



## 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 #24020

FINAL ACTION?  
No

DEVELOPER/OWNER  
William Rentschler

PLANNING COMMISSION HEARING DATE  
June 11, 2025

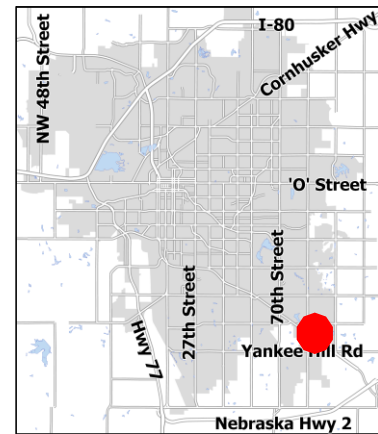
RELATED APPLICATIONS  
None

PROPERTY ADDRESS/LOCATION  
91<sup>st</sup> & Nebraska Parkway

### RECOMMENDATION: DENIAL

#### BRIEF SUMMARY OF REQUEST

This is a request for a change of zone from AG - Agricultural to H-3 - Highway Commercial. There is not a specific development proposal associated with the request, although there was an associated right-of-way (ROW) vacation request for a portion of 91<sup>st</sup> Street that is not proceeding at this time. The property is a part of the Cheney Sanitary Improvement District (SID), which provides sanitary sewer services. The applicant is desirous of preparing the site for future commercial development through this zone change request.



#### JUSTIFICATION FOR RECOMMENDATION

The property is located near the major intersection of South 91st Street and Nebraska Parkway. It is adjacent to H-3 -Highway Commercial land to the south that was rezoned from AG in 2022. The property is suited to provide a viable commercial development advancing the Comprehensive Plan upon the acquisition of ROW and adjacent lots for an assemblage. Efforts were made by the applicant to acquire the ROW and disconnect from the Cheney SID that have proved unsuccessful to date. The rezoning should only occur if this property is in conformance with the Comprehensive Plan and is accompanied with an annexation per City policies.

#### APPLICATION CONTACT

Ann Post, 404-475-5100 or  
[apost@remboltlawfirm.com](mailto:apost@remboltlawfirm.com)

#### STAFF CONTACT

Steve Dush, (402) 441-5662 or  
[sdush@lincoln.ne.gov](mailto:sdush@lincoln.ne.gov)

#### COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The Comprehensive Plan designates almost all of Cheney for Urban Residential Land uses, including the subject property. The few exceptions to this are those properties which have long-standing commercial uses. Rezoning AG-zoned property to commercial which is located outside the city limit is rare and discouraged by the Comprehensive Plan. However, being less than five acres in area, an amendment to change the land use designation on the Future Land Use Plan is not required, provided there are circumstances that justify it and the property will be within the city limits.

## **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.

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.

### **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.

New growth areas will have an average gross residential density of 4.0 du/acre.

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**

#### **Rural Housing**

New acreage development is not encouraged in any of the Growth Tiers except for areas already platted, zoned, or designated for low density residential development.

All proposals for acreages, whether designated on the future land use map for low density residential or not, should be evaluated based on factors such as paved roads, adequate water quality and quantity, soil conditions for on-site wastewater management, availability of emergency services, agricultural productivity, land parcelization, the pattern of existing acreages, and plans for future urban development. Applications for

acreage designation on the future land use map or rezoning to AGR, if planned for on-site wells, should be accompanied by information on water quality and quantity.

## 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.

### *Location Criteria*

Mixed Use Redevelopment Nodes and Corridors should be located based on the following criteria:

- In areas where there is a predominance of commercial or industrial zoning and/or development, focusing on non-residential areas.
- In proximity to planned or existing neighborhoods and community services, to facilitate access to existing community services or to address a deficiency by providing services such as grocery stores, childcare centers, and restaurants.
- Where there is existing or potential for good access to transit, to enhance the public transit system by making it accessible to residents and to facilitate the development of neighborhood multimodal hubs where residents can drive, bike, or walk to a transit stop, go to work, and then shop for their daily needs before they return home.
- On at least one arterial street to help provide for traffic and utility capacity and access to transit.
- Outside of areas with existing or potential industrial use to avoid conflicts with health and safety.
- In areas that minimize floodplain and other environmental impacts. Areas within the floodplain that already have buildings and fill are appropriate for redevelopment; projects that receive public assistance should meet a higher standard to preserve flood storage. This criterion encourages redevelopment while protecting sensitive environmental areas. Preservation or restoration of natural resources within or adjacent to mixed use redevelopment areas should be encouraged

## **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

P13: Commercial and Industrial Centers - Support high-quality commercial and industrial centers located throughout the community.

### **Action Steps**

1. Implement commercial center location and design principles as discussed in the Business & Economy element.
2. Discourage “four corner commercial development” - with commercial uses at all four corners of an

- intersection - in order to promote walkability and ease of movement within each commercial center.
- 3. Implement industrial center principles as discussed in the Business & Economy element.
- 4. Continue incentive-based 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.

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.

P29: Neighborhood Parks - Continue to develop Neighborhood Parks to serve newly developing areas of Lincoln.

