

**Lancaster County**

**BOARD OF ZONING APPEALS**

**AGENDA**

**BOARD OF ZONING APPEALS**

Jeff Frack  
James Pinkerton  
Herschel Staats  
Matthew Warner  
Ed Woepfel

**December 9, 2022**

# COUNTY BOARD OF ZONING APPEALS

NOTICE: Notice is hereby given that the County Board of Zoning Appeals will hold a public hearing on Friday, **December 9, 2022**, at **2:30 p.m.**, in the City Council Chambers, 555 South 10th Street, County-City Building, Lincoln, Lancaster County, Nebraska, on the following items. For more information, call the Planning Department, 441-7491.

## AGENDA

**December 9, 2022**

1. Approval of minutes of the County Board of Zoning Appeals meeting held November 12, 2021.

### PUBLIC HEARING AND ACTION:

2. **BOARD OF ZONING APPEALS 22007**, requested by Andre and Erin Orduna, to waive the minimum lot size requirement, on property generally located at 8401 South 162nd Street.

The County Board of Zoning Appeals agenda may be accessed on the Internet at <http://www.lincoln.ne.gov/city/plan/bdscom/cbza/index.htm>

## MEETING RECORD

*Advanced public notice of the County Board of Zoning Appeals meeting was posted on the County-City bulletin board and the Planning Department's website. In addition, a public notice was emailed to the Lincoln Journal Star for publication on Thursday, November 4, 2021.*

**NAME OF GROUP:** COUNTY BOARD OF ZONING APPEALS

**DATE, TIME AND PLACE OF MEETING:** Friday, November 12, 2021, 2:30 p.m., County-City Building, City Council Chambers, 555 S. 10<sup>th</sup> Street, Lincoln, NE.

**MEMBERS IN ATTENDANCE:** Jeff Frack, Jim Pinkerton, Herschel Staats and Ed Woeppel; (Matthew Warner absent).

**OTHERS IN ATTENDANCE:** Tom Cajka and Teresa McKinstry of the Planning Dept.; Ron Rehtus of Building & Safety; John Ward of County Attorney's Office; Duncan Young of Young and White; and other interested parties.

Chair Woeppel opened the meeting and acknowledged the posting of the Open Meetings Act in the room.

Woeppel then called for a motion approving the minutes of the regular meeting held August 14, 2020. Motion for approval made by Frack, seconded by Pinkerton and carried 4-0: Frack, Pinkerton, Staats and Woeppel voting 'yes'; Warner absent.

**COUNTY BOARD OF ZONING APPEALS NO. 21001, REQUESTED BY SETH AND JILL LIESKE TO WAIVER THE FRONTAGE REQUIREMENT ON PROPERTY GENERALLY LOCATED AT 15830 N. 1<sup>ST</sup> STREET**

**PUBLIC HEARING:** November 12, 2021

Members present: Frack, Pinkerton, Staats and Woeppel; Warner absent.

There were no ex parte communications disclosed.

**Duncan Young from Young & White, 8742 Frederick Street, Omaha, NE** is representing the applicant. The applicant Jill Lieske is his niece. The applicant purchased this property in 2017. They signed the purchased agreement in September and eventually closed on the property. This is a piece of property that has been platted since 1997. He showed a map of the property from

