance agreements are incorporated into covenants and restrictions in deeds to the subdivided property and the documents creating the association and the restrictive covenants have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds

to pay all design, engineering, labor, material, inspection, and other improvement costs

to protect the trees that are indicated to remain during construction and development

Standard Conditions:

5. The following conditions are applicable to all requests:
 - 5.1 Before occupying the dwelling units all development and construction shall substantially comply with the approved plans.
 - 5.2 All privately-owned improvements, including landscaping and recreational facilities, shall be permanently maintained by the Permittee or an appropriately established homeowners association approved by the City.
 - 5.3 The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters be in substantial compliance with the location of said items as shown on the approved site plan.
 - 5.4 The terms, conditions, and requirements of this resolution shall run with the land and be binding upon the Permittee, its successors and assigns.
 - 5.5 The applicant shall sign and return the letter of acceptance to the City Clerk. This step should be completed within 60 days following the approval of the special permit. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant. Building permits will not be issued unless the letter of acceptance has been filed.

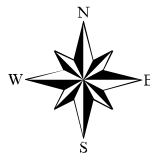


2022 aerial

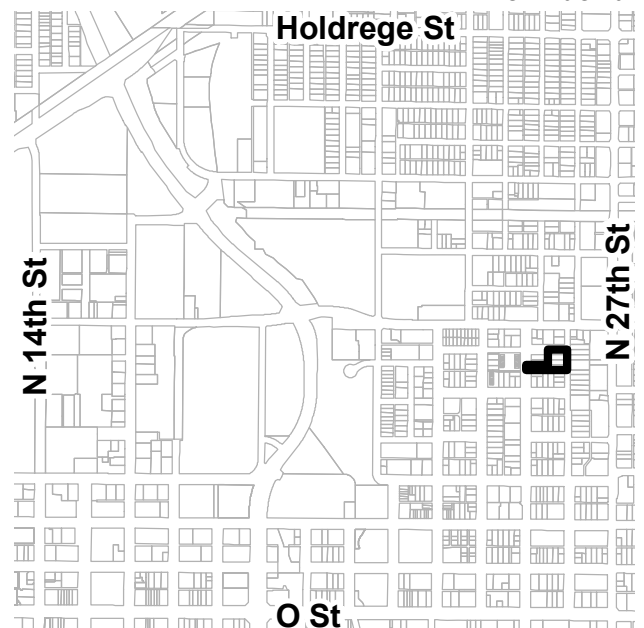
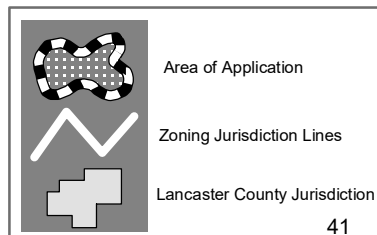
Special Permit #: SP22045
Hawley Corners CUP
N 26th St & U St

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.24 T10N R06E



LEGAL DESCRIPTION:
A TRACT OF LAND CONSISTING OF LOT C, CULTRAS SUBDIVISION AND LOTS A, B AND C, SCHAFER & CULTRAS SUBDIVISION, BOTH LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, LINCOLN, NEBRASKA MORE PARTICULARLY DESCRIBED AS FOLLOWS.
COMMENCING AT THE 1" BAR AT THE INTERSECTION OF THE CENTERLINE OF U STREET AND THE CENTERLINE OF NORTH 26TH STREET; THENCE S1°55'23"E (ASSUMED BEARING) ALONG SAID CENTERLINE OF SAID NORTH 26TH STREET, A DISTANCE OF 194.85 FEET TO THE POINT OF INTERSECTION OF SAID CENTERLINE OF SAID NORTH 26TH STREET AND THE CENTERLINE IF A 16.0 FOOT ALLEY; THENCE S88°04'18"W ALONG SAID THE CENTERLINE IF A 16.0 FOOT ALLEY, A DISTANCE OF 374.76 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF NORTH 25TH STREET SAID LINE ALSO BEING ON THE EAST LINE OF HAWLEY'S ADD REPLAT LOT 3 EASTERDAYS SUB, BLOCK 5; THENCE S1°55'22"E, ALONG SAID WEST RIGHT-OF-WAY LINE OF NORTH 25TH STREET SAID LINE ALSO BEING ON SAID EAST LINE OF HAWLEY'S ADD REPLAT, LOT 3 EASTERDAYS SUB, BLOCK 5, A DISTANCE OF 55.27 FEET; THENCE N88°04'12"E, A DISTANCE OF 199.88 FEET TO THE CENTERLINE OF A 16 FOOT ALLEY, CULTRAS SUBDIVISION; THENCE N1°55'13"W ALONG SAID CENTERLINE OF A 16 FOOT ALLEY, CULTRAS SUBDIVISION, A DISTANCE OF 139.56 FEET TO A POINT ON THE CENTERLINE OF SAID U STREET; THENCE N88°04'02"E ALONG THE CENTERLINE ON SAID U STREET, A DISTANCE OF 174.87 FEET TO THE POINT OF BEGINNING.
SAID TRACT OF LAND CONTAINS AN AREA OF 45122 SQUARE FEET OR 1.04 ACRES MORE OR LESS.

GENERAL NOTES:
1. THIS SPECIAL PERMIT CONSISTS OF 3 DWELLING UNITS.
2. ZONING IS R-6 WITHIN THIS C.U.P.
3. THE DEVELOPER RESERVES THE RIGHT TO BUILD ANYWHERE WITHIN THE SETBACKS AS PER R-6 ZONING DISTRICT WITH EXCEPTION OF APPROVED WAIVERS.
4. ALL LOT LINES ARE CONCEPTUAL AND FINAL PLATS MAY SHOW DIFFERENT DIMENSIONS.
5. UTILITY EASEMENTS TO BE PROVIDED AS REQUIRED BY L.E.S.
6. SANITARY SEWER AND WATER LINES TO BE BUILT TO THE CITY OF LINCOLN SPECIFICATIONS WITH EXCEPTION OF APPROVED WAIVERS.

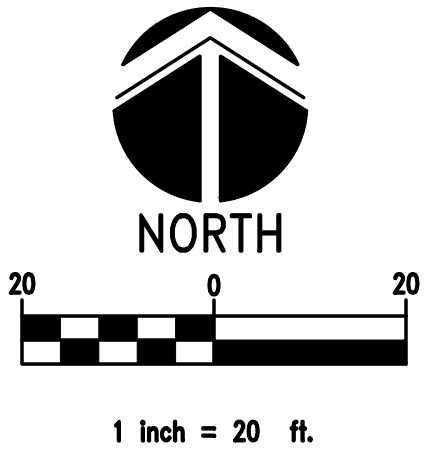
DENSITY:
TOTAL PROJECT AREA: 45,122 SF (1.04 ACRES)
ALLOWABLE DENSITY: 48.4 DWELLING UNITS PER ACRE IN R-6 ZONING = 50.3 DWELLING UNITS
PROPOSED DENSITY: 6 DWELLING UNITS

HAWLEY CORNERS COMMUNITY UNIT PLAN

DEVELOPER
NEIGHBORWORKS LINCOLN
2530 Q STREET
LINCOLN, NE 68503

SURVEYOR
SCHEMMER
333 S. 21ST STREET
LINCOLN, NE 68510

ENGINEER
SCHEMMER
333 S. 21ST STREET
LINCOLN, NE 68510



LEGEND

P.C.C. PAVEMENT

P.C.C. SIDEWALK

PORCH

SCHEMMER
Design with Purpose. Build with Confidence.

NEIGHBORWORKS LINCOLN
COMMUNITY UNIT PLAN
26TH & U STREET
LINCOLN, NE
SITE PLAN

PROJECT NO.: 08611.001

C101

ISSUE DATE: 12/12/2022			
REVISIONS:			
No.:	DATE:	BY:	DESCRIPTION:

DESIGNED:	RMD
DRAWN:	DGD
CHECKED:	MJH

THIS DRAWING IS BEING
MADE AVAILABLE FOR
FOR USE ON THIS PROJECT
UNDER THE ASSUMPTION
AGREEMENT FOR PROFESSIONAL
RESPONSIBILITY OF THE
FOR ANY USE OF THIS DRAWING
IN ACCORDANCE WITH THE TERMS
OF THE ABOVE AGREEMENT.