#### Action Steps

- 1. Locate Neighborhood Parks close to the center of residential areas and within a 10-minute walking distance of a majority of residents; park sites should be readily accessible by pedestrians and bicyclists.
- 3. Locate Neighborhood Parks adjacent to greenway linkages where possible. Where possible, select sites for Neighborhood Parks that allow for multiple functions, such as stormwater management or habitat conservation.
- 4. As the City continues to grow and the community demographics shift, seek out opportunities to provide neighborhood park activities that address the needs of different cultures age groups, and abilities.
- 5. Locate park sites where residents living in surrounding homes, people in passing vehicles, or pedestrians can view activities in the park to provide for informal supervision.
- 6. Identify opportunities to acquire and develop Neighborhood Parks in established neighborhoods that are deficient in Neighborhood Park resources, particularly in those neighborhoods where indicators of vulnerability are higher.

### CLIMATE ACTION PLAN SPECIFICATIONS:

- p. 8 Strategic Vision - Lincoln will reduce net greenhouse gas emissions 80% by 2050 (relative to 2011 levels). This ambitious goal will serve as a guiding target for municipal operations, the Lincoln Electric System, local businesses and institutions, and our entire community in the years to come. Lincoln joins scores of cities across the country who have set a similar “80x50” goal to reduce emissions. A myriad of strategies in the plan speak to achieving this target, from increasing energy efficiency, generating more electricity from renewable energy, switching to electric vehicles and active commuting modes, and employing natural climate solutions.
- p. 11 Key Initiative - Transition to Low-Carbon Energy.
  - 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.
- p. 14 Key Initiative - Build a Decarbonized and Efficient Transportation System.

- Continue to encourage mixed-use development in the Comprehensive Plan.
- Consider Transit Oriented Development policies in the update of the Comp Plan 2050.

p. 19 Key Initiative - Improve Protections for and with Lincoln Residents

- Maintain the Community Rating System (CRS) rating that allows for a 25% reduction in flood insurance premiums for property owners in floodplains.
- Continue to encourage installation of green infrastructure strategies where appropriate, to include grants and incentives. Examples of green infrastructure strategies include rain gardens, bioswales, and permeable pavement to reduce stormwater runoff.

p. 25 Key Initiative - Maximize Natural Climate Solutions

- Continue to support prairie restoration and protection of natural resources.
- Continue to use a Rain-to-Recreation model to utilize floodplain for appropriate recreational activities.

## ANALYSIS

1. This is a request to re-zone 2.23 acres parcel located at 8200 South 91<sup>st</sup> Street from AG to H-3 zoning. The property is currently developed with a single-family dwelling, but the owner is seeking the change of zone to sell for future commercial development. There is no specific plan as a part of the application.
2. The property is in Cheney, an unincorporated development adjacent to the city limit near the intersection of South 91<sup>st</sup> Street and Nebraska Parkway. Cheney was platted in the 1870's but is not annexed into the City of Lincoln. It is located within the City's 3-Mile Extraterritorial Jurisdiction, so it is subject to Lincoln's zoning and subdivision regulations but does not receive municipal services such as police/fire protection or sewer and water service.
3. Cheney is primarily a residential development but has some commercial uses. The commercial uses are primarily located either adjacent to the railroad or along Nebraska Parkway. The main streets extending through Cheney are Breagan Road and First Street. Breagan Road parallels the railroad through much of Cheney and is a buffer between the residential and the tracks.  
  
First Street is a gravel county road from the intersection with Breagan Road to Highway 2. It bisects Cheney where the land uses south of First Street are primarily residential and the uses to the north are a mix of residential and commercial.
4. Cheney is provided sanitary sewer service by the Cheney Sanitary Improvement District (SID). The SID has collection lines throughout the development which drain to lagoons which they own located approximately one-half mile to the northeast on the other side of Nebraska Parkway and east of S 98<sup>th</sup> Street. Water service is provided by Rural Water District #1.
5. The subject tract is surrounded by a mix of zoning and uses. There is H-4, B-5 and B-2 commercial zoning districts to the northwest and northeast. To the southwest is AGR Agricultural Residential zoning and residential uses. Vacant land zoned H-3 is to the south.
6. The Comprehensive Plan discourages re-zoning to intensify land use outside the city limit due to the inefficiencies of providing services. Locating urban commercial, industrial and residential uses in Lincoln or the other incorporated cities and towns in the County helps those communities grow and maintain a sufficient tax base. It also avoids having commercial uses outside of the city to avoid Lincoln's impact fees and taxes. Thus, it places commercially zoned land in the city at a disadvantage. Annexation typically means properties can be provided the full range of municipal services with improvements built to City standards. This is one of the key components of the City's growth management policy.
7. The subject tract cannot be annexed individually at this time. Per State Statute, the City cannot annex a portion of an SID unless the property is voluntarily released from the SID. The SID has been asked by the owner to voluntarily release the tract but voted not to do so. The SID has released properties previously as was done with 8455 South 98<sup>th</sup> Street in 2020 on the north side of Highway 2. This was done at the request of the owner so that property could be annexed by the City, re-zoned and developed commercially.

