

96R-360

Introduce: 11-25-96

RESOLUTION NO. A- 77823

1 WHEREAS, Mount Olive Evangelical Lutheran Church, hereinafter "Property
2 Owner" has requested that the City of Lincoln annex and rezone certain
3 property generally located west of North 84th Street on Holdrege Street; and

4 WHEREAS, in order to accommodate the requested annexation and rezoning
5 the City and said Property Owner agree that it is necessary to provide for the
6 installation of appropriate municipal infrastructure to serve the area and to
7 allocate the cost responsibilities related thereto; and

8 WHEREAS, the City and Property Owner have embodied their understandings
9 into a written agreement which is entitled "Mount Olive Church Conditional
10 Annexation and Zoning Agreement", a copy of which is attached hereto, marked
11 as Attachment "A", and made a part hereof by reference.

12 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of
13 Lincoln, Nebraska:

14 That the City Council does hereby accept and approve said Mount Olive
15 Church Conditional Annexation and Zoning Agreement and hereby authorizes the
16 Mayor to execute the same on behalf of the City.

17 BE IT FURTHER RESOLVED that the City Clerk is directed to return one
18 fully executed copy of said Agreement to Peter Katt, attorney for the Property
19 Owner, and to transmit a photocopy of said Agreement to the Planning Director,
20 Director of Public Works, and Director of Building and Safety with a copy of
21 this Resolution instructing the Planning Director and the Director of Building
22 and Safety to not issue building permits or subdivision approvals until the
23 required dedications have been made pursuant to said Agreement.

Introduced by:

Count Donahue

AYES: Donaldson, Haar, Johnson,
Seng, Shoecraft, Wilson, Young;
NAYS: None.

Approved as to Form & Legality:

Rick Peo

Assistant City Attorney

Staff Review Completed:

Lori McClure

Administrative Assistant

12/02/96 Council Proceedings:

YOUNG Moved to delay action on Bill 96R-360 for one week to 12/9/96.

Seconded by Wilson & carried by the following vote: AYES:

Donaldson, Johnson, Seng, Shoecraft, Wilson, Young; NAYS: None.

ABSENT: Haar.

12/13/96-ORIGINAL AGREEMENTS TO-
RICK PEO, PETER KATT, TIM STEWART,
DICK ERIXSON, JERRY MCGINN.

APPROVED

DEC 12 1996

MAYER

ADOPTED

DEC 9 1996

By City Council

DEC 26 1996

**MOUNT OLIVE CHURCH
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT FOR NORTHERN LIGHTS ADDITION ("Agreement") is made and entered into as of this 12TH day of December, 1996, by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **Mount Olive Evangelical Lutheran Church**, a Nebraska nonprofit corporation ("Mount Olive Church"). Mount Olive Church is the legal title holder of certain real estate as described in the attached Attachment "____" ("Mount Olive Tract"). Olsson Associates is sometimes referred herein as the "Engineer."

RECITALS

1. The Planning Director has recommended amending the Lincoln City-Lancaster County Comprehensive Plan to incorporate a revised figure 65 entitled *Anticipated 2015 Lincoln Service Limit and Phasing Plan*, which will designate the Mount Olive Tract as a "Blue Area" (Phase I - ready for immediate development).

2. Certain other property owners in the area ("Developers") have requested that the City annex the Mount Olive Tract and other real estate ("Property"), as shown on the Site Plan attached as Attachment " ". The Developers have also requested that the City rezone the Mount Olive Tract as R-3 Residential.

3. The City is willing to amend the Lincoln City-Lancaster County Comprehensive Plan, as amended, to designate the Mount Olive Tract as "Blue Area" (Phase I) in the *Anticipated 2015 Lincoln Service Limit and Phasing Plan*. The City is also willing to annex the Mount Olive Tract, provided that the necessary municipal infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area of the proposed annexation.

4. The City and Mount Olive Church recognize that the City does not currently have sufficient funds to devote to these areas to provide for the construction of all necessary infrastructure improvements and recognize that, in order to support a current Comprehensive Plan amendment, annexation and rezoning of the Property, it is necessary for the Developers to assume certain cost responsibilities for various portions of the necessary municipal infrastructure improvements. The parties are entering into this Agreement for the purpose of providing for the construction of the infrastructure improvements necessary for the area of the proposed Comprehensive Plan amendments, annexation and rezoning and for the allocation of cost responsibilities for such infrastructure between the City, Mount Olive Church and Developers.