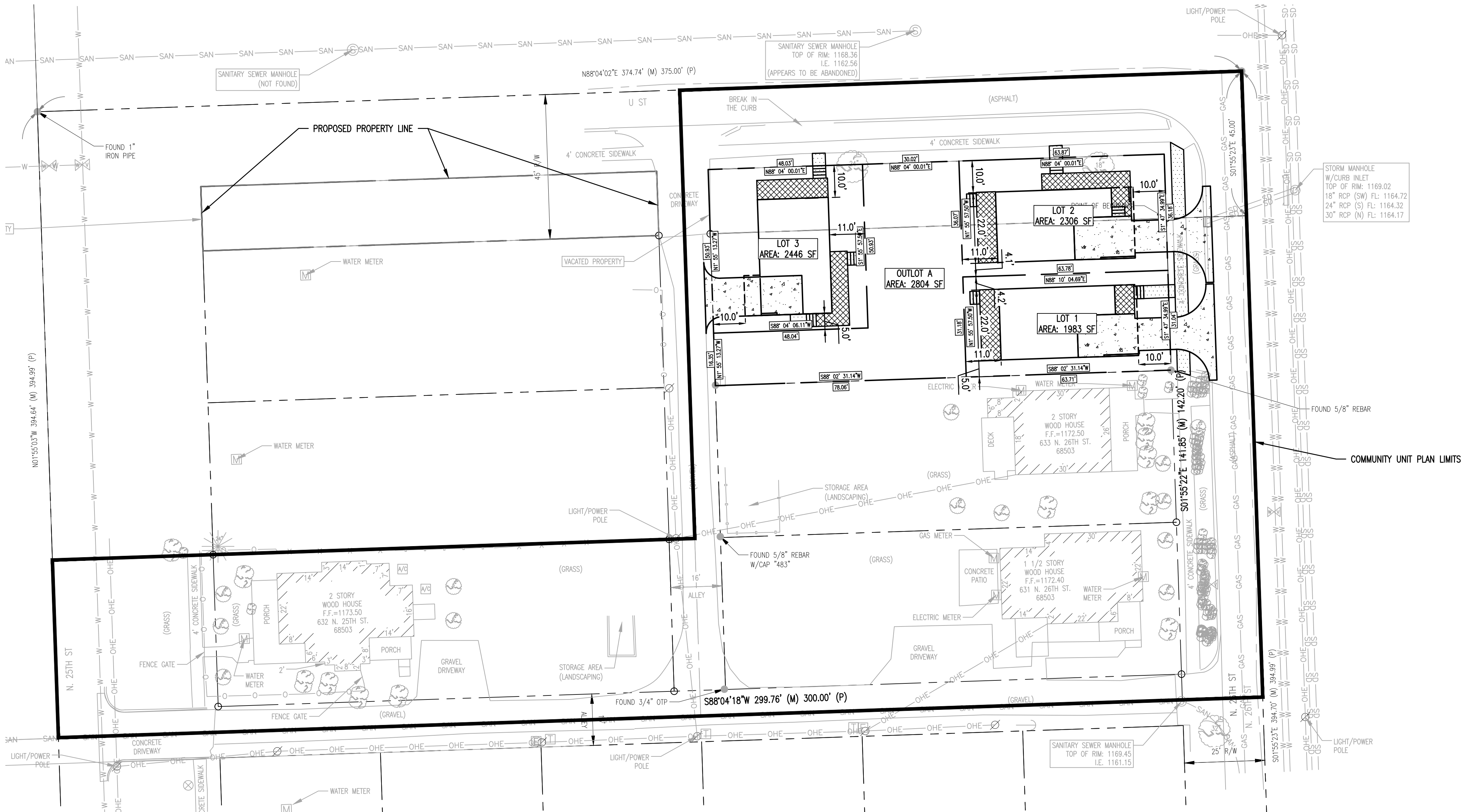




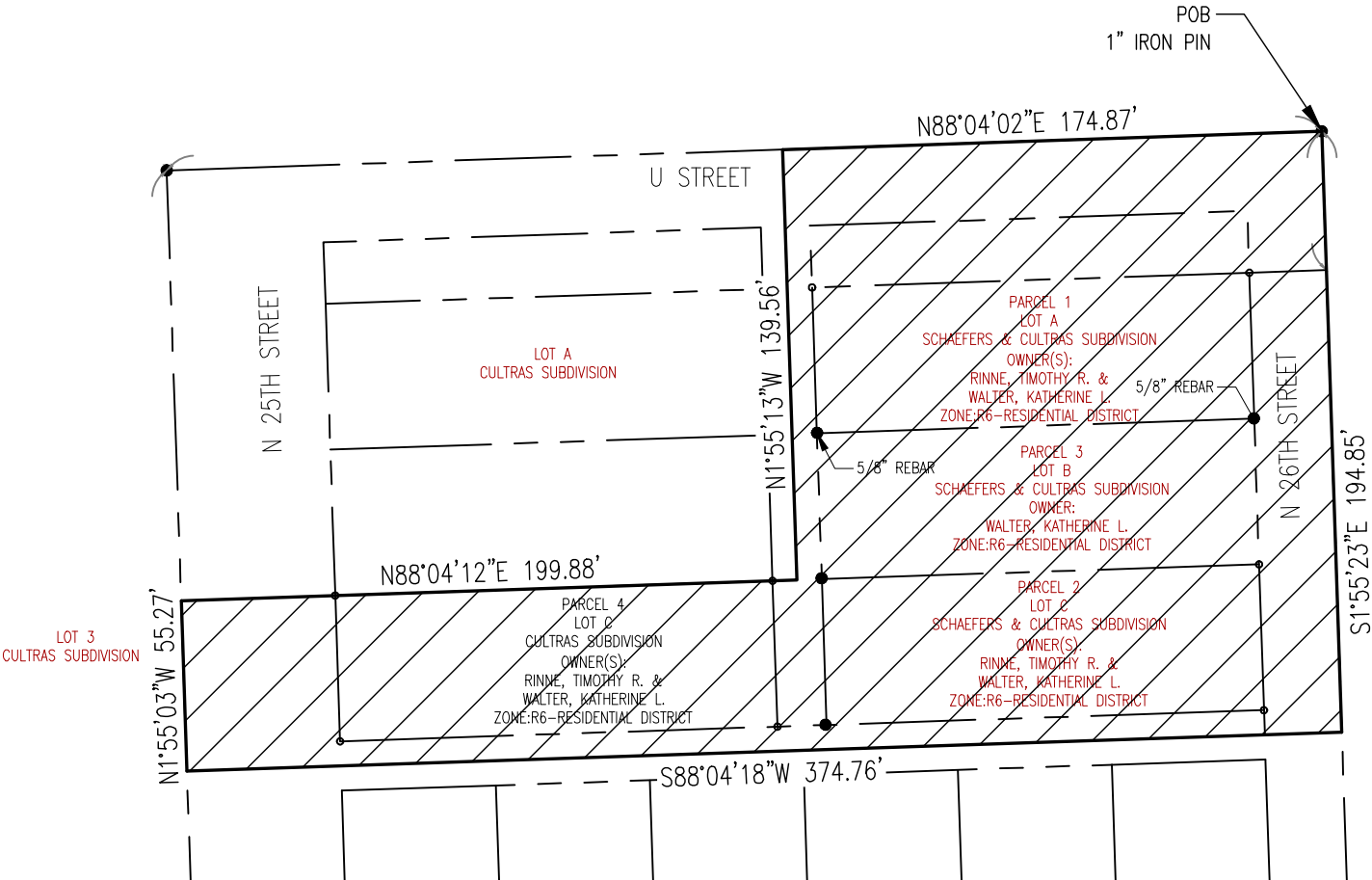
EXHIBIT C

LEGAL DESCRIPTION:

A TRACT OF LAND CONSISTING OF LOT C, CULTRAS SUBDIVISION AND LOTS A, B AND C, SCHAEFER & CULTRAS SUBDIVISION, BOTH LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, LINCOLN, NEBRASKA MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE 1" BAR AT THE INTERSECTION OF THE CENTERLINE OF U STREET AND THE CENTERLINE OF NORTH 26TH STREET; THENCE S1°55'23"E (ASSUMED BEARING) ALONG SAID CENTERLINE OF SAID NORTH 26TH STREET, A DISTANCE OF 194.85 FEET TO THE POINT OF INTERSECTION OF SAID CENTERLINE OF SAID NORTH 26TH STREET AND THE CENTERLINE IF A 16.0 FOOT ALLEY; THENCE S88°04'18"W ALONG SAID THE CENTERLINE IF A 16.0 FOOT ALLEY, A DISTANCE OF 374.76 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF NORTH 25TH STREET SAID LINE ALSO BEING ON THE EAST LINE OF HAWLEY'S ADD REPLAT LOT 3 EASTERDAYS SUB, BLOCK 5; THENCE S1°55'22"E, ALONG SAID WEST RIGHT-OF-WAY LINE OF NORTH 25TH STREET SAID LINE ALSO BEING ON SAID EAST LINE OF HAWLEY'S ADD REPLAT, LOT 3 EASTERDAYS SUB, BLOCK 5, A DISTANCE OF 55.27 FEET; THENCE N88°04'12"E, A DISTANCE OF 199.88 FEET TO THE CENTERLINE OF A 16 FOOT ALLEY, CULTRAS SUBDIVISION; THENCE N1°55'13"W ALONG SAID CENTERLINE OF A 16 FOOT ALLEY, CULTRAS SUBDIVISION, A DISTANCE OF 139.56 FEET TO A POINT ON THE CENTERLINE OF SAID U STREET; THENCE N88°04'02"E ALONG THE CENTERLINE ON SAID U STREET, A DISTANCE OF 174.87 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 45122 SQUARE FEET OR 1.04 ACRES MORE OR LESS.



LEGEND

- CORNERS FOUND (As Noted)
- CORNERS SET (#5 Rebar w/Cap #619)
- P PLAT DIMENSION
- S SURVEY DIMENSION
- O.T. OPEN TOP PIPE
- P.T. PINCH TOP PIPE

SCHEMMER
Design with Purpose. Build with Confidence.



December 13, 2022

David Cary
Director of Planning
City of Lincoln
555 South 10th Street, Suite 213
Lincoln, NE 68508

Re: Submittal for NeighborWorks
Hawley Corners

Dear Mr. Cary::

On behalf of NeighborWorks Lincoln, I am pleased to submit the application and supporting documents for an affordable housing development at the southwest corner of N 26th Street and U Street (Hawley Corners) in Lincoln.

To develop this site, the following steps are going to be required:

1. Vacation of Public Ways
2. Community Unit Plan

We enclose the following:

1. The signed City Application Form
2. Vacation of Public Ways Petition
3. Survey with Metes & Bounds of vacation area
4. An application letter stating general summary, location, and details of the request
5. A check in the amount of \$221.00
6. Project Documents will be uploaded to the City of Lincoln's ProjectDox portal when a project has been assigned a project number.

Please submit all questions and comments to my attention at rduvall@schemmer.com or by phone at 402-431-6369.

Sincerely,

THE SCHEMMER ASSOCIATES INC.

Robert DuVall, P.E.
Team Leader, Civil Engineering – Private Sector
Shareholder

PHONE 402.493.4800
FAX 402.493.7951

1044 North 115th Street, Suite 300
Omaha, Nebraska 68154-4436

SCHEMMER.COM

LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

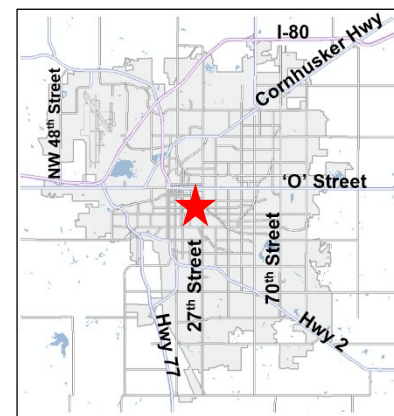
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Street and Alley Vacation #22008	FINAL ACTION? No	DEVELOPER/OWNER See Attached Petition
PLANNING COMMISSION HEARING DATE January 25, 2023	RELATED APPLICATIONS Special Permit #22045 Hawley Corners CUP	PROPERTY ADDRESS/LOCATION Generally located on U Street, between N. 25 th & 26 th Streets

RECOMMENDATION: CONFORMS TO THE COMPREHENSIVE PLAN

BRIEF SUMMARY OF REQUEST

This is a request to vacate a portion of the south side of U Street between North 25th and North 26th Street. Initially the applicant requested the vacation of 20 feet along the south side of U Street. However, that ultimately would reduce the right-of-way below 60 feet in width, so only 15 feet is being vacated. This request is in relation to an application submitted for Special Permit #22045 for Hawley Corners Community Unit Plan (CUP) and will allow the underutilized portion of this right-of-way to be within the CUP boundary for the redevelopment of residential lots. This vacation will only affect the south side of U Street and will not affect the adjacent alley.



JUSTIFICATION FOR RECOMMENDATION

U Street at this location was platted in 1884 and provided a 90-foot right-of-way width. Through the development of the area, the street was never widened to a distance that would require a 90-foot right-of-way and today serves as a local residential street. The proposed reduction to only 15 feet is appropriate for a future vacation along the north side of U Street as well and would keep a remaining 60-foot-wide right-of-way.

APPLICATION CONTACT

NeighborWorks Lincoln, Wayne Mortensen, (402) 477-7181 or wayne.mortensen@nwlincoln.org

STAFF CONTACT

Ben Callahan, (402) 441-6360 or bcallahan@lincoln.ne.gov

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

Vacation of this portion of public right-of-way will not negatively impact the transportation system and subject to the conditions of approval, this request is in conformance with the Comprehensive Plan. The vacation will not decrease the size of the current paved and utilized area of U Street and will continue to serve traffic regularly. Ultimately, the vacated area will be included within a proposed CUP boundary which will support goals for new residential infill and additional dwelling units being added within the existing city limits for affordable housing options.

KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

Elements Section

Transportation Element

The street is shown as a local street in [Figure 4.23](#) of the Long Range Transportation Plan.

Local Streets: These streets serve as conduits between abutting properties and streets of higher functional classification. Local streets provide the lowest level of mobility and are generally designed to carry low levels of traffic at the lowest posted speeds.

Policies Section

P25: Open Space with Development - The community should continue to acquire parkland and conserve open space areas commensurate with expanding development, population growth, and community needs.

Action Steps

4. Designate areas for future urban development outside of the floodplain and floodway in order to mitigate the impacts of flooding and preserve natural flood storage. Floodplain in public ownership should remain in public ownership. However, where it is determined that there is public benefit to releasing floodplain property to private ownership, flood storage capacity should be maintained through easements, deed restrictions, or other tools.

P71: Public ROW and Access - Manage public ROW and access to balance multimodal mobility needs and protect the value of adjacent property.

ANALYSIS

1. This is a request to vacate the south 15 feet of U Street right-of-way between North 25th Street and North 26th Street. The request of 15 feet has total area of approximately 4,230 square feet, or 0.1 acres. This request is related to the application for Special Permit #22045 Hawley Corners Community Unit Plat (CUP) which will include a portion of the eastern vacated area and will provide additional area for proposed dwelling units. The CUP proposes up to 6 dwelling units, with three of the units located on smaller lots and located within a portion of this vacated area.
2. This request will not affect the flow of traffic or current state of U Street as it was platted in 1884 as a 90-foot-wide right-of-way. Today U Street at this location is classified as a local residential street which does not require this large of right-of-way width. Although the 15 feet being vacated is within existing right-of-way, today it visually appears as a large side yard along the north side of the abutting lots on U Street. There are two separate owners that abut the proposed vacated area which have signed off on the vacation petition. If vacated, the additional area would then become a part of the abutting lots, with the east side utilizing the area within the proposed CUP. Since the right-of-way is 90 feet in width, allowing the south side to vacate 15 feet would also allow the north to vacate 15 feet if desired in the future, and ultimately retain a 60-foot-wide right-of-way for U Street.
3. Lincoln Electric System requests an easement over within vacated area for existing utilities. If an easement is not desired, the applicant will need to work with LES to coordinate the relocation of the utilities. Beyond that there are no public water, sanitary sewer or storm sewer infrastructure present in the right-of-way.
4. Lincoln Municipal Code Chapter 14.20 requires the City to establish the proper price to be paid for the right-of-way, as well as any amounts necessary to guarantee required reconstruction within the right-of-way. These values must be established and deposited with the City Clerk prior to scheduling the vacation request with the City Council.
5. The right-of-way vacation will not affect the transportation system as vehicular traffic on U Street will not be impacted. The vacation will ultimately decrease the current right-of-way width, but still remain larger, for the moment, than what is required within the Lincoln Municipal Code today for a residential and local street right-of-way width. The request is consistent with the Comprehensive Plan by providing additional land for infill redevelopment and adding affordable housing units within the existing city limits.

CONDITIONS OF APPROVAL: See attached.

EXISTING LAND USE & ZONING: Existing U Street & R-6, Residential

SURROUNDING LAND USE & ZONING

North: Multifamily Dwellings	R-6, Residential
South: Single Family Dwellings	R-6, Residential
East: Single & Multifamily Dwellings	R-6, Residential
West: Single & Multifamily Dwellings	R-6, Residential

APPROXIMATE LAND AREA: Approximately .13 acres or 5,674 square feet

LEGAL DESCRIPTION: The south 15 feet of the U Street right of way between the east line of N. 25th Street and the west line of the North-South alley between N. 25th Street and N. 26th Street from T Street to U Street and immediately adjacent to Lot A, Cultras Subdivision; and the south 15 feet of the U Street right of way between the west line of N. 26th Street and the east line of the North-South alley between N. 25th Street and N. 26th Street from T Street to U Street and immediately adjacent to Lot A, Schaefer's & Cultras Subdivision.