8. The alternative is for the City to annex the entire SID, which is allowed under State law. However, the City has been unable to do so for numerous reasons, including Cheney cannot be served by gravity sewer service back to the city, and the sewer lines in Cheney are old and may not meet City standards. This potentially represents a significant expense and large maintenance responsibilities that would be assumed by the City upon annexation. In addition, under such a scenario the City would also be responsible to pay the Rural Water District #1 for each property annexed, an amount that would total in the hundreds of thousands of dollars. Maintenance of all the unimproved gravel streets would also be assumed.
9. While city water service may be feasible to extend to the area, it becomes a question of connecting substandard water lines and facilities to the City's system. The responsibility of who would pay for the needed upgrades is not known largely because little is known of the system in place. As noted, a bigger issue yet is sanitary sewer. Cheney sits at the top of a hill and flows into at least three drainage basins. At this time there is no city sanitary sewer into which the entire development can drain nor that has the capacity. The ability to provide gravity-flow sanitary sewer is another key component of the growth management policy and this capability does not currently exist for Cheney. Overall, the financial impact of annexation of all of Cheney would be significant to both Lincoln and potentially the homeowners involved in the conversion.
10. There are three cases in the area where the zoning was changed in recent years to allow commercial development. One is in Cheney at the intersection of First Street and Nebraska Parkway at 9520 First Street. A zoning agreement accompanied that re-zoning to H-3 Highway Commercial (CZ#12005) which limited the development to mini storage only. At the time, the SID had limited capacity and was accepting no more customers. There was a single-family dwelling on the property at the time, and the single bathroom for the mini-storage facility.
11. The second case is CZ#20035 at 8455 South 98<sup>th</sup> Street located northeast of 9520 First Street on the north side of Nebraska Parkway. This property was also within the SID and a former dwelling was served by it as well. This more recent example differs from this request in that the property could be served by sanitary sewer located in the adjacent residential development to the north. It also differs in that the property was released from the SID at the request of the owner so it could be annexed by the City. A zoning agreement (attached and labeled as Res. A-92604) was required where the owner agreed to install a turn lane in South 98<sup>th</sup> Street, restrict the allowed uses, maintain the screen along Nebraska Parkway, meet the City's drainage and water quality standards, and connect to city water and sewer and pay any fees associated with annexation to the Rural Water and Fire Districts.
12. The third case is CZ #20036 located at 8230 South 91<sup>st</sup> Street from AG to H-3. For the construction of a multi-tenant commercial building for contractor services. The application was approved with a zoning agreement requiring:
  - a. Dedicate 60' of right-of-way and then design and build a public street connection across the north edge of the property.
  - b. Locate the street in a location approved by LTU.
  - c. Build the street to County road standards.
  - d. To extend and connect to City water and sewer at such time as they become available.
  - e. Pay the contribution to the Southeast Rural Fire District #1 at the time of annexation.
  - f. Gain a release from the Rural Water District #1 and pay any fees necessary to gain the release.
13. This application was originally submitted in August of 2024 and the applicant has been working to acquire ROW from the County and obtain the release from the Cheney SID. However both attempts have been unsuccessful at this time so the applicant is advancing only the change of zone request. Additionally, the ROW acquisition has included the consideration of a City Parks planned trail under Nebraska Parkway and the construction of the underpass would necessitate property rights through an easement, ROW, or acquisition to construct the planned trail.
14. The Comprehensive Plan discourages rezoning land beyond the city limit which cannot be annexed and served by the full range of municipal services. The recommendation is for denial given the precedent it would establish for rezoning land for commercial uses beyond the city limit without access to the full range of municipal services. Should the City Council choose to approve this request it should be subject to the applicant entering into a zoning agreement with the City.

**EXISTING LAND USE & ZONING:** Single-family Residential

AG Agriculture

**SURROUNDING LAND USE & ZONING**

North: Vacant	H4 - General Commercial District
South: Residential	H3 - Heavy Commercial District
East: Vacant	AG - Agriculture District
West:	
Residential	AGR- Agricultural District
Commercial	H4 - General Commercial District

**APPROXIMATE LAND AREA:** Approximately 2.23 acres

**LEGAL DESCRIPTION:**

Lot 69 Irregular Tract and Lot 132 Irregular Tract and in the southeast quarter of Section 23, Township 9 North, Range 7 East, Lincoln, Lancaster County, generally located at 91st Street and Nebraska Parkway.

Prepared by Steve Dush, AICP  
(402) 441-5662 or [sdush@lincoln.ne.gov](mailto:sdush@lincoln.ne.gov)

Date: May 22, 2025

Applicant: Ann Post;

Owner: William & Kathleen Rentschler;

<https://linclanc.sharepoint.com/sites/PlanningDept-DevReview/Shared Documents/DevReview/CZ/24000/CZ 24020 - 91st & NE Parkway Staff Report.docx>