The parties agree as follows:

**II.
COMPREHENSIVE PLAN AMENDMENT,
ANNEXATION, REZONING, AND ZONING TEXT AMENDMENT**

A. Concurrent Approval. The City, concurrently with the approval of this Agreement, is:

1. Amending the Lincoln City-Lancaster County Comprehensive Plan, as amended, to designate the Mount Olive Tract as "Blue Area" (Phase I) in the *Anticipated 2015 Lincoln Service Limit and Phasing Plan*.
2. Annexing the Mount Olive Tract;
3. Approving a change to the Lincoln zoning district map showing the Mount Olive Tract as R-3 residential.

B. Conditional Approval. Said annexation and zoning approvals are conditioned upon the terms, conditions and understandings as

set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) change the municipal corporate boundaries; (iii) rezone or revise the zoning designations applicable to the Property; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

**III.
SANITARY SEWER IMPROVEMENTS
FOR THE MOUNT OLIVE TRACT**

The City and Developers under a separate agreement have agreed that three trunk line sewer projects (designated as Sewer A, B and C) are necessary to provide sewer service to the Property and Mount Olive Tract. Mount Olive Church understands and acknowledges that Sewer C will eventually provide service to the Mount Olive Tract and that it will be constructed by the Developers without any City subsidy from North 84th Street and Leighton Avenue to approximately North 81st Street and Elizabeth Drive. Sewer C will be constructed in phases as part of the platting process of the Property. Mount Olive Church agrees to dedicate any reasonably necessary temporary and permanent nonexclusive sanitary sewer easements to the City for Sewer C upon the first occurrence of any of the following events:

1. City's approval of a final plat of Mount Olive Tract (or any portion thereof) as a buildable and sewerable lot of record; or
2. City's approval of a final plat requiring the use of Sewer C south of Holdrege.

It is anticipated by the City that the Developers will cause Sewer C (or the applicable phase extension) to be constructed under

the authority of an executive order(s) issued by the Mayor of the City as part of the platting process. The Developers have agreed to utilize the design services of the Engineer in order to minimize time delays, increase potential quality control, reduce potential liability claims, and to maximize coordination between the City and the Developers in designing Sewer C and the other infrastructure improvements required by this Agreement.

**IV.
NECESSARY MUNICIPAL IMPROVEMENTS
FOR THE PROPERTY**

A. Infrastructure Standard. Unless otherwise provided, the infrastructure described in this Agreement shall be constructed to the City's design standards and City standard pavement.

B. Phase Development of the Property. The Developers believe that the Property will be final platted and developed in various phases, generally developing from the north to the south. For planning purposes, the Developers have submitted to the City a proposed phasing plan for the Property.

C. Sewer C. The City and Mount Olive Church covenant and agree that the Sewer C, which runs north and south through the Property, will be constructed pursuant to Section III.

D. Water Mains. The City and Mount Olive Church covenant and agree that the following water main will be needed:

1. 16" Water Line in Holdrege. A 16-inch water main from approximately North 79th Street to North 84th Street located on the north side of the right-of-way of Holdrege Street will be constructed by the City. This main shall be tappable by Mount Olive Church. In the event the City's Special Assessment Review Committee

determines there are sufficient funds to construct the water line and the City Council creates the special assessment district the City will cause the water line to be constructed as a City project and will be responsible for the design, bidding and construction oversight of said project. Mount Olive Church agrees to sign a petition sufficient to create and order construction of the water district. Mount Olive Church shall not object to the City's levying of an assessment against the Mount Olive Tract for the cost of constructing a typical 6-inch water line abutting a residential area, and shall pay all assessments so levied as they become due and payable. The City shall be responsible for all costs associated with the water line of any additional width due to the fact that the City constructs a 16-inch water line. In the event that any assessments levied against benefitted properties for such water district(s), if created, are challenged and are for any reason declared to be void, illegal, in excess of benefits, or otherwise unenforceable, then Mount Olive Church agrees to pay to the City, in full, an amount equal to the amount of the assessment so declared to be void, illegal, in excess of benefits, or otherwise unenforceable. In the event that the City Council refuses to create such special assessment district or in the event such district is not ordered constructed in a timely manner and developers construct the water line under authority of an executive order issued by the mayor of the City of Lincoln, Mount Olive agrees to pay its fair share of the costs of such construction.

E. Streets. The City and Mount Olive Church covenant and agree that the following Street improvements will be needed:

1. Holdrege Street. Holdrege Street from the terminus of the existing urban street section (approximately North 79th Street) to approximately North 82nd Street will be reconstructed at a minimum from two lanes to three lanes with City standard paving (no parking on either side of the street) in areas abutting residential areas. Holdrege Street from approximately North 82nd Street to North 84th Street will be reconstructed as five lane street located in a 100 feet wide right-of-way with paving of 64 feet wide (no parking on either side of the street) in areas abutting the commercial areas. The City shall propose to the City Council the creation of a paving district or districts to accomplish three lanes of the urban standard paving described above. Upon creation of such paving district(s), Developers and Mount Olive Church will provide petitions sufficient to order construction of the paving district(s). Mount Olive Church agrees to dedicate at no cost to the City its respective half of the necessary right-of-way for Holdrege Street (50 feet). Mount Olive Church shall not have any liability for the cost of any assessment amounts associated with the Holdrege Street widening project.