1997. The entirety of this development was put together in 1997. January 1, 2017 is when new County Zoning Regulations became effective and it required each lot to have 550 feet of frontage. This piece of property obviously did not have that much frontage. He pointed out the easement that turned into a gravel road. There is 30 feet on each side of the property line. That is the way it sat until around 2018. The grandfathered clause of the regulation allowed a lot platted prior to 2017 didn't have to meet the frontage requirement. Unfortunately, there was an ornate ornamental gate to the south of their property, just at about the lot line. A couple of problems were noted. It is partially on the applicant's property, it is partially in the easement. The applicant talked to the Real Estate Agent. The agent spoke with the sellers to see what they wanted to do. The Lieske's purchase agreement had already been signed. The owners of Parcel 4 decided that the easiest way to remedy this was to carve out the area where the gate is. Everyone put their heads together and came up with a solution. They carved out a niche of the lot for the gate to remain where it was. Had they not done that, they could have gone forward and submitted the building permit request and been grandfathered in. The applicant was not aware that once you altered the legal description of Parcel 3, it became a new parcel that didn't happen until 2017/2018. That is why we are here today. The applicant thought that by being neighborly and solving the issue themselves, it would be taken care of. They did not know that this would create a whole new set of problems. This is the land for their dream house. They were shocked to find out this was now an unbuildable lot. It was clearly set up so it could be a lot that would be built on. There is no way this property can have 550 feet of frontage. This would have been a buildable lot had they done nothing with the gate. This is the last lot that doesn't have a house built upon it. He believes there will be absolutely no detriment to the neighborhood. He is not aware of any objections to this. He pointed out the notch for the gate. He is asking for approval because this lot has essentially remained the same since 1997. The lot did not change. He pointed out language for the easement for the road and maintenance. He doesn't believe it makes any sense to not allow the applicant to build. If they don't receive a variance, there is nothing that can go on this lot. He believes this is an undue hardship. He would like common sense to prevail. He believes the area will be improved by the addition of one more house. It will benefit the area with more taxes. He would like to see the applicant have reasonable use of their land. This is a strange situation. The applicant didn't know that by being neighborly, they wouldn't be able to build on their lot.

Frack asked about the survey. It appears to show 227 feet of frontage. Young stated that is correct. That is how they would access their property.

Pinkerton inquired who the access easement is with. Young stated that according to a document filed in the Register of Deeds, it provides for ingress and egress for all lots in perpetuity. There is 30 feet on each side of the property on all lots.

Pinkerton believes the owner needs to do their due diligence on any easements and who owns what. Young noted that what the applicant didn't understand was that by deeding the piece to their neighbor, this is a brand new lot that was created.

**Judy Mueller 15820 N. 1<sup>st</sup> St., Raymond, NE**, appeared in support. She stated that in the beginning, they were told the County would take over the road. All the owners split the expense of maintaining the road. She talked to the County and found out it wasn't going to happen. The road isn't wide enough and not up to County specifications. Every year the owners get together and purchase some rock for the road. The people who originally owned both of the properties thought it might be left to their relatives. Everyone assumed someone would always build on this lot.

No one appeared in opposition

**Tom Cajka Planning staff** wanted to clarify a few items regarding the road frontage and access easement. Frontage is to a public or private street. This is an access easement. There is zero frontage. That is why the waiver being requested is from 550 feet to zero.

Frack asked if would make sense to have this modified to 227 feet. Cajka responded that there is no frontage. It must be to a public road. These were all 20 acre lots when they were created. They weren't requiring frontage when these lots were created. In 2018, a text amendment cleaned up language that said any lot created before 2017, the frontage requirement didn't apply if the parcel 20 or more acres. The applicant laid out the sequence of events very well.

**ACTION:**

Pinkerton moved to close the public hearing, seconded by Staats and carried 4-0: Frack, Pinkerton, Staats and Woeppel voting 'yes'; Warner absent.

Staats moved to approve the appeal and waive the frontage requirement from 550 feet to zero feet, seconded by Frack.

All members voiced agreement that the applicant made their case and that they believe this appeal should be granted so this can be a buildable lot.

Motion for approval carried 4-0: Frack, Pinkerton, Staats and Woeppel voting 'yes'; Warner absent.

There being no further business, the meeting was adjourned at 2:55 p.m.

**COUNTY BOARD OF ZONING APPEAL #22007**

**DATE:** November 28,2022

**DATE SCHEDULED FOR PUBLIC HEARING: December 9,2022**

**LOCATION:** Generally located at S. 162<sup>nd</sup> St. and Yankee Hill Rd.

**ADDRESS:** 8401 S. 162<sup>nd</sup> St.

**LEGAL DESCRIPTION:** Lot 16 Irregular Tract, SE ¼ of Section 2, Township 9, North, Range 8 East, Lancaster County, NE

**APPLICANT:** Andre and Erin Orduna

**LOT AREA:** 5.6 acres

**ZONING:** AG-Agriculture

**EXISTING LAND USE:** Dwelling with accessory structures.

**SURROUNDING LAND USE AND ZONING:**

North:	AG-Agriculture	farm ground
South:	AG-Agriculture	farm ground and acreage lots
East:	AG-Agriculture	farm ground
West:	AG-Agriculture	farm ground