Lancaster County, NE GIS, Maxar, Microsoft

## Change of Zone #: CZ24020 (AG to -3) S 91st St & Nebraska Pkwy

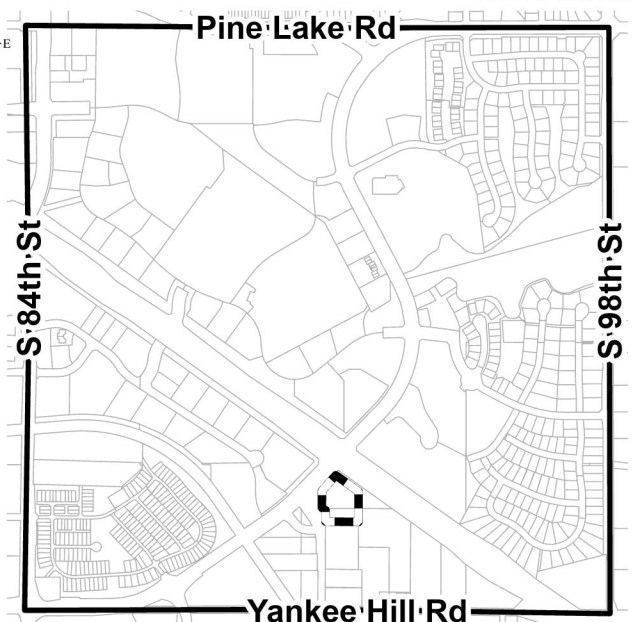
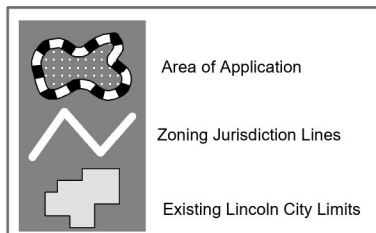