Prepared by

Ben Callahan, Planner

Date: January 12, 2023

Applicant/
Contact NeighborWorks Lincoln
2530 Q Street
Lincoln, NE 68503
(402) 477-7181
Wayne.mortensen@nwlincoln.org

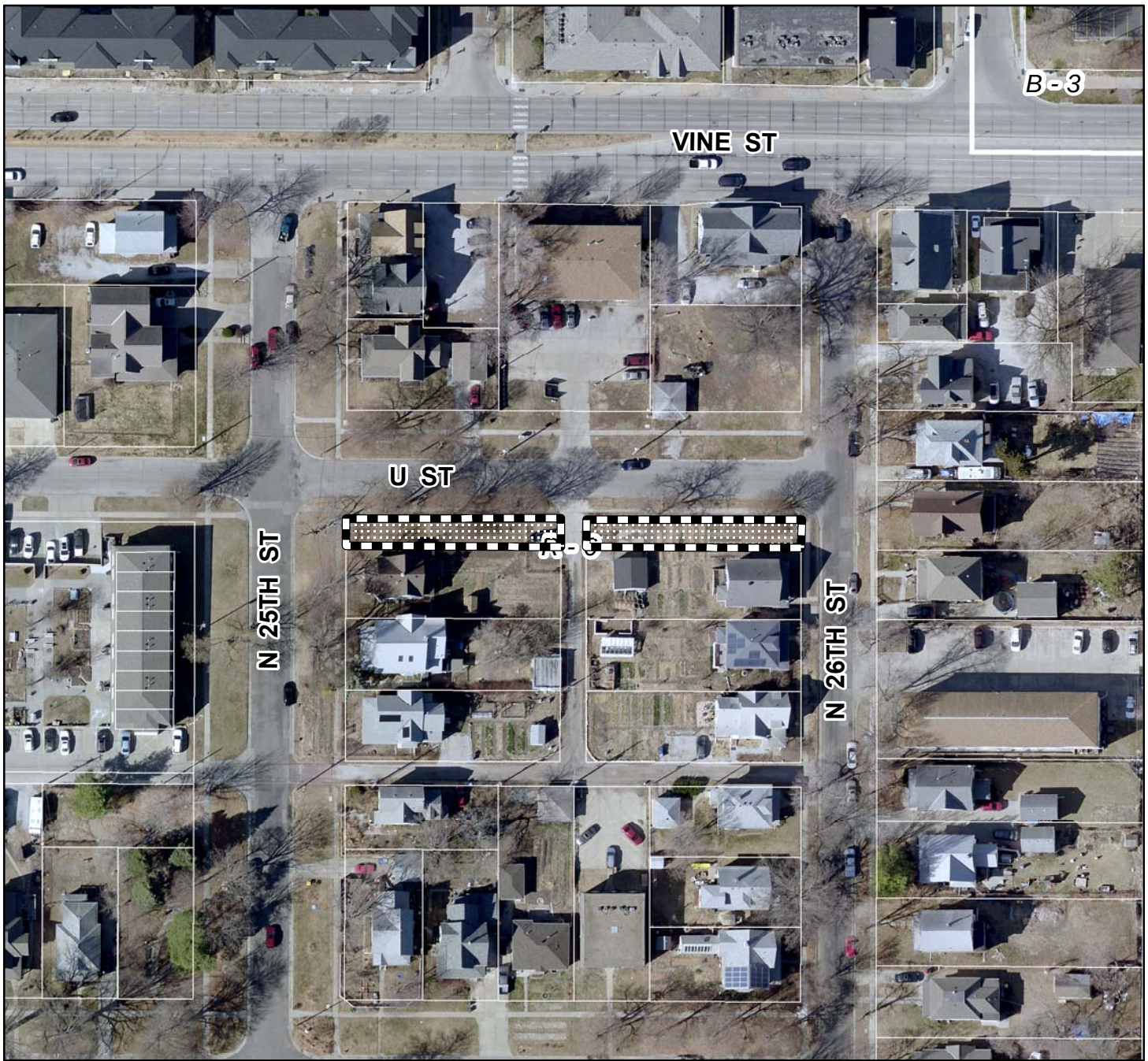
Owner: Katherine Walter & Timothy Rinne
805 N 26th Street
Lincoln, NE 68503
(402) 477-7181
Kaywalter19@gmail.com

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/SAV/22000/SAV22008 U Street.bmc.docx>

CONDITIONS OF APPROVAL - STREET AND ALLEY VACATION #22008

BEFORE THE VACATION REQUEST IS SCHEDULED ON THE CITY COUNCIL AGENDA THE FOLLOWING MUST BE COMPLETED:

- 1.1 Revise Exhibit A & B to reflect only 15 feet being vacated, not 20 feet.
- 1.2 The provisions of Chapter 14.20 of the Lincoln Municipal Code are met.
- 1.3 Include retention of utility easements by City with deed transfer.

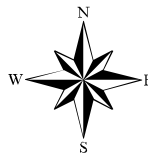


2022 aerial

Street and Alley Vacation #: SAV22008
N 26th St & U 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.24 T10N R06E

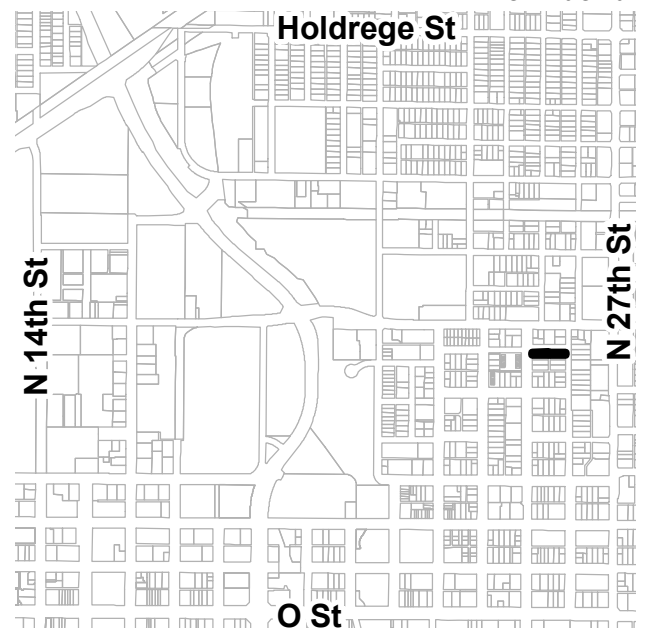
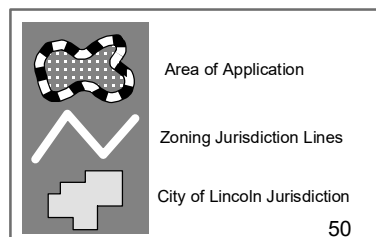


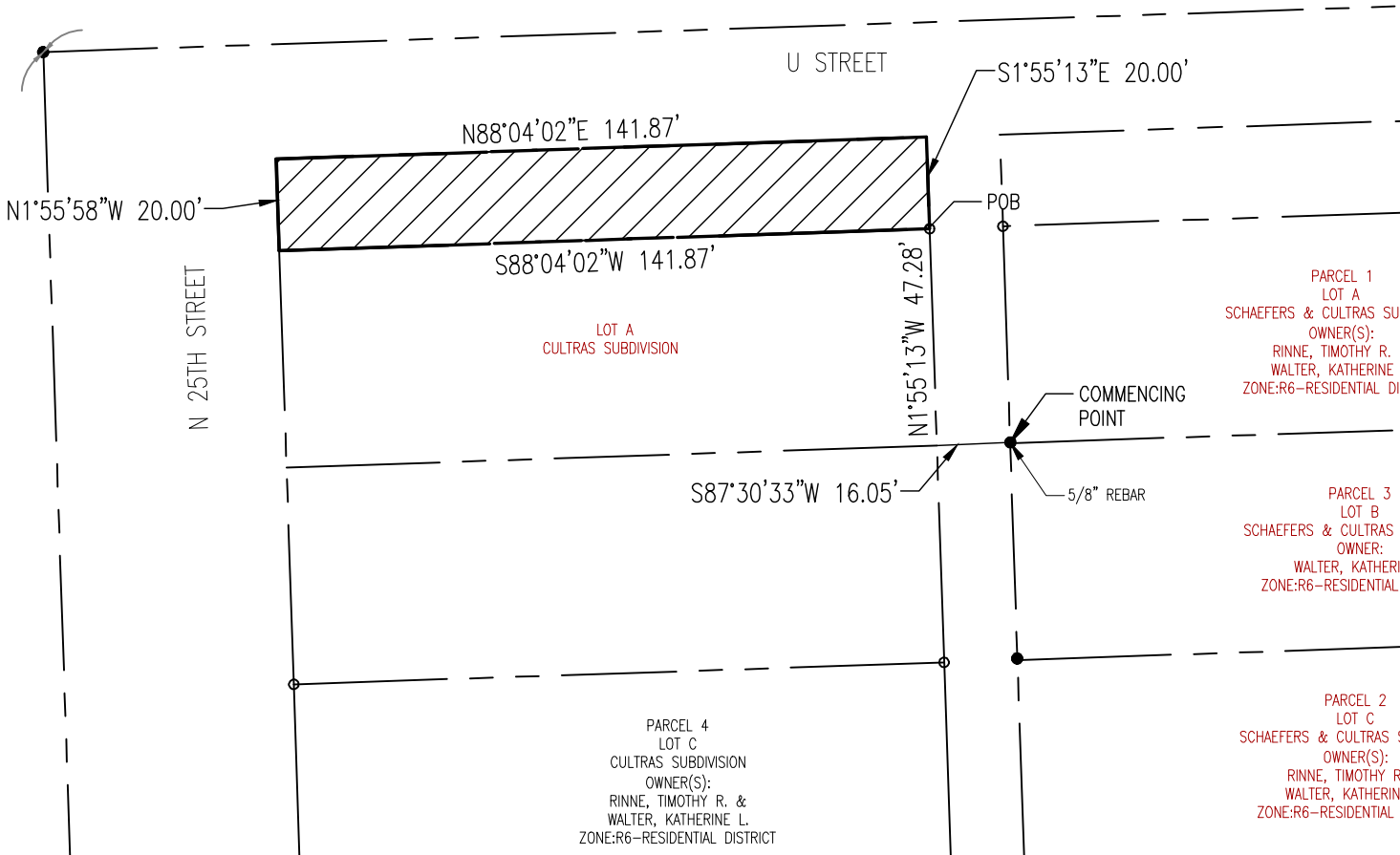
EXHIBIT A

LEGAL DESCRIPTION:

A TRACT OF LAND CULTRAS SUBDIVISION, LOCATED IN THE SOUTHEAST QUARTER FO SECTION 24, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, LINCOLN, NEBRASKA MORE PARTICULARLY DESCRIBED AS FOLLOWS.

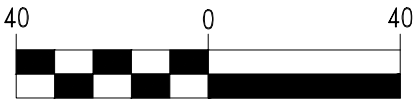
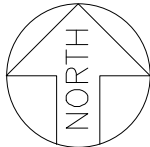
COMMENCING AT THE SOUTHWEST CORNER OF LOT A, SCHAEFERS & CUTLRAS SUBDIVISION, A SUBDIVISION LOCATED IN SAID SOUTHEAST QUARTER OF SECTION 24, SAID POINT ALSO BEING THE NORTHWEST CORNER OF LOT B, SAID SCHAEFERS & CUTLRAS SUBDIVISION ; THENCE S87°30'33W (ASSUMED BEARING), A DISTANCE OF 16.05 FEET TO THE SOUTHEAST CORNER OF LOT A, SAID CUTLRAS SUBDIVISION, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT B, SAID CUTLRAS SUBDIVISION; THENCE N1°55'13"W ALONG THE EAST LINE OF SAID LOT A, CUTLRAS SUBDIVISION, A DISTANCE OF 47.28 FEET, TO THE NORTHEAST CORNER OF SAID LOT A, SAID CUTLRAS SUBDIVISION, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE S88°04'02"W ALONG THE NORTH LINE OF SAID LOT A, CUTLRAS SUBDIVISION, A DISTANCE OF 141.87 FEET TO THE NORTHWEST CORNER OF SAID LOT A, CUTLRAS SUBDIVISION, SAID POINT ALSO BEING THE INTERSECTION OF EAST RIGHT-OF-WAY LINE OF N 25TH STREET AND THE SOUTH RIGHT-OF-WAY LINE OF U STREET; THENCE N01°55'58"W, ALONG SAID EAST RIGHT-OF-WAY LINE OF N 25TH STREET A DISTANCE OF 20.00 FEET; THENCE N88°04'02"E, A DISTANCE OF 141.87 FEET; THENCE S1°55'13"E, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 2,837 SQUARE FEET, OR 0.065 ACRES MORE OR LESS.



LEGEND

- CORNERS FOUND (As Noted)
- CORNERS SET (#5 Rebar w/Cap #619)
- P PLAT DIMENSION
- S SURVEY DIMENSION
- O.T. OPEN TOP PIPE
- P.T. PINCH TOP PIPE



1 inch = 40 ft.

SCHEMMER
Design with Purpose. Build with Confidence.