F. Sidewalks. Mount Olive Church agrees to construct, at its cost, the sidewalk abutting Holdrege Street as required by the City's platting, use permit or special permit process. No portion of the sidewalk will be constructed or included within any paving or other assessment district.

G. Park. On or before the time the Developers final plat, Northern Lights Addition, Mount Olive Church agrees to dedicate a park, trail, vegetation, mini-playground and open space easement to the City for the linear park and trail located south of Holdrege Street to the south property line of the Mount Olive Tract. The

City agrees to construct one mini-playground park area as part of the linear park within the easement area dedicated by Mount Olive Church. The easement will be free and clear of liens but subject to other easements, restrictions, and conditions of record and as stated in this Agreement, including pedestrian trails, drainage easements and other necessary infrastructure improvements.

**V.
CONSTRUCTION STANDARDS**

All construction of required municipal infrastructure improvements shall be completed in accordance with the City of Lincoln's standard specifications for municipal construction which are on file in the Office of the City Engineer and shall be subject to inspection and approval by the City Engineer.

**VI.
FUTURE COST RESPONSIBILITIES**

Except as stated herein, it is understood and agreed between the parties that the provision of the above-described municipal infrastructure improvements and the allocation of cost responsibilities therefor in no way limit the right of the City to impose lawful conditions or to require lawful additional dedications, contributions, or construction in conjunction with the approval of future zoning requests, plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating all or any portion of the Property which is subject to annexation or rezoning in conjunction with this Agreement. Such future dedications, contributions and construction may include, but shall not be limited to, local sewers, water mains, paving, trails, detention ponds, storm sewers.

**VII.
DEFAULT**

The parties agree that the rezoning of the Mount Olive Tract will promote the public health, safety and welfare so long as the Mount Olive Church fulfills all of the conditions and responsibilities set forth in this Agreement. In the event that the Mount Olive Church defaults in fulfilling any of the covenants or responsibilities as set forth in this Agreement, the City may, in lawful exercise of its legislative authority, rezone the Mount Olive Tract to the previous zoning designations or such other zoning designations as the City may deem appropriate under the then existing circumstances.

**VIII.
NOTICES**

Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or at such future addresses as may be designated in writing:

City of Lincoln, Nebraska
ATTN: Public Works Director
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to: City Clerk
 555 South 10th Street
 Lincoln, Nebraska 68508

Mount Olive Church: Pierson, Fitchett, Hunzeker, Blake & Loftis
 ATTN: Peter W. Katt
 530 South 13th Street
 P.O. Box 95109
 Lincoln, NE 68509

**IX.
BINDING EFFECT**

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

**X.
AMENDMENTS**

This Agreement may only be amended or modified by a writing, signed by all the parties.

**XI.
FURTHER ASSURANCES**

The parties agree to use their best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation of this Agreement and the parties shall cooperate in good faith with the others and shall do any and all acts and execute, acknowledge, and deliver any and all documents necessary to carry out the intent and purpose of this Agreement.

**XII.
EXECUTION IN COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**XIII.
GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Nebraska.

**XIV.
INTERPRETATIONS**

Any uncertainty or ambiguity in this Agreement shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

**XV.
TERMINATION**

This Agreement shall terminate upon completion of the following items:

- A. The Water Line described in Section IV-D.
- B. The Street described in Section IV-E.
- C. Sidewalks in Section IV-F.
- D. The Park described in Section IV-G.

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

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

ATTEST:

Sandra A. Matz
City Clerk

By:

Mike Johanns
Mike Johanns, Mayor

"Mount Olive Church"

Mount Olive Evangelical Lutheran
Church, a Nebraska nonprofit
corporation

By:

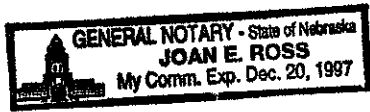
Mark Parnitz

Title:

Council President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 12TH day of DECEMBER, 1996, by Mike Johanns, Mayor of the City of Lincoln, Nebraska, on behalf of the City of Lincoln, Nebraska.



Joan E. Ross
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 9th day of December, 1996, by MARIE PANELITZ, President of Mount Olive Evangelical Lutheran Church, a Nebraska nonprofit corporation, on behalf of the corporation.



Karen McBeth
Notary Public