2024 aerial

### 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

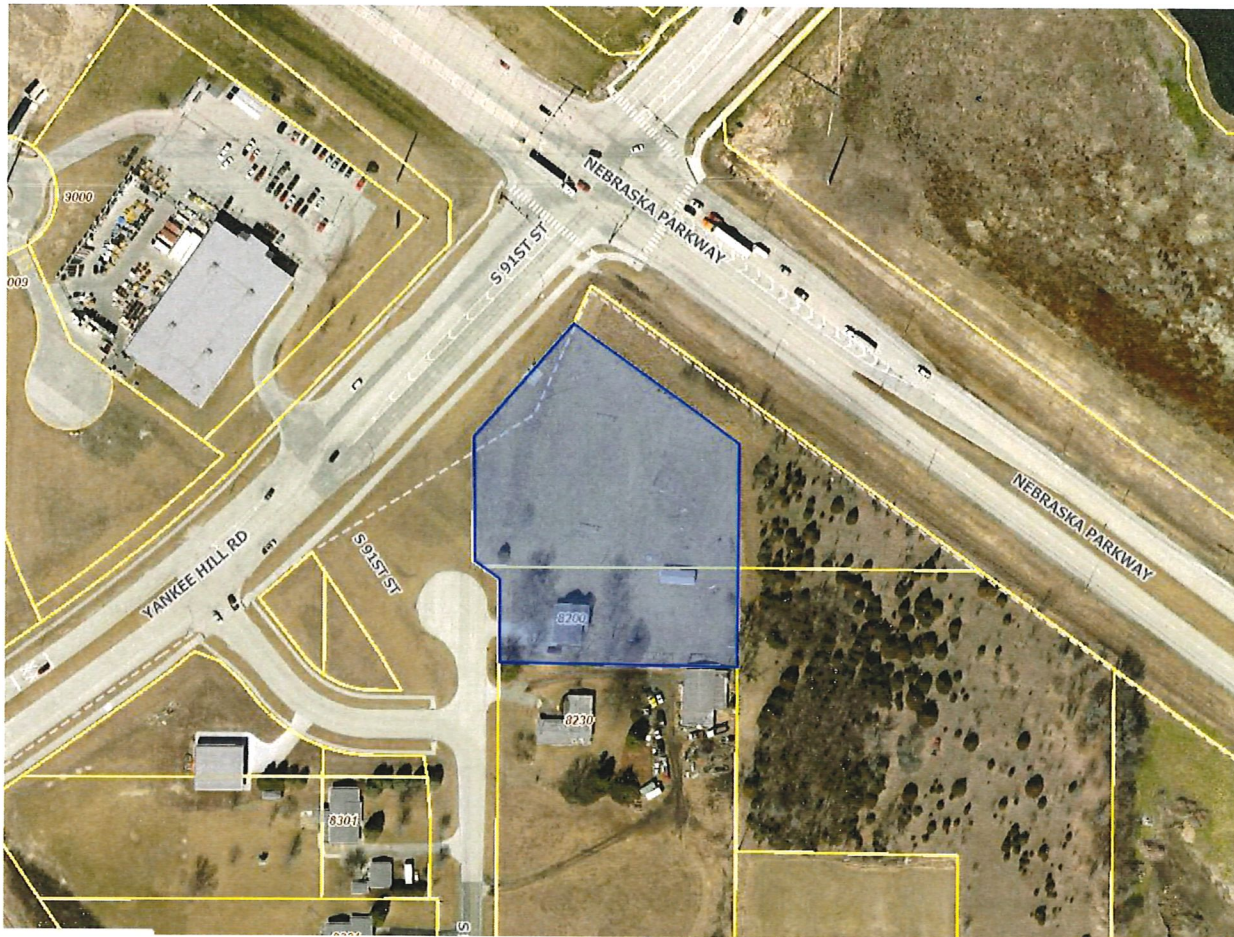
One Square Mile:  
Sec.23 T09N R07E





## Area of Change of Zone

*(Shown in Blue)*

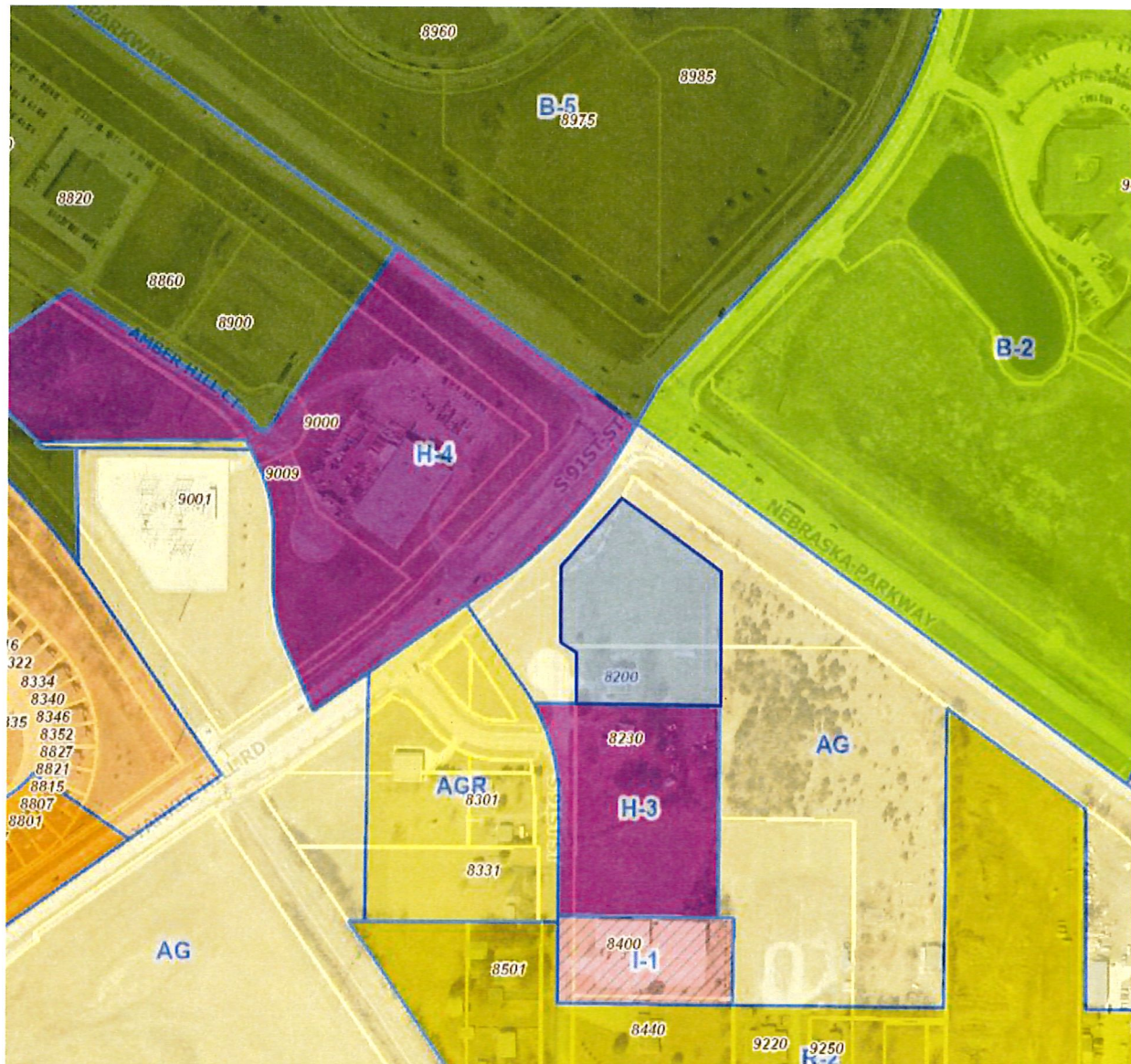


Request to rezone from AG Agricultural to H3 Highway Commercial



## Vicinity of Change of Zone Application

*(Application Property Shown in Blue)*



Request to rezone from AG Agricultural to H3 Highway Commercial

**Ann K. Post***Partner*

+1.402.473.4392

apost@remboltlawfirm.com

August 21, 2024

**VIA HAND DELIVERY**

City of Lincoln Planning Department  
c/o Steven J. Dush, Planner  
555 S 10<sup>th</sup> St., Ste 213  
Lincoln, NE 68508

RE: Application for Change of Zone at 91<sup>st</sup> and NE Pkwy

Mr. Dush:

Rembolt Ludtke LLP represents Bill & Kathleen Rentschler, the owner of real estate located at the southeast corner of the intersection of 91<sup>st</sup> and Nebraska Parkway, regarding the enclosed application for Change of Zone from AG Agricultural to H-3 Highway Commercial.

Bill and Kathleen Rentschler purchased the property over 30 years ago and since that time have lived and raised their family at this property. The property is just over 2.5 acres, currently zoned AG agricultural, located adjacent to but outside the City of Lincoln City limits, and is a part of the Cheney Sanitary and Improvement District (SID).

The property's small size and location surrounded by commercial and industrial uses, limit its future potential for agricultural or residential use. However, the property's frontage on Nebraska Parkway and convenient access ideally position it for commercial use. Therefore, though the property owners have no current plans for redevelopment of this property, they are seeking this change of zone to best position the property for future sale or redevelopment.

The applicant is aware that the City of Lincoln adheres to a contiguous zoning policy, set forth in the comprehensive plan, which generally directs that property must be annexed in order to obtain urban zoning such as commercial or urban density residential. In this case, the City of Lincoln cannot annex the property so long as it is within the boundaries of the Cheney SID.