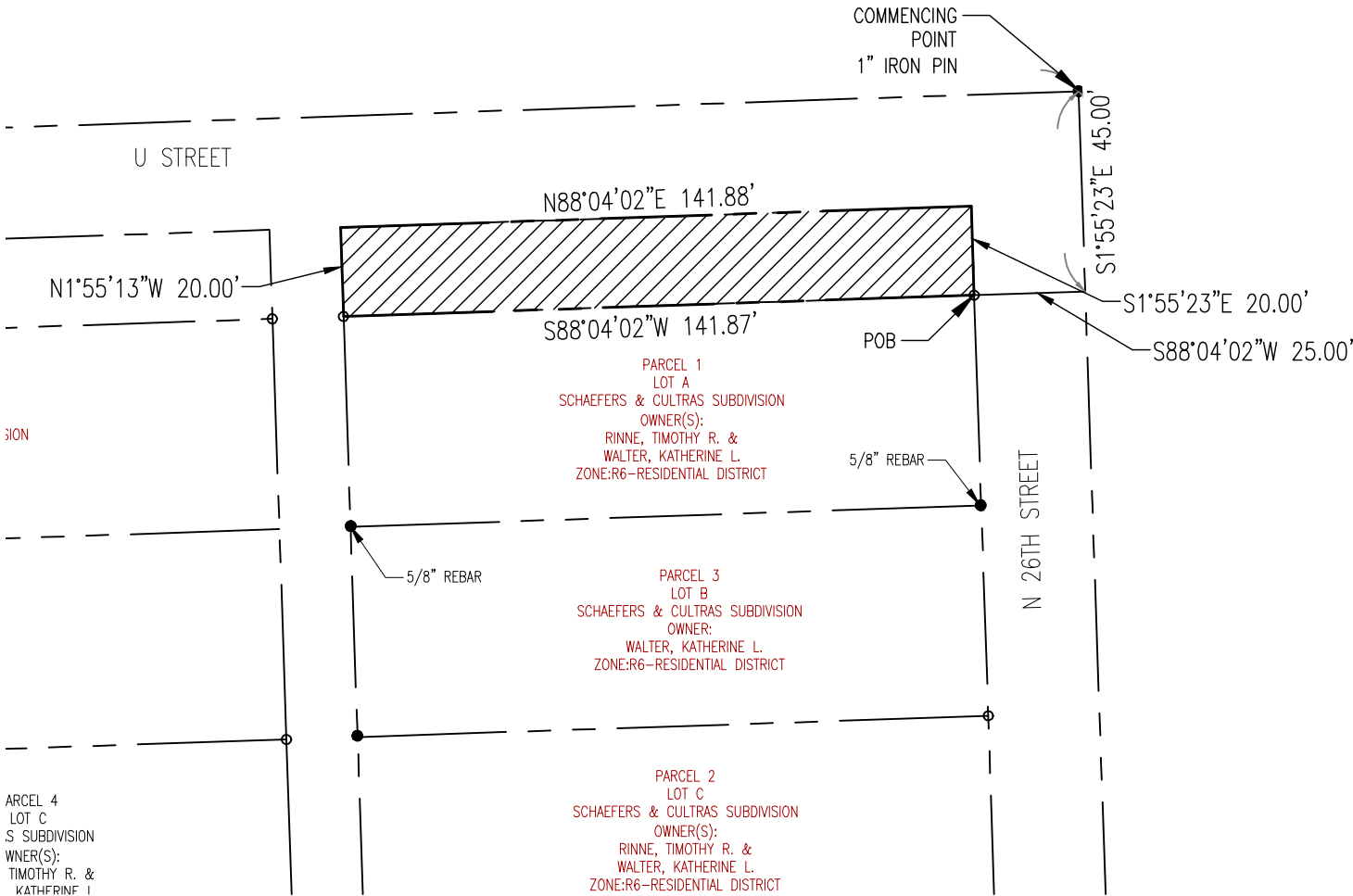
EXHIBIT B

LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, LINCOLN, NEBRASKA MORE PARTICULARLY DESCRIBED AS FOLLOWS.

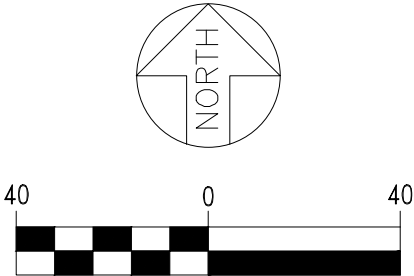
COMMENCING AT THE 1" BAR AT THE INTERSECTION OF THE CENTERLINE OF U STREET AND THE CENTERLINE OF NORTH 26TH STREET; THENCE S1°55'23"E (ASSUMED BEARING) ALONG SAID CENTERLINE OF NORTH 26TH STREET, A DISTANCE OF 45.00 FEET; THENCE S88°04'02"W, A DISTANCE OF 25.00 FEET TO THE NORTHEAST CORNER OF SAID LOT A, SCHAEFER & CULTRAS SUBDIVISION, SAID CORNER ALSO BEING THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF SAID U STREET AND THE WEST RIGHT-OF-WAY LINE OF SAID NORTH 26TH STREET, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE S88°04'02"W ALONG THE NORTH LINE OF SAID LOT A, SCHAEFER & CULTRAS SUBDIVISION, A DISTANCE OF 141.87 FEET TO THE NORTHWEST CORNER OF SAID LOT A, SCHAEFER & CULTRAS SUBDIVISION SAID POINT ALSO BEING THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF THE 16.00 FOOT ALLEY AND THE SOUTH RIGHT-OF-WAY LINE OF SAID U STREET; THENCE N1°55'13"W, A DISTANCE OF 20.00 FEET; THENCE N88°04'02"E, A DISTANCE OF 141.88 FEET; THENCE S1°55'23"E, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 2,837 SQUARE FEET, OR 0.065 ACRES MORE OR LESS.



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- O.T. OPEN TOP PIPE
- P.T. PINCH TOP PIPE



1 inch = 40 ft.

SCHEMMER
Design with Purpose. Build with Confidence.

**PETITION TO VACATE PUBLIC WAY
with
RELEASE AND WAIVER OF RIGHTS AND TITLE,
AND QUITCLAIM DEED TO CITY OF LINCOLN**

TO THE HONORABLE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

The undersigned property owner(s) hereby petition you to vacate the following street, alley, or other public way, commonly known as: *(i.e.: Elm Street from 1st to 2nd St. or East-west alley, from the north line of 1st St. to the south line of 2nd St.)*

~~"The south 15 feet of the U Street right of way between the east line of N. 25th Street and the west line of the North-South alley between N. 25th Street and N. 26th Street from T Street to U Street and immediately adjacent to Lot A, Cultras Subdivision."~~

in the CITY OF LINCOLN, NEBRASKA, with the City reserving in said street, alley, or other public way such title, rights, easements, and privileges as it may deem necessary. In consideration of the vacation of the above-described street, alley, or other public way, we, and each of us, for ourselves, our heirs, personal representatives, successors, and assigns, hereby waive and release any and all claims, causes of action, rights of access, and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of such vacation; and hereby quitclaim unto the City of Lincoln, Nebraska, and to its successors and assigns forever, all right, title, interest, estate, and demand, both at law and in equity, in and to all of said street, alley, or other public way.

TO HAVE AND TO HOLD the above-described street, alley, or other public way together with all tenements, hereditaments, and appurtenances thereto belonging unto the City of Lincoln, Nebraska, and to its successors and assigns forever.

The undersigned hereby represent(s) that he, she, they, or it is(are) the owner(s) of the following described property in Lincoln, Lancaster County, Nebraska, abutting on said street, alley, or other public way: *(Legal description from deed or abstract NOT street address, i.e. Lot 10, Block 500 Boardwalk Addition NOT 4500 Park Place Blvd.)*

Cultas Subdivision lot A

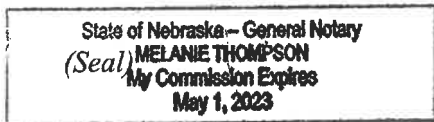
DATED this 11 day of January, 2023

Lois Leopoldt

**(ALL TITLEHOLDERS OF THE REAL ESTATE DESCRIBED ON THE PRECEDING PAGE
MUST SIGN THIS PETITION BEFORE A NOTARY PUBLIC)**

STATE OF Nebraska)
) ss.
Lancaster COUNTY)

The foregoing instrument was acknowledged before me on this 11th day of January,
2023, by Lois Leopoldt, single
(Please indicate name(s) and marital status of person(s) signing)



Melanie Thompson
Notary Public

STATE OF _____)
) ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me on this _____ day of _____,
20____, by _____
(Please indicate name(s) and marital status of person(s) signing)

(Seal)

Notary Public

SIGNATURE PAGE FOR INDIVIDUAL(S)

**PETITION TO VACATE PUBLIC WAY
with
RELEASE AND WAIVER OF RIGHTS AND TITLE,
AND QUITCLAIM DEED TO CITY OF LINCOLN**

TO THE HONORABLE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

The undersigned property owner(s) hereby petition you to vacate the following street, alley, or other public way, commonly known as: *(i.e.: Elm Street from 1st to 2nd St. or East-west alley, from the north line of 1st St. to the south line of 2nd St.)*

~~"The south 15 feet of the U Street right of way between the west line of N. 26th Street and the east line of the North-South alley between N. 25th Street and N. 26th Street from T Street to U Street and immediately adjacent to Lot A, Schaefers & Cultras Subdivision."~~

in the CITY OF LINCOLN, NEBRASKA, with the City reserving in said street, alley, or other public way such title, rights, easements, and privileges as it may deem necessary. In consideration of the vacation of the above-described street, alley, or other public way, we, and each of us, for ourselves, our heirs, personal representatives, successors, and assigns, hereby waive and release any and all claims, causes of action, rights of access, and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of such vacation; and hereby quitclaim unto the City of Lincoln, Nebraska, and to its successors and assigns forever, all right, title, interest, estate, and demand, both at law and in equity, in and to all of said street, alley, or other public way.

TO HAVE AND TO HOLD the above-described street, alley, or other public way together with all tenements, hereditaments, and appurtenances thereto belonging unto the City of Lincoln, Nebraska, and to its successors and assigns forever.

The undersigned hereby represent(s) that he, she, they, or it is(are) the owner(s) of the following described property in Lincoln, Lancaster County, Nebraska, abutting on said street, alley, or other public way: *(Legal description from deed or abstract NOT street address, i.e. Lot 10, Block 500 Boardwalk Addition NOT 4500 Park Place Blvd.)*

Schaefers & Cultras Subdivision lot A

DATED this 6 day of January, 2023

Katherine L. Walter

Timothy R. Rime

**(ALL TITLEHOLDERS OF THE REAL ESTATE DESCRIBED ON THE PRECEDING PAGE
MUST SIGN THIS PETITION BEFORE A NOTARY PUBLIC)**

STATE OF Nebraska)
) ss.
Lancaster COUNTY)

The foregoing instrument was acknowledged before me on this 6 day of January,
2023, by Katherine L. Walter, married
(Please indicate name(s) and marital status of person(s) signing)

(Seal)

Melanie Thompson
Notary Public

STATE OF Nebraska)
) ss.
Lancaster COUNTY)

The foregoing instrument was acknowledged before me on this 6 day of January,
2023, by Timothy R. Rime, married
(Please indicate name(s) and marital status of person(s) signing)



Melanie Thompson
Notary Public

SIGNATURE PAGE FOR INDIVIDUAL(S)



December 13, 2022

David Cary
Director of Planning
City of Lincoln
555 South 10th Street, Suite 213
Lincoln, NE 68508

Re: Submittal for NeighborWorks
Hawley Corners

Dear Mr. Cary::

On behalf of NeighborWorks Lincoln, I am pleased to submit the application and supporting documents for an affordable housing development at the southwest corner of N 26th Street and U Street (Hawley Corners) in Lincoln.

To develop this site, the following steps are going to be required:

1. Vacation of Public Ways
2. Community Unit Plan

We enclose the following:

1. The signed City Application Form
2. Vacation of Public Ways Petition
3. Survey with Metes & Bounds of vacation area
4. An application letter stating general summary, location, and details of the request
5. A check in the amount of \$221.00
6. Project Documents will be uploaded to the City of Lincoln's ProjectDox portal when a project has been assigned a project number.

Please submit all questions and comments to my attention at rduvall@schemmer.com or by phone at 402-431-6369.

Sincerely,

THE SCHEMMER ASSOCIATES INC.

Robert DuVall, P.E.
Team Leader, Civil Engineering – Private Sector
Shareholder

PHONE 402.493.4800
FAX 402.493.7951

1044 North 115th Street, Suite 300
Omaha, Nebraska 68154-4436

SCHEMMER.COM

LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT

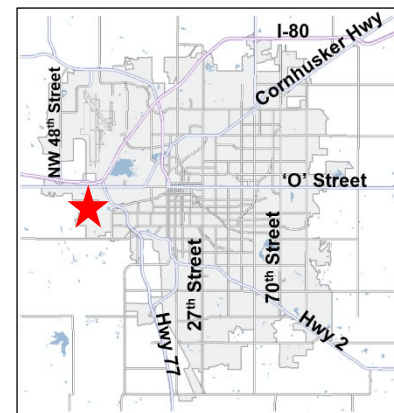
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Miscellaneous #22014	FINAL ACTION? No	DEVELOPER/OWNER MAK Development LLC
PLANNING COMMISSION HEARING DATE January 25, 2023	RELATED APPLICATIONS None	PROPERTY ADDRESS/LOCATION 2648 Washington Street

RECOMMENDATION: Finding of compliance with requirements of Fair Housing Act with conditions

BRIEF SUMMARY OF REQUEST

A request for reasonable accommodation under Chapter 1.28 of the Lincoln Municipal Code, the Nebraska Fair Housing Act (Neb. Rev. Stat. 20-301 etc.) and the Federal Fair Housing Act (FHA) (Title VIII of the Civil Rights Act of 1968, as amended) to make an accommodation to the definition of family as provided in Chapter 27.02.070 to include up to 12 unrelated individuals with disabilities to reside in the dwelling known as the Michael House at 2648 Washington. If approved, the accommodation will allow 12 individuals with disabilities, including a live-in manager with a disability, to reside in a single family dwelling. If the accommodation were not approved, the current use with 12 persons could be defined as a group home which is a conditional use. However, this location doesn't meet the conditions for a group home per Chapter 27.62.050 (b).