**TYPE OF APPEAL:**

THIS APPEAL IS DIRECTED TO THE BOARD RELATIVE TO

Article 4.017(a) of the Lancaster County Zoning Regulations requires a minimum of 20 acres for parcels in the AG Agricultural District. This is a request to waive the minimum lot size from 20 acres to 5.6 acres.

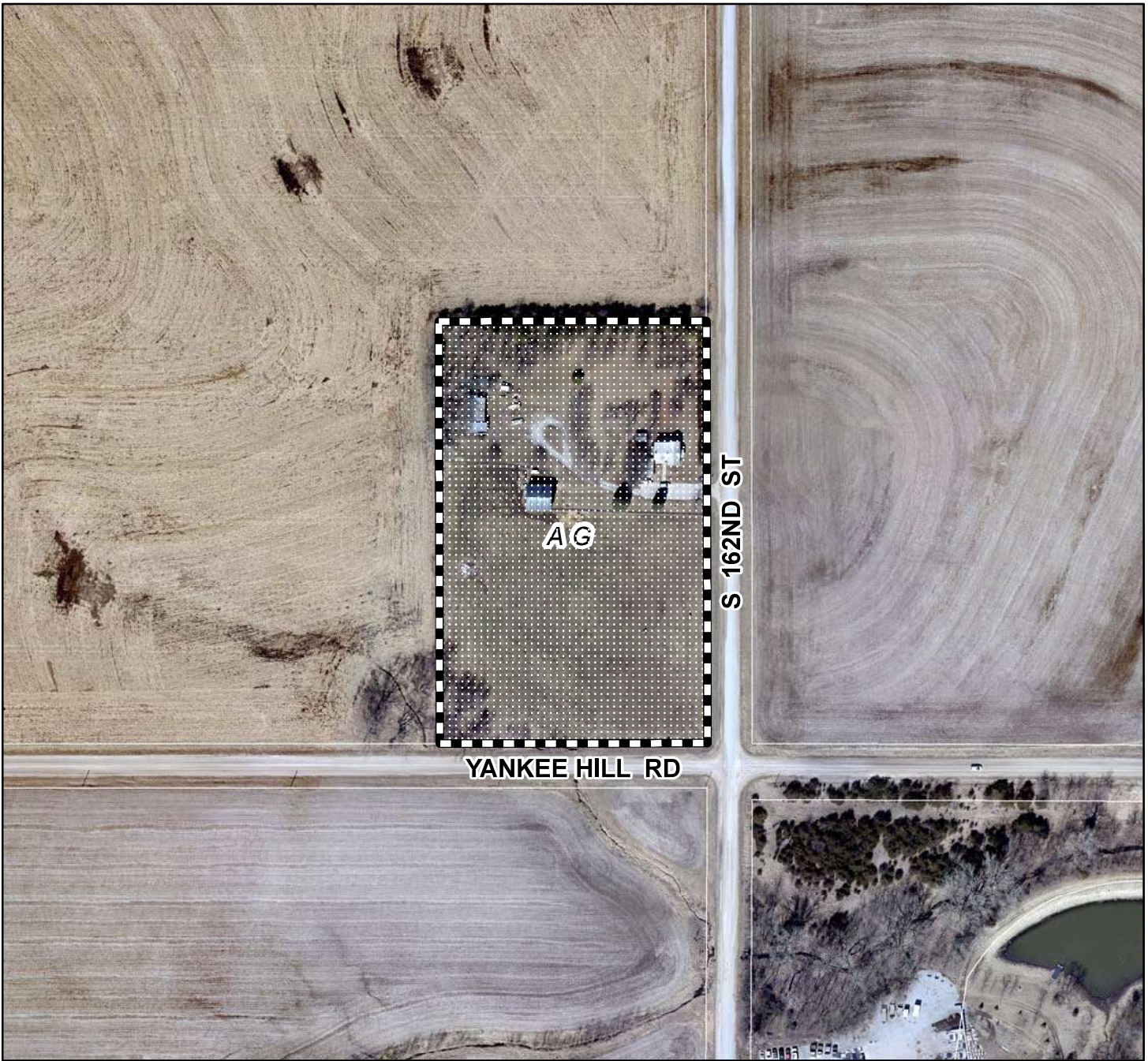
**STAFF FINDINGS:**

1. The applicant is requesting the minimum lot size be reduced from 20 acres to 5.6 acres to allow Lot 16 to be a buildable lot.
2. Lot 16 I.T. was split off from the East half of the SE quarter of Section 22-9-8. This created a 6.4-acre lot and a 73.6-acre lot. A deed was filed with Register of Deeds for the 6.4-acre lot on October 12, 1988. Lot 16 has a house and accessory structures on the property. The house was built around 1900. The house needs repairs.

3. An Administrative Subdivision Permit (ASP) was submitted to the Planning Department in August 1988. The ASP proposed to create the 2 lots as they are today. There is no approved ASP in the Planning Department file. Neither Lancaster County Engineering nor Lancaster County Assessor had any records of the ASP being approved. The ASP process no longer exists and any unfinished permits were expired if they were not approved.
4. The only options to make the lot buildable are either to go to Board of Zoning Appeals or do a new final plat. A final plat would require the cooperation of the adjacent Lot 17 property owner. The adjacent property (Lot 17) is no longer owned by the original person who did the lot split. As there is no issue with Lot 17 being buildable, there is no reason for the owner to participate in a final plat.
5. Lot 16 was first sold October 31, 1988, by lola Finke, the applicant of the ASP. The parcel was then sold to the current owner in October 2022. Although Andre and Erin Odruna were aware of the lot not meeting zoning regulations, their letter states that they were told they could not delay the closing due to there being a clen title on the property.  
Erin Orduna first contacted Planning Department by phone on October 19<sup>th</sup> to inquire about building permits for accessory structures. She was informed during the phone conversation that the lot appeared to be unbuildable. After consulting with County Engineering and County Assessor it was determined that the lot was unbuildable due to being created without an ASP.
6. The applicant's letter states that per the previous owner a survey was done. A survey was done, but it appears that the survey was never filed with the State or County Engineering (see attached). A survey on its own would not make Lot 16 buildable. The ASP would have needed to be approved to make the lot buildable.
7. Section 19.003 (2) Powers Relative to Variances. The Board of Zoning Appeals is authorized, upon petitions for variances, to vary the strict application of the height, area, parking or density requirements to the extent necessary to permit the owners a reasonable use of their land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.