In August of 2022, the applicant petitioned the Cheney SID to request to be released from the SID to facilitate annexation. Officials of the City of Lincoln Planning Department were in attendance at this meeting. The Cheney SID refused this

**Rembolt Ludtke LLP**

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Phone: +1.402.475.5100 • Fax: +1.402.475.5087



August 21, 2024

Page 2

request. Therefore, because the City cannot annex the property, and in similar circumstance the City has approved commercial zoning outside city limits, the applicant has elected to proceed with this application for a change of zone.

Since August 2022, the applicant has been in discussion with various City of Lincoln and Lancaster County departments regarding this change of zone. Specifically, the City of Lincoln-Lancaster County 2050 Comprehensive Plan identifies this location as an ideal location for a future trail, though there are no plans or identified funding sources for the trail to be constructed within the 2050 planning horizon and no identified use that creates demand for a trail.

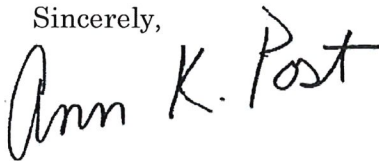
Bill & Kathleen Rentschler believe that a trail at this location would benefit both the property and the community as a whole, and have therefore worked diligently to craft a plan to meet the needs of all parties. This plan involves exchanging vacated county right of way and city surplus property for future trail property. However, this requires the cooperation and consent of numerous City and County departments that has yet to materialize. Therefore, although the Rentschlers continue to be willing to work toward a mutually beneficial solution, it is time to move forward with this application.

With this application, please find enclosed:

- City of Lincoln Application Form
- Change of Zone Application fee of \$1,109
- Site plan for the area of the requested change of Zone.

Thank you for your consideration of this application, please contact me with any additional questions or to request further information.

Sincerely,



Ann K. Post  
apost@remboltlawfirm.com



A92604

21R-40

Introduce: 2-8-21

RESOLUTION NO. A- **92604**

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the Conditional Zoning Agreement and Annexation Agreement, which is attached  
3 hereto marked as Attachment "A" and made a part hereof by reference between the City of Lincoln  
4 and Roger Byrne, to annex approximately 4.84 acres and adjacent right-of-way including on the  
5 property generally located at approximately 8455 South 98<sup>th</sup> Street and re-zoning the property  
6 from AG Agricultural District to H-3 Highway Commercial District as set forth in the agreement  
7 is hereby approved and the Mayor is authorized to execute the Conditional Zoning and  
8 Annexation Agreement on behalf of the City.

9 BE IT FURTHER RESOLVED that the City Clerk is directed to return one original fully  
10 executed copy of this Agreement to the Planning Department for distribution to the parties.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Conditional  
12 Zoning and Annexation Agreement with the Register of Deeds, filing fees to be paid in advance  
13 by Roger Byrne.

Introduced by:

Approved as to Form &amp; Legality:

  
City Attorney

AYES: Bowers, Christensen, Meginnis,  
Raybould, Shobe, Ward, Washington;  
NAYS: None.

Approved this 4<sup>th</sup> day of MARCH, 2021:  
Mayor**ADOPTED**

MAR 01 2021

**BY CITY COUNCIL**

RESOLUTION NO. A- 92604

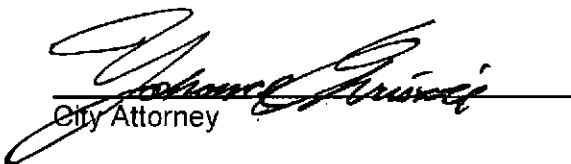
1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the Conditional Zoning Agreement and Annexation Agreement, which is attached  
3 hereto marked as Attachment "A" and made a part hereof by reference between the City of Lincoln  
4 and Roger Byrne, to annex approximately 4.84 acres and adjacent right-of-way including on the  
5 property generally located at approximately 8455 South 98<sup>th</sup> Street and re-zoning the property  
6 from AG Agricultural District to H-3 Highway Commercial District as set forth in the agreement  
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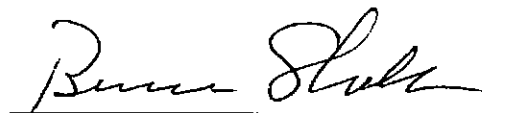
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13 by Roger Byrne.

Approved as to Form & Legality:

  
City Attorney

Introduced by:



AYES: Bowers, Christensen, Meginnis,  
Raybould, Shobe, Ward, Washington;  
NAYS: None.

Approved this 4<sup>th</sup> day of MARCH, 2021:

  
Mayor

**ADOPTED**

**MAR 01 2021**

**BY CITY COUNCIL**



**CONDITIONAL ANNEXATION AND ZONING AGREEMENT  
(8455 S. 98<sup>th</sup> St. )**

This Conditional Annexation and Zoning Agreement (8455 S. 98<sup>th</sup> St.) is made and entered into this 10 day of January, 2021, by and among Roger Byrne ("Byrne"), and the City of Lincoln, Nebraska, a municipal corporation ("City").