JUSTIFICATION FOR RECOMMENDATION

The FHA requires City make reasonable accommodations to the zoning code when the requested accommodation will ensure equal opportunity to individuals with disabilities to live in the neighborhood they choose. Requests for accommodation are not reasonable when the accommodation imposes on the City an undue financial or administrative burden. The applicant has demonstrated it is entitled to a reasonable accommodation under the FHA and the City has not, at this time, identified evidence that the accommodation is unreasonable.

APPLICATION CONTACT

MAK Development LLC doing business as
the "Michael House"
6607 Maple Street
Omaha, NE 68104
402-830-1175

Ryan Watson
Wagner, Meehan, & Watson, LLP
11515 S. 39th St., Ste 202
Bellevue, NE 68123
(402)592-2800

STAFF CONTACT

Stephen Henrichsen, (402) 441-6374
shenrichsen@lincoln.ne.gov

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan encourages a variety of housing types within a neighborhood. In order to ensure a mix of housing types, but with compatible within a neighborhood, the zoning ordinance establishes conditions and requirements for different housing types such as group homes or transitional living facilities. This request would make an accommodation to those regulations to permit this use to be treated as a family.

KEY QUOTES FROM THE 2050 COMPREHENSIVE PLAN

Goals Section

G1: Safe, Affordable, and Accessible Housing. Lincoln and Lancaster County will support the development of safe, affordable, and accessible quality housing that meets the diverse needs of the community. PlanForward understands the ongoing need for affordable housing and supports development of 5,000 affordable units by the year 2030.

G2: Complete Neighborhoods. Lincoln and Lancaster County will support complete neighborhoods within both developing and redeveloping areas of Lincoln. A complete neighborhood is one where residents are able to get the goods and services to meet daily needs within 15 minutes of their residence including a variety of housing options, grocery stores and other commercial services, quality public schools, public open spaces and recreational facilities, affordable active transportation options, and civic amenities. Housing variety should include townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and even small lot single-family.

Figure E1.b: Strategies for Design, Sustainability and Complete Neighborhoods in Existing Areas

1. Encourage a mix of compatible land uses to develop more complete neighborhoods:
 - a. Similar uses on the same block face: residential faces residential.
 - b. Similar housing densities developed near each other: single-family and “missing middle” residential (3-12 units) scattered throughout with higher density residential (more than 12 units) near the neighborhood edge or clustered near commercial centers.
 - c. Non-residential uses, including parking lots, should be screened from residential areas.
 - d. Locate mixed-use centers so as residents can safely access essential goods and services (i.e. not located across arterial streets) and no more than a 15-minute walk from all residences.
 - e. Support existing Commercial Centers and encourage inclusion of essential goods and services.
 - f. Infill and redevelopment projects should meet or exceed Neighborhood or Commercial Design Standards.

Existing Neighborhoods

The diversity of architecture, housing types and sizes are central to what make existing neighborhoods great places to live. New construction should continue the architectural variety, but in a manner that is sensitive to the existing neighborhoods.

Infill and redevelopment is supported and must respect the street pattern, block sizes, and development standards of the area, such as parking at the rear and porches, windows, and doors on the front street side.

The City’s primary strategy for residential infill and redevelopment outside of the Greater Downtown is to encourage the redevelopment and reuse of sites and buildings in commercial areas in order to create new mixed use centers that are compatible and complementary to adjacent neighborhoods.

Modest opportunities for redevelopment may also be appropriate along “neighborhood edges.” Neighborhood edges include arterial streets and transition zones between lower density residential and commercial areas.

Policies Section

P1: Housing Affordability - Make available a safe residential dwelling for all residents.

Action Steps

1. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated and Annual Action Plans and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
2. Distribute and preserve affordable housing throughout the community to be near job opportunities and public

transit and to provide housing choices within existing and developing neighborhoods.

3. Encourage public/private partnerships with housing entities such as Lincoln Housing Authority, Affordable Housing Initiatives, Habitat for Humanity, and NeighborWorks Lincoln.
4. Provide for more education of the public about affordable housing and code enforcement.
5. Promote the preservation, maintenance and renovation of existing housing and neighborhoods throughout the city, with special emphasis on low and moderate income neighborhoods.
6. Preserve the existing affordable housing stock, increase the supply of affordable owner and renter units, and add more variety in housing types.

P2: Existing Neighborhoods - Continue our commitment to strong, diverse, and complete neighborhoods.

Action Steps

1. Promote the preservation, maintenance, and renovation of existing housing and supporting neighborhood uses throughout the City, with special emphasis on low and moderate income neighborhoods.
3. Encourage well-designed and appropriately placed density, including within existing apartment and group living complexes and in redeveloping commercial or industrial centers, where there is land available for additional buildings or expansions. Provide flexibility to the marketplace in siting future residential development locations. This includes appropriately placed infill in prioritized Nodes and Corridors, neighborhood edges, and underutilized commercial or industrial sites.
4. Recognize that broad economic diversity within existing neighborhoods encourages reinvestment and improves quality of life for all residents while acknowledging the need for affordable housing.
5. Preserve, protect and promote the character and unique features of urban neighborhoods, including their historical and architectural elements.
6. Promote the continued use of residential dwellings and all types of buildings, to maintain the character of neighborhoods and to preserve portions of our past. Building code requirements for the rehabilitation of existing buildings should protect the safety of building occupants, while recognizing the need for flexibility that comes with rehabilitating existing buildings.
7. Implement the housing and neighborhood strategies as embodied in the Affordable Housing Coordinated Action Plan, City of Lincoln Consolidated, Annual Action Plans, and subsequent housing and neighborhood plans. These plans provide the core for affordable housing and neighborhood preservation actions for public and private agencies.
8. Retain and encourage a mix of housing in existing and new neighborhoods in order to provide a mix of housing types at a variety of price points.
11. Encourage public and private investment in neighborhood infrastructure and services to support economic diversity that improves the quality of life for all residents.
12. Balance expanding housing options and neighborhood character. Infill development should include housing for a variety of incomes and households and should complement the character of the existing neighborhood by including appropriate transitions, scale, and context.
13. Preserve areas designated for multi-family and group living housing in approved plans to support a distributed choice in affordable housing.
20. Examine current residential zoning districts and propose modifications to encourage 'missing middle' units (single-family attached, cottage courts, townhomes, live-work, and a variety of three- and four-plex configurations), including affordable units, to people with a range of incomes. Neighborhood edges in particular present an opportunity for missing middle housing.
21. Encourage a variety of housing types including townhomes, senior living facilities, low/no maintenance condominiums, accessory dwelling units, multi-family development, and small lot single-family units.

FACTS, LAW, AND ANALYSIS

1. This is a request for the Michael House at 2648 Washington. This is a single family detached house zoned R-2 Residential. The applicant is seeking an accommodation to the definition of "family" to include up to 12 residents with disabilities at this location with a live-in manager who also has a disability. The stated mission for the residents of the Michael House is "To provide a structured program to allow you to succeed in sobriety allowing you to be more financially independent, self-sufficient and excel in your next phase in life."
2. MAK Development LLC purchased this house in June 2022. The Assessor's Office lists this house as four bedrooms and two bathrooms, with 2,162 square feet of living space on the first and second level, 323 square feet in a third floor

space and 1,371 square feet in the basement. A notice was issued to the property owner on August 9, 2022 for failure to comply with zoning and other building code violations. The letter from Building & Safety is attached to the applicant exhibits.

3. The applicant's position appears in the attached application materials and letter from legal counsel.

4. The Lincoln Municipal Code (LMC) defines in 27.02.070 (F) a family as:

'Family One or more persons immediately related by blood, marriage, or adoption and living as a single housekeeping unit in a dwelling shall constitute a family. A family may include, in addition, not more than two persons who are unrelated for the purpose of this title. The following persons shall be considered related for the purpose of this title:

- a. A person residing with a family for the purpose of adoption;
- b. Not more than six persons under nineteen years of age, residing in a foster home licensed or approved by the State of Nebraska;
- c. Not more than four persons nineteen years of age or older residing with a family for the purpose of receiving foster care licensed or approved by the state or its delegate;
- d. Any person who is living with a family at the direction of a court."

5. Under the FHA, it is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability. 42 U.S.C. § 3604(f)(1).

The FHA defines a person with a disability as any 1) individual with a physical or mental impairment that substantially limits one or more major life activities; 2) individual with a record of such impairment; or 3) individual who is regarded as having such an impairment. 42 U.S.C. § 3602(h).

6. It is well established that individuals recovering from drug or alcohol addiction are disabled under the FHA. *United States v. Southern Management Corp.*, 955 F.2d 914, 917–23 (4th Cir.1992); *Elliott v. City of Athens*, 960 F.2d 975, 977 n. 2 (11th Cir.1992), cert. denied, 506 U.S. 940, 113 S.Ct. 376, 121 L.Ed.2d 287 (1972); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F.Supp. 450, 458–60 (D.N.J.1992); *United States v. Borough of Audubon*, NJ, 797 F.Supp. 353, 358–59 (D.N.J.1991).

7. The FHA requires Cities make reasonable accommodations to rules, policies, laws, and practices to afford people with disabilities and equal opportunity to live in a dwelling. 42 U.S.C. § 3604(f)(3)(B)

8. LMC 27.02.050 (D) then defines a disability as:

"Disability or handicap shall mean, with respect to a person:

- a. A physical or mental impairment which substantially limits one or more of such person's major life activities;
- b. A record of having such an impairment; or
- c. Being regarded as having such an impairment."

Disability shall not include current, illegal use of or addiction to a controlled substance as defined by state law.

9. If the reasonable accommodation request were denied, then when more than three unrelated persons live together, one residential option is a group home. This is defined in 27.02.080 (G) as:

"Group Home Group home shall mean a building or structure licensed or approved by the State or an appropriate agency, if required, used as any one of the following:

- a. A facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care;

- b. A facility engaged in the service of exercising 24-hour daily care, supervision, custody, or control over more than three but less than sixteen children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home.”

10. Group Homes are allowed in residential zoning districts as a conditional use. LMC 27.62.050 (b) states:

“Group homes are allowed in the AG, AGR, R-T and all residential zoning districts under the following conditions:

1. Such use shall be permitted only so long as the facility continues to be validly licensed by the State of Nebraska.
2. The distance between the proposed use and any existing group home measured from lot line to lot line is not less than:
 - i. One-half mile in the AG, AGR, R-1, R-2, R-3 and R-T zoning districts;
 - ii. 1,200 feet in the R-4, R-5, R-6, R-7 and R-8 zoning districts.”

11. In the case of 2648 Washington, it does not meet the spacing requirement of the R-2 Zoning district as two group homes are within 2,600 feet. So, this option is not available. It is unknown whether the residents at 2648 Washington Street are engaged in therapy or counseling, a component of the “group home” definition under LMC 27.02.080, The applicant has not met with staff to see if there are any other options. Their request is for reasonable accommodation to the family definition.

12. The property has a two stall garage with driveway access to S 27th Street. The two stalls appear to be over 20 feet from the S 27th Street right-of-way which would provide opportunity for two more stalls in the driveway. These stalls are difficult to use due to the heavy traffic on S 27th Street and the need to back out of the driveway into traffic with limited visibility. However, the parking area meets the zoning requirement for two parking stalls per single family dwelling unit in the R-2 zoning district. Since the parking is difficult to use, most parking will likely be accommodated on Washington Street.

Reasonable Accommodation Process & Findings

13. The Lincoln Municipal Code in Chapter 1.28.020 provides the process for a person with a disability, or entity on their behalf, to request the City Council make reasonable accommodations to laws such a building codes, fire or safety codes, or zoning code to allow those individuals with disabilities to enjoy equal opportunity to use of a dwelling. The Planning Commission is the “Reviewing Authority” for reasonable accommodation requests involving the zoning code. The Commission must hold a public hearing on the request and make a recommendation to City Council.

1.28.020 Applicability.

“A request for reasonable accommodation may be made by any person with a disability or handicap, as defined in the Acts, or by an entity acting on behalf of a person or persons with disabilities or handicaps to provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. The provisions of this chapter do not apply to the City’s Bureau of Fire Prevention’s application of any code or regulation adopted by the State Fire Marshal pursuant to its delegated authority from the State Fire Marshal. As defined in the Acts, a person with a disability or handicap is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment.

A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive

services or participate in programs or activities provided by the City. Requests for reasonable accommodation shall be made in the manner prescribed by Section [1.28.030](#).”.