Prepared by

Tom Cajka  
Planner

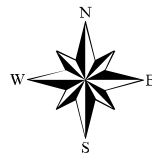


2022 aerial

**Board of Zoning Appeals #: BZA22007**  
**S 162nd St & Yankee Hill Rd**

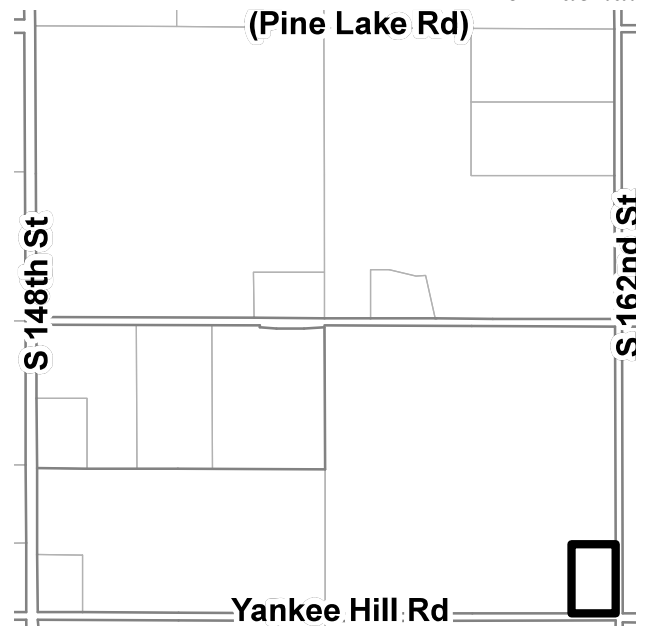
**Zoning:**

- 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

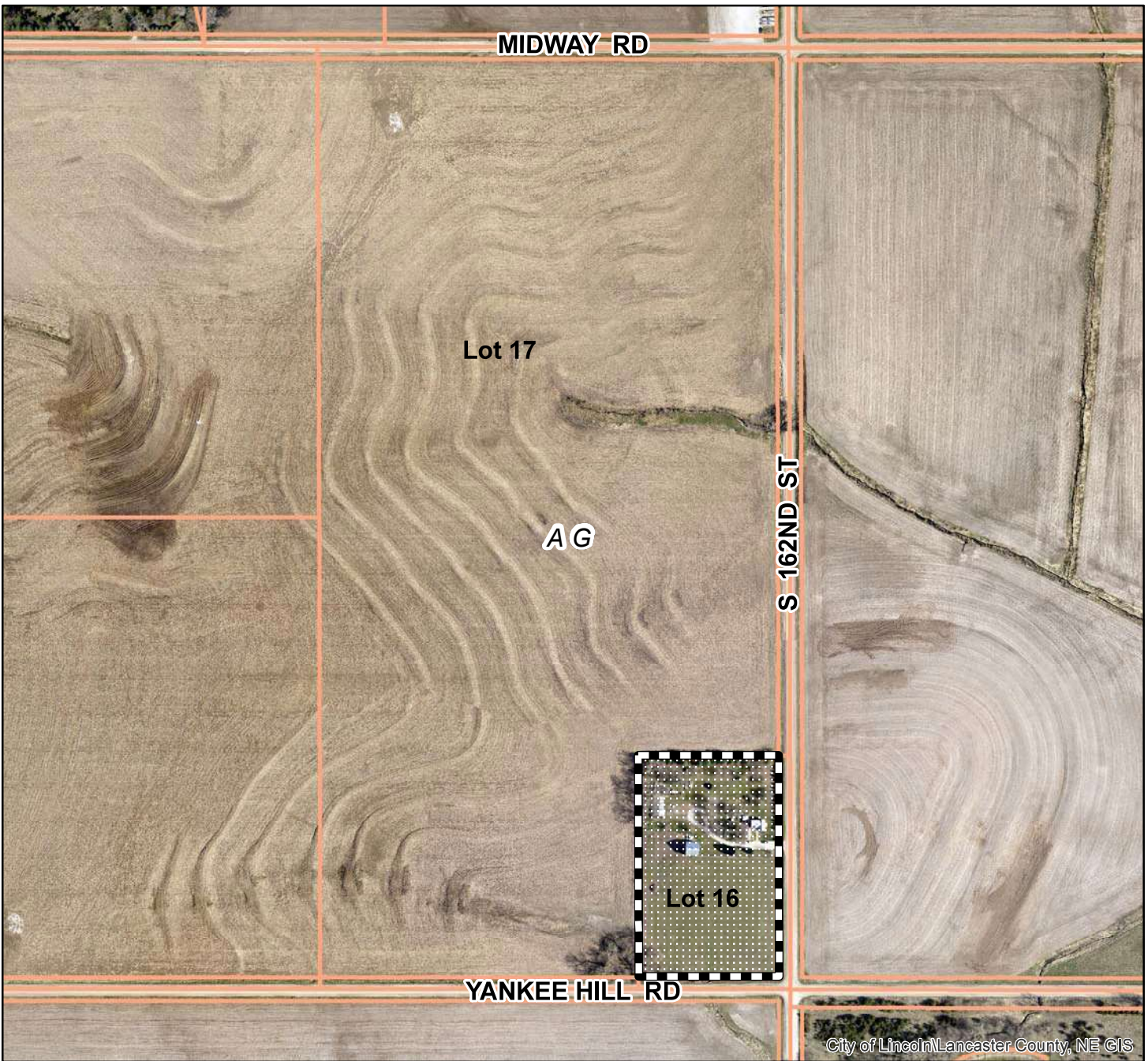


**One Square Mile:**  
**Sec.22 T09N R08E**

	Area of Application
	Zoning Jurisdiction Lines
	Lincoln City Limits