**RECITALS**

**I.**

Byrne is the owner of Lot 64 of Irregular Tracts in the Southeast Quarter of Section 23, Township 9 North, Range 7 East of the 6<sup>th</sup> P.M., Lancaster County, Nebraska (the "Property"). The Property is known as 8455 South 98<sup>th</sup> Street, Lincoln, Nebraska 68526. The Property and Site Plan is shown on Exhibit 1.

**II.**

Developers have requested the City to (a) annex the Property (AN#20013) and (b) rezone the Property from AG to H-3 (CZ#20035). Annexation 20013 and CZ20035 are collectively the "Governmental Actions".

**III.**

The City as a condition of approving the Governmental Actions desires an agreement with Byrne to be assured that Byrne will develop the property and required public infrastructure serving the property in a certain manner, as described in Article IV below.

**IV.**

Developers have represented to the City that, in consideration of the City approving the Governmental Actions, Byrne would enter into an agreement with the City to develop the Property subject to the terms and conditions listed below.

NOW, THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

1. City agrees to approve the Governmental Actions.
2. Byrne agrees:
  - a. To connect the property to City sanitary sewer and watermain in Topher Boulevard via the property which is now legally described as Southlake 10<sup>th</sup> Addition, Outlot A.
  - b. That the property will remain as one lot and will not be subdivided.
  - c. At his own cost, Byrne shall extend a 6-inch water service line from Topher Boulevard to provide water service and fire protection to the property.
  - d. To install a fire hydrant on the property.
  - e. To install a water service meter on the property no more than 400 feet from the watermain. The parties acknowledge the water service lines may extend beyond the water service meter.
  - f. To construct right and left turn lanes on South 98<sup>th</sup> street as depicted on the site plan attached as Exhibit 1.
  - g. To dedicate right-of-way, as depicted on Exhibit 1, to accommodate future improvement of South 98th Street.
  - h. That any structure on the property shall have a building envelope defined by a 20-foot perimeter setback, except that the setback from NE Highway 2 shall

be 30 feet to preserve the screening provided by existing trees and landscaping on the Property as further described in subsection 2.i. below.

- i. Byrne shall preserve and maintain the existing tree masses that serve as screening along the southwest boundary of the property along Highway 2 and along the north boundary of the Property adjacent to the residential lots immediately adjacent to the Property. With regard to the tree screening along the north boundary of the property, Byrne shall also be responsible for filling in gaps in the tree masses, where required to effect adequate screening.
- j. That, prior to application for a building permit, Byrne will submit to the City a revised Site Plan (Exhibit 1) demonstrating all necessary grading and drainage details, including but not limited to detention and water quality, for review and approval by Lincoln Transportation and Utilities Watershed Management Division. Byrne acknowledges that no building permit shall be issued by the City without Site Plan approval by the Watershed Management Division.
- k. To limit use of the property to those Heavy Commercial Services Uses described in Lincoln Municipal Code Section 27.06.170.

3. **Contribution for Rural Fire District.** Byrne understands and acknowledges that the City's annexation of the Property lying within the boundaries of the Southeast Rural Fire District shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. The parties anticipate that the amount will be \$0. However, in the event said amount is in excess of \$0 Byrne agrees to pay the City whatever amount which must be paid by the City to Southeast Rural Fire District in order for the annexation to be complete.

4. **Release from Rural Water District.** Byrne understands and acknowledges that the City may not furnish water to serve any portion of the Property that lies within the boundaries of Rural Water District No. 1 Lancaster County Nebraska ("District No. 1") without the consent and approval from District No. 1. Byrne desires that the Property be connected to the City's Public water system. Therefore, Byrne agrees to pay, within fourteen (14) days of demand by District No. 1, all the cost needed to obtain District No. 1's approval for the City to furnish water to the Property lying within the boundaries of District No. 1 and to provide the City satisfactory proof of such District No. 1 payment, release, and relinquishment.

5. **Binding Effect.** This Agreement shall run with the land and be binding upon and inure to the benefit and burden of successors and assigns of the respective parties.

6. **Amendments.** This Agreement may only be amended or modified in writing signed by the parties hereto.

7. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

8. **Authority.** This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms.

9. **Recording.** This Agreement shall be recorded by the City with the Register of Deeds of Lancaster County, filing fees therefor to be paid in advance by the Developers.

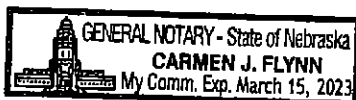
IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

CITY OF LINCOLN, NEBRASKA,  
a municipal corporation

By: Leirion Gaylor Baird  
Leirion Gaylor Baird, Mayor of Lincoln

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER            )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of March, 2021, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



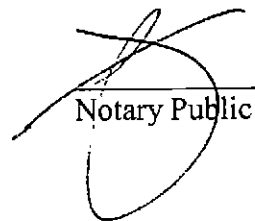
Carmen J. Flynn  
Notary Public

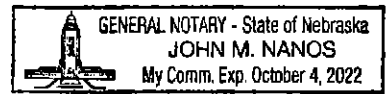
OWNER,

By: Roger L. Byrne  
Roger Byrne

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER            )

The foregoing instrument was acknowledged before me this 70 day of January, 2021, by Roger Byrne.