14. The history of prior reasonable accommodation requests is summarized below. In 2022 three requests for accommodation from the definition of family were approved for 9 to 14 persons at three different locations. Prior to 2022, in 2005 there were three requests which were withdrawn, three were denied and only one was approved. Enactment of Section 1.28 was spurred by federal litigation and denial of certain of the 2005 requests resulted in an adverse federal court judgment against the City.
15. Chapter 1.28 provides 8 factors for the City Council to consider when evaluating a request for reasonable accommodation. The Planning Commission role is to make a recommendation on these findings. This report will review each factor with commentary in *italics*.

1.28.050 Decision.

“Upon receiving the report from the Reviewing Authority or upon failure of the Reviewing Authority to timely submit its report, the City Council after public hearing shall take final action upon the application and may grant, grant with modifications, or deny the request for reasonable accommodation consistent with the Acts and based upon the following findings:

1. Whether the housing which is the subject of the request will be used by an individual or a group of individuals considered disabled or handicapped under the Acts.
The residents of the house are disabled under the FHA because they are in recovery from addiction to alcohol or other substances.
2. Whether the accommodation requested is financially, therapeutically, or otherwise necessary to make specific housing available to the individual or group of individuals with a disability or handicap under the Acts.
The applicant describes the necessity of communal sober living in their application materials.
3. Whether there are alternative reasonable accommodations available that would provide an equivalent level of benefit.
City staff, at this time, has not explored whether there is an alternative reasonable accommodation available that would provide an equal level of benefit.
4. Whether alternative accommodations would be suitable based on the circumstances of this particular case.
The reasonable accommodation request identifies the circumstances and necessity of the accommodation under the circumstances. City staff have not explored whether an alternative accommodation would be suitable.
5. If applicable, whether the requested reasonable accommodation would be consistent with the Comprehensive Plan land use designation of the property which is the subject of the reasonable accommodation request, and with the general purpose and intent of the zoning district in which the use is located.
The Comprehensive Plan designates this area as Urban Residential. The Comprehensive Plan encourages a variety of housing types in neighborhoods. This specific request wouldn't be contrary to the Plan.

6. Whether the requested reasonable accommodation substantially affects the physical attributes of the property.

No changes are proposed, but the approval doesn't limit the owner to making changes to alter the house in the future. The house at 2648 Washington has four bedrooms and two bathrooms. It is 2+ story house with a total of 2,162 square feet on the first and second level, 323 square feet in the third floor and 1,371 square feet in the basement. No information was provided on how 12 people would be accommodated in a four bedroom house. In a follow up email, the applicant stated that each person wouldn't necessarily have their own room, although some would have their own room. The Building and Safety Department advises that 12-person occupancy would not exceed building code maximum occupancy based on floor area for the dwelling.

7. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City.

City has identified no financial or administrative hardship resulting from this particular accommodation. Activity at this address was reviewed by the Lincoln Police Department. They had no concerns. They noted there have been five calls for service to this address since July 1, 2022. They noted the calls were not unusual or concerning to them.

8. Whether the requested reasonable accommodation would require a fundamental alteration to the zoning, building, fire, or safety codes of the City.

Although a proliferation of communal living dwellings in a concentrated area may result in a fundamental alteration to certain residential zones, this accommodation, on its own, will not.

"In granting a request for reasonable accommodation, the City may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would be consistent with the Acts and the findings required above."

Conclusion:

Applicant is entitled, under Lincoln Municipal Code and the Federal Fair Housing Act to make application to City of Lincoln for a reasonable accommodation to the definition of "family" under LMC Title 27 to allow up to 12 unrelated individuals with a disability, to include a manager with a disability, to reside as a family at 2648 Washington Street. Applicant has demonstrated individuals residing at 2648 Washington Street are disabled under the FHA. Applicant asserts that the accommodation is financially and therapeutically necessary. Unless City can demonstrate an undue financial or administrative burden or a fundamental alteration of the zoning code resulting from the reasonable accommodation requested, the request should be approved.

EXISTING LAND USE & ZONING: Single family detached house and R-2 Residential zoning

SURROUNDING LAND USE & ZONING

North: Single family dwelling units	R-5
South: Single family dwelling units	R-2
East: Single family dwelling units	R-2
West: Single family dwelling units	R-2

REASONABLE ACCOMMODATION APPLICATION HISTORY (does not include any legal cases or determinations)

Application Number	Action Date	Council Action	Location	Applicant	Staff Recomm.	PC Recomm.	Planning Dept. Notes
MISC05011	N/A	N/A	3912 S. 20 th Street	Developmental Services of Nebraska	Withdrawn	N/A	Request to allow 4 residents with developmental disabilities in a residential home.
MISC05012	8/19/05	Approved (CC)	4000 Lindsey Circle	Developmental Services of Nebraska	Not noted	Planning Commission Recommended Approval	Allow 4 residents with developmentally disabilities under a group home not meeting the spacing.
MISC05013	N/A	N/A	2440 SW 18 th Street	Developmental Services of Nebraska	Withdrawn	N/A	Allow 4 residents with developmental disabilities in a residential home.
MISC05017	11/14/05	Denied 5-2	424 N. Coddington Avenue	Developmental Services of Nebraska	Conditional Approval	Denial - found applicant had not sufficiently demonstrated financial and therapeutic necessity and recommended denial.	Staff recommended withdrawing neighboring application to allow spacing and application to be met as a group home.
MISC05018	11/14/05	Denied	1661 Timber Ridge Road	Developmental Services of Nebraska	Approval	Denial - found applicant had not sufficiently demonstrated financial and therapeutic necessity and recommended denial.	Allow 4 residents with developmental disabilities in a residential home.
MISC05019	11/14/05	Denied	5516 Hunts Drive	Developmental Services of Nebraska	Approval	Denial	Same circumstances as MISC05018.
MISC05020	N/A	Withdrawn	416 N. Coddington Avenue	Developmental Services of Nebraska	Conditional Approval	N/A	Same circumstances as prior two applications. Withdrawn by the applicant at PC hearing.
MISC22008	7/18/22	Approved	315 N 35 th Street	MAK Development	Conditional Approval	Conditional Approval	Allow up to 9 unrelated persons with disabilities to be

Application Number	Action Date	Council Action	Location	Applicant	Staff Recomm.	PC Recomm.	Planning Dept. Notes
							a "family."
MISC22009	7/18/22	Approved	5203 Walker Ave	MAK Development	Conditional Approval	Conditional Approval	Allow up to 9 unrelated persons with disabilities to be a "family."
MISC22010	8/22/22	Approved	1923 B Street	Oxford House Inc.	Conditional Approval	Conditional Approval	Allow up to 14 unrelated persons with disabilities to be a "family."

APPROXIMATE LAND AREA: 6,362 square feet, (approximately 43 feet by 150 feet after land acquired for S 27th Street right-of-way)

LEGAL DESCRIPTION: Remaining portion of Lot 16, Block 1, Woods Bros and Kelly's Park Addition Lincoln, Nebraska

Prepared by

Stephen Henrichsen, Development Review Manager

Date: January 12, 2023

Applicant/

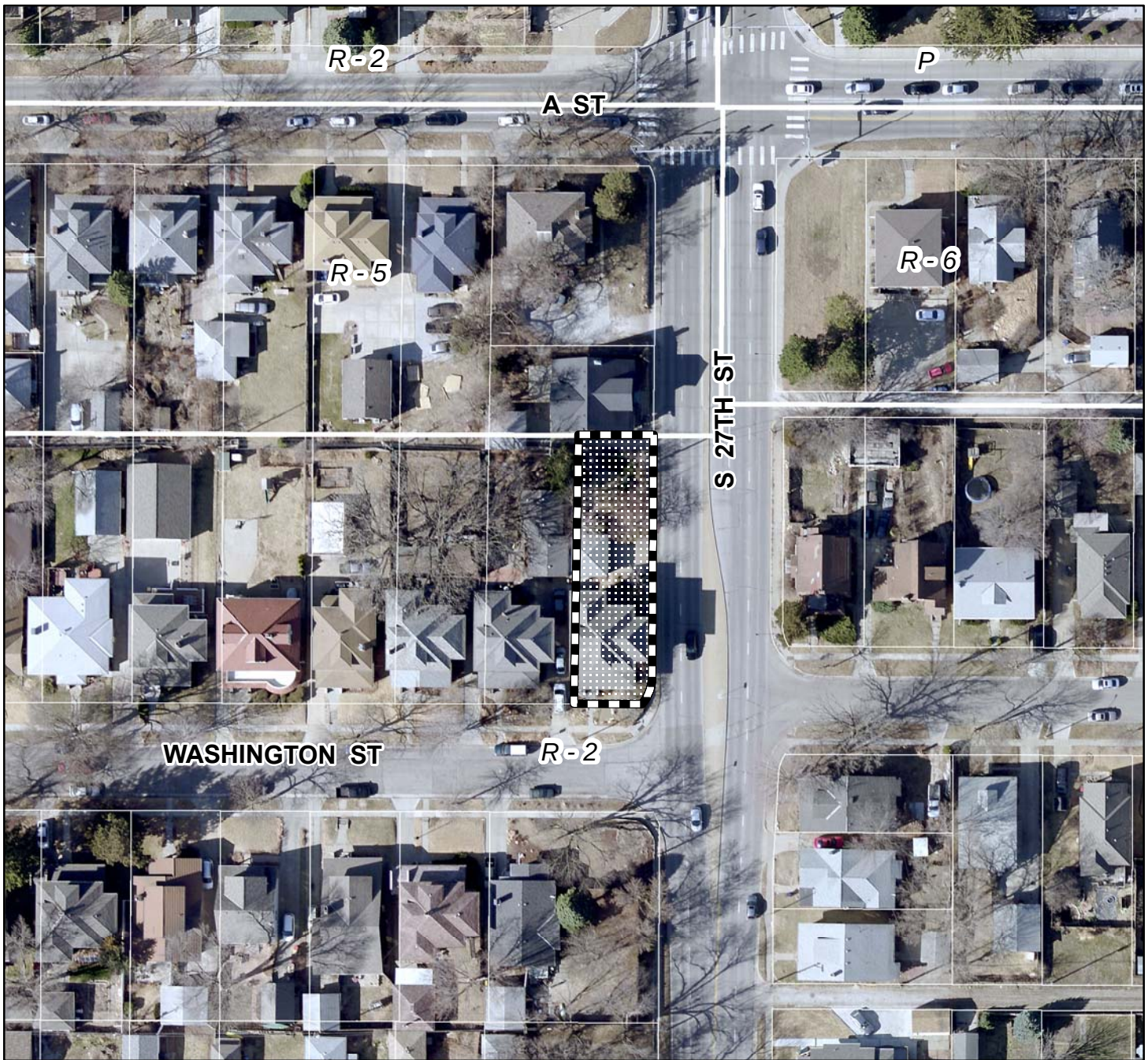
Contact: Michael Corrodo
Ryan Watson

Owner: MAK Development LLC
6607 Maple Street
Omaha, NE 68104

**FINDING OF COMPLIANCE WITH REQUIREMENTS OF FAIR HOUSING ACT WITH CONDITIONS -
MISCELLANEOUS #22014**

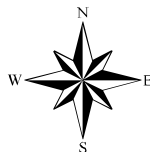
Per the Fair Housing Act, the City agrees to permit Michael House to have up to twelve unrelated persons to reside as a single family provided that all residents have a disability and operate under the provisions of Michael House. The Michael House approval is subject to the following conditions:

- a. Applicant shall notify Planning Director if dwelling ceases to be used as sober-living home where, at all times, all residents are in recovery from alcohol or other substance abuse.
- b. Reasonable accommodation is granted only to 2648 Washington Street, and only to MAK Development, LLC operating as "Michael House." Reasonable accommodation is granted only as to this address and this operator for the purposes of sober-living, is not transferable, and does not run with the land.



2022 aerial

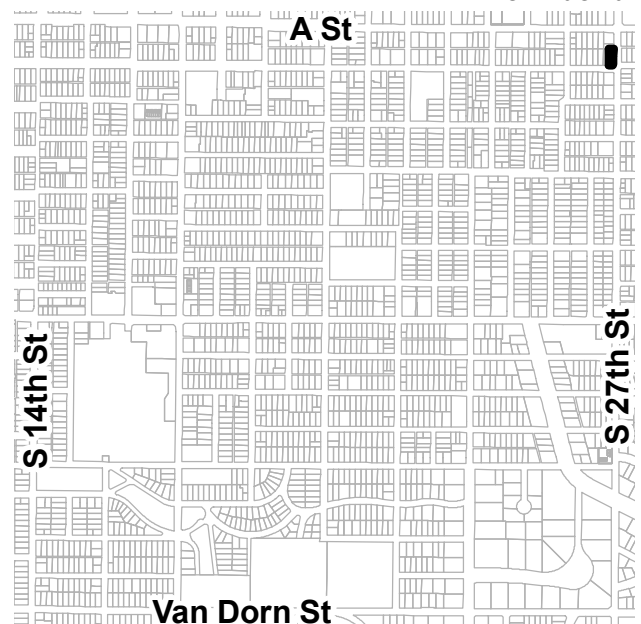
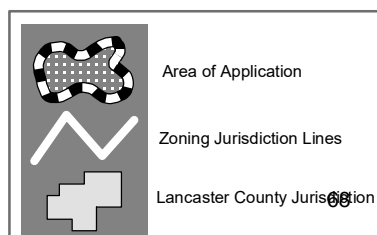
Miscellaneous #: MISC22014 S 27th St & Washington St



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.36 T10N R06E



REQUEST FOR REASONABLE ACCOMMODATION TO HOUSING

per Lincoln Municipal Code Chapter 1.28, The Rehabilitation Act,
The Americans with Disabilities Act, the Federal Fair Housing Amendments Act
& The Nebraska Fair Housing Act

Purpose:

To provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs or activities provided by the City.