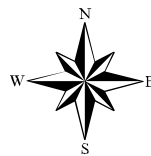




City of Lincoln Lancaster County, NE GIS

2020 aerial

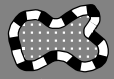


**Board of Zoning Appeals #: BZA22007**

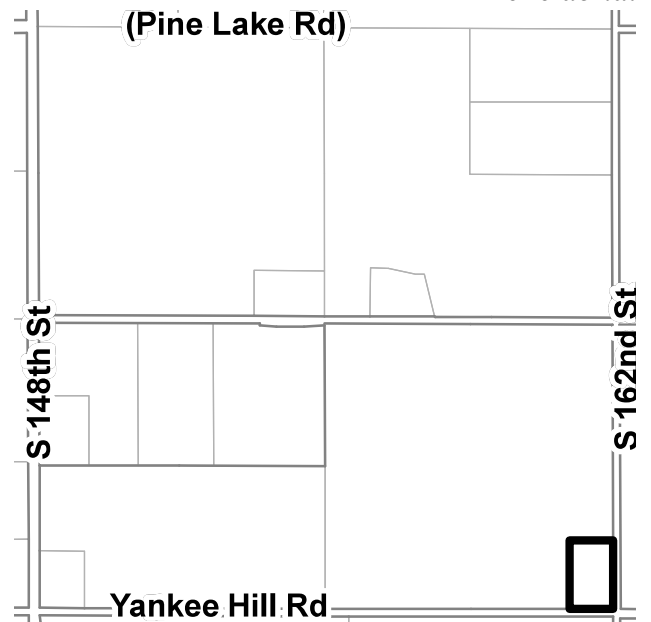


**Zoning:**

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- P Public Use District

One Square Mile:  
Sec.22 T09N R08E

	Area of Application
	Zoning Jurisdiction Lines
	Existing City Limits



# Survey Record

88-035  
JOB NO.