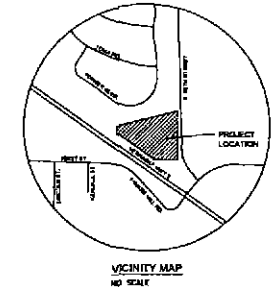
  
Notary Public





# EXHIBIT 1

## 8455 PLACE ANNEXATION #20013 CHANGE OF ZONE #20035



### P.U.D. LEGAL DESCRIPTION

LOT 4A LOCATED IN THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 9 NORTH, RANGE 1 EAST, LANCASTER COUNTY, NEBRASKA.

### NOTES

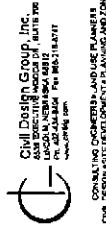
1. THE EXISTING ZONING IS AG. THE PROPOSED ZONING IS H-1.
2. TO CONNECT THE PROPERTY TO CITY SANITARY SEWER AND WATERMAIN IN TOWNSHIP 9 NORTH, RANGE 1 EAST, LANCASTER COUNTY, NEBRASKA.
3. THAT THE PROPERTY SHALL REMAIN AS ONE LOT AND SHALL NOT BE SUBDIVIDED.
4. AT DEVELOPER'S COST, EXTEND A 6-INCH WATER SERVICE LINE FROM TOWNSHIP 9 NORTH, RANGE 1 EAST, LANCASTER COUNTY, NEBRASKA TO PROVIDE WATER SERVICE AND FIRE PROTECTION TO THE PROPERTY.
5. TO INSTALL A FIRE HYDRANT ON THE PROPERTY.
6. TO INSTALL A WATER SERVICE METER ON THE PROPERTY AND MORE THAN 100 FEET FROM THE WATERMAIN. THE PARTIES ACKNOWLEDGE THE WATER SERVICE LINES MAY EXTEND BEYOND THE WATER SERVICE METER.
7. TO CONSTRUCT RIGHT-OF-WAY LINES AND LEFT-OF-WAY LINES WITH STREET UNLESS ACCESS MANAGEMENT DEVIATION REQUEST IS GRANTED.
8. TO DEDICATE RIGHT-OF-WAY, AS NECESSARY, TO ACCOMMODATE FUTURE IMPROVEMENT OF SOUTH WITH STREET.
9. THAT ANY STRUCTURE ON THE PROPERTY SHALL HAVE A BUILDING ENVELOPE DEFINED BY A 35-FOOT PERIMETER SETBACK, EXCEPT THAT THE SETBACK FROM THE HIGHWAY 2 SHALL BE 30 FEET TO PRESERVE THE SCREENING PROVIDED BY EXISTING TREES AND LANDSCAPING ON THE PROPERTY.
10. DEVELOPER SHALL PRESERVE AND MAINTAIN THE EXISTING TREE BANKS THAT SERVE AS SCREENING ALONG THE SOUTHWEST BOUNDARY OF THE PROPERTY AS HIGHWAY 2 AND ALONG THE NORTH BOUNDARY OF THE PROPERTY ADJACENT TO THE RESIDENTIAL LOTS, IMMEDIATELY ADJACENT TO THE PROPERTY. WITH REGARD TO THE TREE SCREENING ALONG THE NORTH BOUNDARY OF THE PROPERTY, DEVELOPER SHALL ALSO BE RESPONSIBLE FOR FILLING IN GAPS IN THE TREE BANKS, WHERE REQUIRED TO EFFECT ADEQUATE SCREENING.
11. PRIOR TO APPLICATION FOR A BUILDING PERMIT, DEVELOPER WILL SUBMIT TO THE CITY A REDESIGNED SITE PLAN DEMONSTRATING ALL NECESSARY DRAINAGE AND DRAINAGE DETAILS, INCLUDING BUT NOT LIMITED TO DETENTION AND WATER QUALITY, FOR REVIEW AND APPROVAL BY LINCOLN'S TRANSPORTATION AND UTILITIES UTILITIES MANAGEMENT DIVISION. DEVELOPER ACKNOWLEDGES THAT HOLDING PERMIT SHALL BE ISSUED BY THE CITY WITHOUT SITE PLAN APPROVAL BY THE UTILITIES MANAGEMENT DIVISION.
12. TO LIMIT USE OF THE PROPERTY TO THOSE HEAVY COMMERCIAL SERVICE USES DESCRIBED IN LINCOLN MUNICIPAL CODE SECTION 21.04.01.

**DEVELOPER**  
MARK LEWIS  
1015 DUNDAS COURT  
LINCOLN, NE 68503

**PROPERTY OWNERS**  
WALDEN DRIVE  
13111 S 24TH STREET  
NORFOLK, NE 68701

**ENGINEER**  
CIVIL DESIGN GROUP, INC.  
803 EXCLUSIVE WOODEN DRIVE  
SUITE 200  
LINCOLN, NE 68517  
(402) 434-6000

**SURVEYOR**  
ALBERT SURVEYING & MAPPING  
8333 EXHIBIT WOODS DRIVE  
SUITE 200  
LINCOLN, NE 68517  
(402) 434-2655



REVISIONS	DATE	DESCRIPTION
1	08/11/2020	ISSUED FOR PERMIT

2020

**SITE PLAN**  
8455 PLACE  
ANNEXATION #20013 & CHANGE OF ZONE #20035  
LINCOLN, NEBRASKA

Drawn by: [blank]  
Checked by: [blank]  
Designed by: [blank]  
Project No.: 20013-017  
Date: 08/11/2020

**SHEET**  
1 OF 1