RETURN APPLICATION TO: City Clerk's Office, 555 S. 10th St., Suite 103, Lincoln NE 68508.

Questions Contact: Sony Phan, 402-441-7347, sphan@lincoln.ne.gov

APPLICANT			
NAME:	MAK Development, LLC dba Michael House		
STREET ADDRESS:	6607 Maple Street		
CITY:	Omaha	STATE:	NE ZIP: 68104
EMAIL ADDRESS:	mjc.michaelhouse@gmail.com		PHONE #: 402-830-1175

PROPERTY REQUEST IS BEING MADE FOR	
STREET ADDRESS:	2648 Washington St.
LEGAL DESCRIPTION:	WOODS BROS AND KELLYS PARK ADDITION, BLOCK 1, Lot 16
ASSESSOR'S PARCEL #:	10-36-205-018-000

CURRENT ACTUAL USE OF THE PROPERTY
It is currently operating as home for those seeking a sober living environment.

LAW, PROVISION, REGULATION OR POLICY FROM WHICH REASONABLE ACCOMMODATION IS BEING REQUESTED:
LMC 27.02.070
FILED

DEC 22 2022

CITY CLERK'S OFFICE

ATTACHMENTS

The following items *must* be ATTACHED to the application. Please put a Check (✓) mark next to those items you have attached.

ITEM	ATTACHED
A statement from the applicant describing the basis for the claim that the individual (or group of individuals, if application is made by an entity acting on behalf of a person or persons with disabilities or handicaps) is considered disabled or handicapped under the Acts.	X
A statement as to why the requested accommodation is financially, therapeutically, or otherwise necessary to afford a handicapped or disabled person equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs provided by the City.	X
Documentation supporting the financial, therapeutic, or other necessity for the accommodation.	X

Dated this 15th day of December, 2022.

Michael Corrado

Printed Name of Applicant



Signature of Applicant

NOTE:

Upon the filing of the application, together with all information required above, the City Council shall refer a request for reasonable accommodation from a zoning law or other land use regulation policy or practice to the Planning Commission. If the request is for reasonable accommodation from a building code, fire code, or safety code, the City Council shall refer the request to the Board of Appeals established under said code to hear appeals of orders, decisions, determinations, made by the code official relative to the application or interpretation of such code. The Planning Commission or such Board of Appeals are hereinafter referred to in this chapter as the Reviewing Authority.



**WAGNER MEEHAN
& WATSON, LLP**

Jeffrey A. Wagner, PC LLO
Liam K. Meehan, PC LLO*
Ryan P. Watson, PC LLO
Nicholas A. Gibson

*Also admitted in Iowa

11515 S. 39th St., Ste. 202, Bellevue, Nebraska 68123 | P. 402.592.2800 | F. 402.592.9869

December 15, 2022

City of Lincoln
City Clerk
555 S. 10th St., Suite 103
Lincoln, NE 68508

RE: MAK Development, LLC Reasonable Accommodation Request:
2648 Washington St., Lincoln, NE 68502

Statements for Purposes of MAK Development, LLC's ("MAK") Reasonable
Accommodation Request:

The property at 2648 Washington St. is occupied by approximately 8-12 persons who are seeking a mutually beneficial sober living environment. We do have residents who are on probation because they are often ordered to refrain from drugs and alcohol and refrain from associating with those who are actively using. None of the residents are ordered to reside with us in lieu of incarceration. The property is zoned as R2 residential. Each resident has their own room and then share communal living spaces, a kitchen, and bathrooms.

A Notice was issued to MAK on August 9th, 2022, regarding the property at 2648 Washington St. The letter indicted there were violation of Title 21 and 27 of the Lincoln Municipal Code ("LMC"). Specifically, the letter cited, inter alia, the following violation:

27.02.070 – Definition of Family

A follow-up inspection was conducted, and other issues cited therein were deemed resolved. The City issued another letter regarding the remaining violation above and requested action be taken for re-inspection or it would be referred to the City Prosecutor. MAK is now seeking a reasonable accommodation request to allow continued operations in compliance with the law.

Statement Describing Basis of Disability:

The Fair Housing Act prohibits a broad range of housing practices that discriminate against

individuals because of race, color, religion, sex, disability, familial status, or national origin.

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

Our residents are recovering from substance abuse, are not engaged in current illegal use, and therefore, are also considered to have a disability under the FHA. (See attached Joint Statement of the Department of Housing and Urban Development – *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, also found at <https://www.justice.gov/opa/file/912366/download>, 73, pg. 6).

Statement Describing Necessity:

Without specifically stating as much, the letter implied the dwelling was not within the definition of a single-family home. The LMC does provide a definition for “Group Home” under LMC 27.02.080 as:

“Group Home. Group home shall mean a building or structure licensed or approved by the State or an appropriate agency, if required, used as any one of the following:

- a. A facility in which more than three but less than sixteen disabled persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care;
- b. A facility engaged in the service of exercising 24-hour daily care, supervision, custody, or control over more than three but less than sixteen children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home. (Ord. 20373; August 29, 2016: prior Ord. 20372 §4; August 29, 2016: Ord. 19733 §1; June 25, 2012).

Neither of these homes fall into this category because MAK does not provide “therapy or counseling” as described in subpart “A” and while it does provide supervision, it does not house minors and does not provide supervision “normally exercised by parents in their own home” as described in subpart “B.”

Additionally, for purposes of zoning classification, it is difficult to determine whether these properties would fall under the a “Household Living Use Group” under LMC 27.06.070 or a “Group Living Use Group” under LMC 27.06.080. The characterizations suggest the property use should be classified as a “Group Living Use Group.”

Compare LMC 27.06.070 “Household Living Group Use”:

“Characteristics: The Household Living Use Group is characterized by the residential occupancy of a dwelling unit by a household living independently. Tenancy is generally arranged on a month-to-month basis, or for a longer period. Such uses include, but are not limited to, single- and two-family dwellings, townhouses, and multifamily dwellings units. Housing with paid supervision or care for residents is included under the Group Living Use Group.”

With LMC 27.06.080 “Group Living Use Group”:

“Characteristics: The Group Living Use Group is characterized by the residential occupancy of a structure by a group of people who do not meet the characteristics of Household Living. Tenancy is generally arranged on a month-to-month basis, or for a longer period. Group Living may have common eating and social areas for residents. The residents may receive any combination or duration of care, counseling, training, or treatment. Such uses include but are not limited to dwellings for members of religious orders, convalescent home, nursing home, domestic shelters, assisted living facilities, fraternities and sororities, group homes and temporary shelters for the homeless.”

Due to the shared common facilities, it would appear the best use classification would be as “Group Living.” Assuming that classification is used, LMC 27.06.080 would conditionally permit “Group homes” and specially permit “Dwellings for non-related persons.” As noted above, the classification as a “group home” would not apply. The definition of “Dwellings for Non-Related Persons” under LMC 27.02.050 limits them to “four to six persons” and would not apply. Furthermore, LMC 27.63.320 describes that

special permits may issue for “Community Unit Plans” as detailed under LMC 27.65. The general purpose for LMC 27.65 “Community Unit Plan” is to “to encourage the creative design of new living areas, as distinguished from subdivisions of standard lot sizes and standard street systems” which is not applicable with the pre-existing dwelling.

Conditional use permits for “Group Living Use Groups” specifically allow for “group homes” under LMC 27.62.050(b) however it is restricted to those facilities “validly licensed by the State of Nebraska.” The operations of MAK require no license by the State of Nebraska. It would appear this provision would not apply to MAK either. Notably, the definition for “group home” under LMC 27.02.080 includes state licensing “if required.” The “if required” language is absent under LMC 27.62.050(b). There does not seem to be a clear spot to pigeonhole MAK’s operations for these properties.

Accommodation Request

MAK would request an accommodation for the definition of “family” found in LMC 27.02.070. We think an accommodation to ignore the language “immediately related by blood, marriage, or adoption and” from that provision would suffice to allow MAK to continue to operate the referenced properties as an R2 zoned property without unreasonable modification to its operations or property. This would allow the properties to be treated as a single-family dwelling and fall under the “Household Living Use Group” per LMC 27.06.070.

Legal Support

It is fairly settled law that addiction and alcoholism is an impairment to constitute a disability under the FHA and ADA. See *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 (2d Cir. 2002) (collecting cases). Our request seeks to avoid the strict application of “family” as requiring the persons to be “related by blood, marriage, or adoption.” Multiple federal courts have repeatedly found in favor of Plaintiffs seeking reasonable accommodations where the restrictions have hinged on the definition of “family.”

“In case after case, courts have concluded that the FHA has been violated where municipalities have attempted to prevent or restrict persons with disabilities from living in the single family-zoned homes of their choice, even when the number of residents exceeds the number of unrelated people permitted to live together under the applicable zoning ordinances.

Developmental Services of NE v. City of Lincoln, 504 F. Supp. 2d 714 - Dist. Court, D. Nebraska 2007(citing *Dr. Gertrude A. Barber Center, Inc. v. Peters Township*, 273 F.Supp.2d 643, 651 (W.D.Pa.2003))

The residents of MAK's properties are entitled to fair housing regardless of their impairment. Their needs are unique in that their impairments are minimized when residing with other mutually disadvantaged persons. MAK provides an opportunity for these persons to pool not only their financial resources, but also their willpower, to lead their lives as unobstructed as possible.

The social stigma of ostracizing these individuals into undesirable corners of the community promotes relapse. The problem of substance abuse affects all families, small and large, rich and poor, religious or agnostic. Your accommodations will serve not only our clients but also the community at large.

We thank you for your consideration.

On behalf of MAK Development, LLC,

Ryan P. Watson, NSBA #25597
ryan@wmwlegal.com

Attached:

1. Notice dated August 9th, 2022
2. Notice dated November 30th, 2022
3. *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, Joint Statement of the Department of Housing and Urban Development.
4. *Fact Sheet: Drug Addiction and Disability Laws*, U.S. Dept. of Health and Human Services, Office for Civil Rights (October 25th, 2018).

August 09, 2022

MAK DEVELOPMENT LLC
6607 MAPLE ST
OMAHA, NE 68104

RE: 2648 WASHINGTON ST
WOODS BROS AND KELLYS PARK ADDITION, BLOCK 1, Lot 16
CT220635

Dear MAK DEVELOPMENT LLC,

An inspection was made by the Housing Code Section of the DEPARTMENT OF BUILDING & SAFETY, of your property at 2648 WASHINGTON ST on August 09, 2022. This inspection was made due to a complaint.

It was found that the following Property Maintenance Code or zoning violations exist and must be corrected in order to comply with Titles 21 and 27 of the Lincoln Municipal Code. The list of violations is attached.

Since these are violations of the Lincoln Municipal Code and are required to be corrected, we will reinspect on September 08, 2022, at which time the corrections must be completed. Appropriate permits may be required for these repairs in accordance with the applicable codes enforced by this office. Failure to complete the necessary repairs by the date specified will result in the City taking legal action against the property owner.

An inspection fee of \$75.00 will be charged to you if the violations in this notice are not corrected by the completion date outlined in this letter. The inspection fee is result of the adoption of amendments by the City Council to section 21.05.120 and 5.38.040 of the Lincoln Municipal Code.

The decision of the Code Official contained herein ordering the repair may be appealed to the Housing Advisory and Appeals Board by any person having record title or legal interest in the building, provided a \$100.00 fee is paid and a written appeal is filed in the DEPARTMENT OF BUILDING & SAFETY, 555 S 10th St, (County-City Building, Room 203), Lincoln NE 68508-2803, within twenty (20) days from the date of service of this notice and order. You may obtain an appeal form from the DEPARTMENT OF BUILDING & SAFETY office or you may call 402-441-7785 to request a form be mailed to you. Failure to so appeal will constitute a waiver of all rights to an administrative hearing and determination of the matter.

Should you have any questions or to set up an inspection, please call me at (402) 441-6430 , 8:00 a.m. 4:30 p.m., Monday through Friday. If the repair work is inaccessible for re-inspection, it will be necessary for the owner or his/her agent to make an appointment for reinspection to confirm compliance.