LAWCASTER COUNTY, NEBRASKA

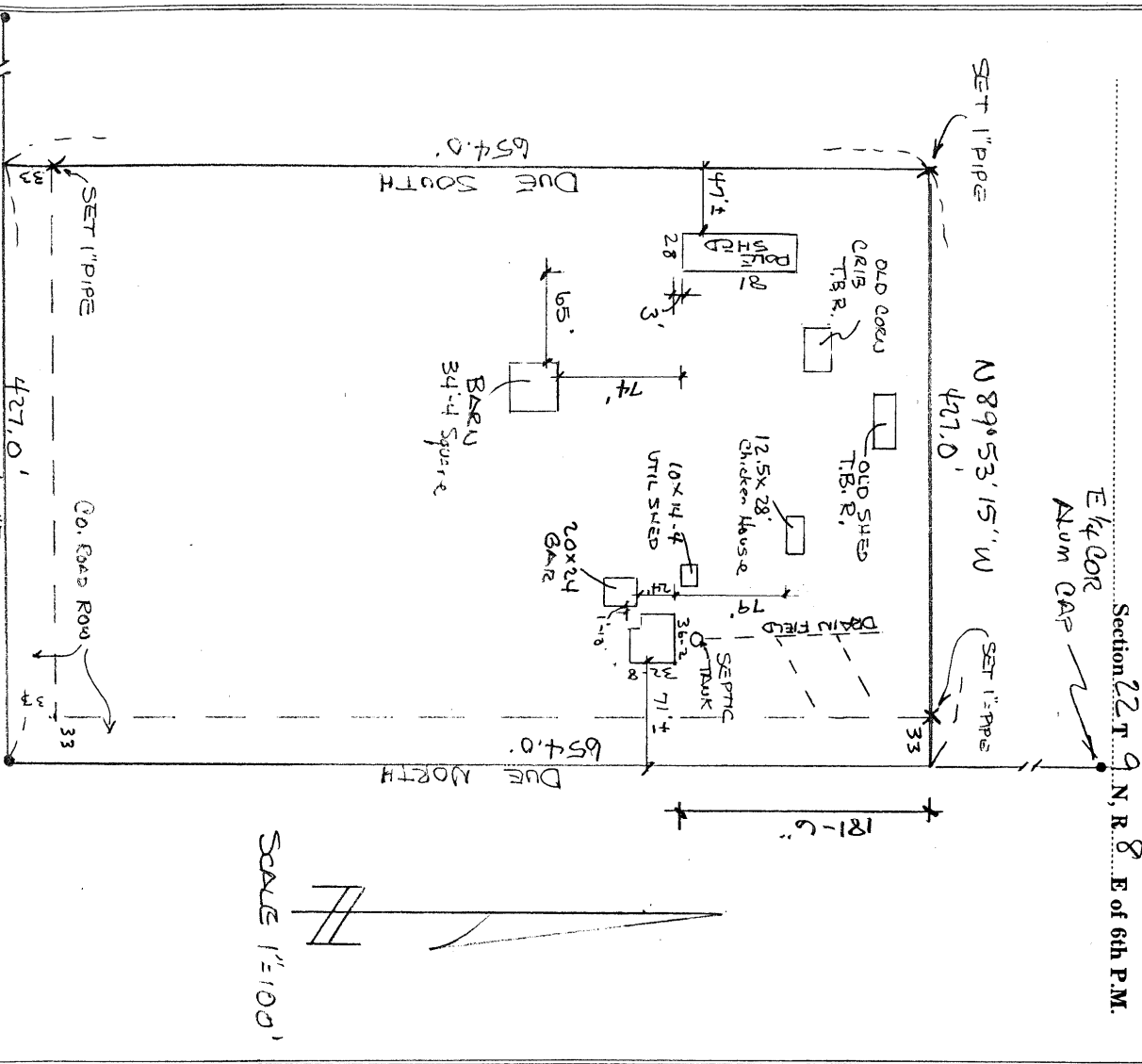
BATES AND ASSOCIATES  
911 ADAMS - LINCOLN, NEBRASKA

PHONE 432-3724

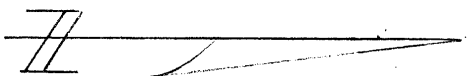
Survey of: AUTREG TRACT DELAID IN THE SE 1/4

Section 22 T. 9 N. R. 8 E of 6th P.M.

E 1/4 COR  
ALUM CAP



SCALE 1"=100'



5/4 COR

SE COR SEC 22

November 3, 2022

Board of Zoning Appeals,

We are writing to you today to request a waiver that would allow us to pull permits and make necessary renovations to the home which currently is described as a "non buildable" lot.

On 10/21/2022 our family closed 8401 S. 162nd St. in Bennett, NE. A 5.62 acre property with an existing home, barn, and 3 outhouse structures.

In preparation for closing, Erin called Tom Cajka (planning commission) to inquire about how we might be able to use the land in the future and make the necessary improvements needed. During the phone call Tom informed us that this land was a "non buildable" lot which meant when we would go to pull permits in the future, we would be declined. Additionally, Ron Rehtus (Zoning coordinator) confirmed he cannot issue permits for this property until it becomes a buildable lot. We were advised we were unable to delay the closing due to there being a clean, legal title.

Per Steve Hettenbaugh (previous owner of 8401 S 162nd St) a survey was completed when he purchased the land in 1993; however, we have been unable to locate this record. It appears there were multiple documentation errors and/or incorrect procedures followed in filing the documents when the original homestead was split up. Because not all of the paperwork was filed by the previous owners correctly, our property is considered a "non buildable" lot. There are several safety concerns and liabilities with the current home. It is old, run down, and has not been maintained well over the years. Windows are broken and leaks can be visibly seen to the outside around the windows and doors, additions have been added on without permits in the past, wiring and electrical is not up to code, heating and air-conditioning are outdated and not efficient, and the home and garage foundations both have significant structural problems.

We bought this property with the intention of being able to create an updated and safe home for our family, and we hope you can help us accomplish this.

Sincerely,

The Orduna Family