Sincerely yours,

James Reinsch
Housing Inspector

List of Deficiencies

1. 801 Violation: More than three unrelated persons living in a single family dwelling. LMC 27.02.070.
Required Action: Reduce occupancy to no more than three unrelated people living in the single family dwelling.
2. A1. 401 Violation: Smoke alarms are missing or inoperative. IPMC Sec. 704.2 as amended by LMC Sec. 21.05.510.
Required Action: Single or multiple-station smoke alarms shall be installed and maintained in all residential occupancies:
 1. On the ceiling or wall outside of each separate sleeping area.
 2. In each room used for sleeping purposes. Exception: In groups R-2 & R-3 dwellings, smoke alarms are not required in each room used for sleeping purposes unless said room is renovated, remodeled, repaired, improved or otherwise subject to construction for any reason requiring a building permit or requiring a correction order from the code official. In the event of conflict, IBC, IRC, and IFC shall control.
 3. In each story within a dwelling unit, including basements and cellars but not crawl spaces and uninhabitable attics. In split level units a smoke alarm on the upper level is adequate if there is not a door separating the two and the lower level is less than a full story below the upper level.

ENSURE ALL BED ROOMS HAVE WORKING SMOKE DETECTORS AND ONE LOCATED OUTSIDE BED ROOMS
SMOKE DETECTOR IN BASEMENT
CO2 DETECTORS IN BASEMENT AND ONE LOCATED ON FIRST LEVEL ABOVE GAS SOURCE
3. 504 Violation: Water heater installed without a permit. IPMC Sec. 505.4
Required Action: Repair/replace. A plumbing permit must be applied for and received from this office.
4. 602 Violation: Light fixture is improperly wired or is not maintained in good condition. IPMC Sec. 604.3, 605.1.
Required Action: Repair or replace lighting fixtures.

BATHROOM LIGHT FIXTURE, REPAIR
5. 616 Violation: Every bathroom shall contain at least one receptacle. All bathroom receptacle(s) must be protected by a ground fault circuit interrupter (GFCI). IPMC Sec. 605.2 as amended by LMC 21.05.465
A licensed electrician is required to add or change the existing receptacles to be GFCI protected. This must be done to all receptacles that are located in any bathroom.



CITY ATTORNEY

555 South 10th Street, Suite 300 | Lincoln, NE 68508
402-441-7281 | F: 402-441-8812

November 30, 2022

MAK Development LLC
6607 Maple St
Omaha NE 68104

RE: Minimum Housing Code Violations - # **CT220635**
2648 Washington St

Dear Owner:

This office has been contacted by the Department of Building and Safety regarding your failure to correct *minimum housing code violations* which were brought to your attention by a written notice from Housing Inspector James Reinsch on August 9, 2022 and Chief Housing Inspector Sean Stewart on October 10, 2022. As of today's date, the violations remain uncorrected.

In order to amicably resolve this matter, this office requests that you immediately contact **Housing Inspector James Reinsch** at **441-6430** between the hours of 8:00 a.m. to 4:30 p.m. and schedule a time when a reinspection can be made to confirm the violations have been corrected. If this inspection is not arranged for and made within 15 calendar days from the date of this letter, the case will be referred to this office for review of any further action, which can include filing of a misdemeanor complaint in the County Court of Lancaster County, Nebraska, charging you with any appropriate violation(s) of the Lincoln Municipal Code.

Sincerely yours,

A handwritten signature in black ink, appearing to read "JK" or "J.K.", with a stylized flourish at the end.

Jessica Kerkhofs
Chief City Prosecutor
City Attorney's Office

Lincoln Municipal Code Title 1 General Provisions

Chapter 1.28 Reasonable Accommodation

1.28.010 Purpose.

This chapter provides a procedure to request reasonable accommodation for persons with disabilities or handicaps seeking equal access to housing under the Rehabilitation Act, the Americans With Disabilities Act, the Federal Fair Housing Amendments Act and the Nebraska Fair Housing Act (the Acts) in the application of the City of Lincoln's building codes, fire or safety codes, zoning laws, and other land use regulations, policies and procedures. (Ord. 18536 §1; May 9, 2005).

1.28.020 Applicability.

A request for reasonable accommodation may be made by any person with a disability or handicap, as defined in the Acts, or by an entity acting on behalf of a person or persons with disabilities or handicaps to provide or secure equal opportunity to use and enjoy a dwelling and/or otherwise receive services or participate in programs or activities provided by the City when the application of a City of Lincoln building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as a barrier to such equal opportunities. The provisions of this chapter do not apply to the City's Bureau of Fire Prevention's application of any code or regulation adopted by the State Fire Marshal pursuant to its delegated authority from the State Fire Marshal. As defined in the Acts, a person with a disability or handicap is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment.

A request for reasonable accommodation may include a modification or exception to rules, standards and practices when such modification or exception is necessary to eliminate regulatory barriers and provide a person with a disability or handicap with equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs or activities provided by the City. Requests for reasonable accommodation shall be made in the manner prescribed by Section 1.28.030. (Ord. 18607 §1; August 29, 2005; prior Ord. 18536 §2; May 9, 2005).

1.28.030 Application Requirements.

- a. Application. Requests for reasonable accommodation shall be submitted on an application form provided by the City Clerk, or in the form of a letter to the City Clerk, and shall contain the following information:
 1. The applicant's name, address and telephone number.
 2. The street address and legal description or Assessor's Parcel Number of the property for which the request is being made.
 3. The current actual use of the property.
 4. The law, provision, regulation or policy from which reasonable accommodation is being requested.
- b. Additional Information. The following information shall be submitted with the application:
 1. A statement from the applicant describing the basis for the claim that the individual (or group of individuals, if application is made by an entity acting on behalf of a person or persons with disabilities or handicaps) is considered disabled or handicapped under the Acts.
 2. A statement as to why the requested accommodation is financially, therapeutically, or otherwise necessary to afford a handicapped or disabled person equal opportunity to use and enjoy a dwelling and/or to otherwise receive services or participate in programs provided by the City.
 3. Documentation supporting the financial, therapeutic, or other necessity for the accommodation.

Upon the filing of the application, together with all information required above, the City Council shall refer a request for reasonable accommodation from a zoning law or other land use regulation policy or practice to the Planning Commission. If the request is for reasonable accommodation from a building code, fire code, or safety code, the City Council shall refer the request to the Board of Appeals established under said code to hear appeals of orders, decisions, determinations, made by the code official relative to the application or interpretation of such code. The Planning Commission or such Board of Appeals are hereinafter referred to in this chapter as the Reviewing Authority. (Ord. 18607 §2; August 29, 2005; prior Ord. 18536 §3; May 9, 2005).



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**



**U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION**

*Washington, D.C.
November 10, 2016*

**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

**STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION
OF THE FAIR HOUSING ACT**

INTRODUCTION

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the Federal Fair Housing Act (“the Act”),¹ which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.² The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act’s requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ’s and HUD’s Joint

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.

² The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act’s requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD’s and DOJ’s enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act (“ADA”),³ Section 504 of the Rehabilitation Act of 1973 (“Section 504”),⁴ and Title VI of the Civil Rights Act of 1964.⁵ In addition, the Joint Statement does not address a state or local government’s duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning

1. How does the Fair Housing Act apply to state and local land use and zoning?

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

³ 42 U.S.C. §12132.

⁴ 29 U.S.C. § 794.

⁵ 42 U.S.C. § 2000d.

2. What types of land use and zoning laws or practices violate the Fair Housing Act?

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the

decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the “impact” of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the “historical background” of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the “specific sequence of events,” such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the “normal procedural sequence,” such as whether a municipality deviated from normal application or zoning requirements; (5) “substantive departures,” such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the “legislative or administrative history,” such as any statements by members of the state or local decision-making body.⁶

4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*⁷ The Court stated that “[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.”⁸

⁶ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).

⁷ ___ U.S. ___, 135 S. Ct. 2507 (2015).

⁸ *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R. § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

5. Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the “housing for older persons” exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

**Questions and Answers on the Fair Housing Act and
Local Land Use and Zoning Regulation of Group Homes**

7. Who qualifies as a person with a disability under the Fair Housing Act?

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term “physical or mental impairment” includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term “major life activity” includes activities such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

8. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

9. In what ways does the Fair Housing Act apply to group homes?

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

10. What is a reasonable accommodation under the Fair Housing Act?

The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

11. Does the Fair Housing Act protect persons with disabilities who pose a “direct threat” to others?

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual’s recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual’s tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.⁹

14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?

In *Olmstead v. L.C.*,¹⁰ the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

⁹ Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

¹⁰ 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?

A “spacing” or “dispersal” requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction’s intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction’s stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors’ stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

16. Can a state or local government impose health and safety regulations on group home operators?

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

**Questions and Answers on the Fair Housing Act and
Reasonable Accommodation Requests to Local Zoning and Land Use Laws**

20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

22. What is the procedure for requesting a reasonable accommodation?

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

24. What if a local government fails to act promptly on a reasonable accommodation request?

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

**Questions and Answers on Fair Housing Act Enforcement of
Complaints Involving Land Use and Zoning**

26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

27. How can I find more information?

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.
- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* <https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0> or http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

For more information on state and local governments' obligations under Section 504:

- HUD website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504.

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, www.ADA.gov, or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* http://www.ada.gov/olmstead/q&a_olmstead.htm.
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* <http://www.hud.gov/offices/fheo/images/fhpg.pdf>.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* <http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.

FACT SHEET: DRUG ADDICTION AND FEDERAL DISABILITY RIGHTS LAWS



U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES
**OFFICE FOR
CIVIL RIGHTS**

DRUG ADDICTION AND FEDERAL DISABILITY RIGHTS LAWS

WHEN IS A DRUG ADDICTION A DISABILITY UNDER FEDERAL DISABILITY RIGHTS LAWS?

Drug addiction, including an addiction to opioids, is a disability under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Section 1557 of the Affordable Care Act, when the drug addiction substantially limits a major life activity.¹

WHEN DOES AN INDIVIDUAL WITH A DRUG ADDICTION “QUALIFY” AS AN INDIVIDUAL WITH A DISABILITY UNDER FEDERAL ANTIDISCRIMINATION LAWS?

To be protected by federal disability rights laws, an individual with a disability, must be a “qualified” individual with a disability, which means that the individual must meet the essential eligibility requirements for receipt of services or participation in a covered entity’s programs, activities, or services. Under these laws, qualified individuals with a disability may not be excluded from participation in programs and services, be denied the benefits of, or otherwise be subjected to discrimination based on the disability. In addition, covered entities are required to reasonably modify rules, policies or practices, provide appropriate auxiliary aids and services, or remove architectural and communication barriers to ensure equal opportunities for qualified individuals with disabilities.

Federal disability rights laws also protect individuals if they:

- Have successfully completed a supervised drug rehabilitation program or have otherwise been successfully rehabilitated and are not currently engaged in the illegal use of drugs;
- Are participating in a supervised drug rehabilitation program and are currently not engaged in the illegal use of drugs; or
- Are erroneously regarded as engaging in such use, but are not engaging in such use.

WHO MUST COMPLY WITH THE LAW

Any entity that receives federal financial assistance from the U.S. Department of Health and Human Services must comply with federal nondiscrimination laws. Covered entities may include, but are not limited to:

¹ Examples of major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

FACT SHEET: DRUG ADDICTION AND FEDERAL DISABILITY RIGHTS LAWS

- Substance Use Disorder Treatment Programs
- Hospitals and Health Clinics
- Pharmacies
- Contracted Service Providers
- Medical and Dental Providers
- Nursing Homes
- Child Welfare Agencies
- State Court Systems

In addition, state and local governments are prohibited from discriminating on the basis of disability.

EXCEPTION CONCERNING CURRENT ILLEGAL USE OF DRUGS

Individuals who currently engage in the “illegal use of drugs”² are specifically excluded from the definition of an individual with a disability when a covered entity takes an adverse action on the basis of that current use. However, an individual is not to be denied health services, or services provided in connection with drug rehabilitation, vocational rehabilitation programs and services, and other programs and other specific programs and services funded under the Rehabilitation Act on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

ARE INDIVIDUALS RECEIVING MEDICATION ASSISTED TREATMENT PROTECTED BY FEDERAL DISABILITY RIGHTS LAWS?

Medication Assisted Treatment (MAT) has been shown to be an effective treatment to address opioid misuse and addiction. MAT is the use of FDA-approved medications, such as buprenorphine, methadone, and naltrexone, in combination with counseling and behavioral therapies to treat an opioid use disorder or other substance use disorders. The determination of whether an individual receiving MAT is entitled federal disability rights protections is a fact-specific inquiry based on the criteria described above. However, persons receiving MAT cannot be, by virtue of that fact, excluded from protection under federal disability rights laws. Because MAT related medications are prescribed and are taken under the supervision of a licensed health care professional, MAT is not the illegal use of drugs.

FOR MORE INFORMATION

If you are interested in learning more about how federal civil rights laws protect qualified individuals with an opioid use disorder, as well as OCR’s important work on how HIPAA allows the appropriate sharing of important health information about individuals who are in crisis due to opioid addiction, visit OCR’s website at: www.hhs.gov/ocr/opioids.

For more help, information and helpful resources concerning opioid prevention, treatment and recovery, visit HHS’s opioids website at: www.hhs.gov/opioids.

DISCLAIMER: This guidance document is not a final agency action, does not legally bind persons or entities outside the Federal government, and may be rescinded or modified at the Department’s discretion. Noncompliance with any voluntary standards (e.g., recommended practices) contained in this document will not, in itself, result in any enforcement action.

October 25, 2018

² Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. It does not include use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Controlled Substances Act or other Federal law. Alcohol is not a “controlled substance,” but alcoholism is a disability if it substantially limits one or more major life activities.