

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3329**, from I-1 Industrial to R-3 Residential, requested by J. Michael Rierden on behalf of The Dinerstein Companies, on property generally located south of Charleston Street, west of No. 1st Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/03/01 and 10/17/01
Administrative Action: 10/17/01

STAFF RECOMMENDATION: **Deferral**, so that the proposal may be examined in a sub-area plan or in the Comprehensive Plan update.

RECOMMENDATION: Approval (7-0: Carlson, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Steward and Krieser absent).

ASSOCIATED REQUESTS: Special Permit No. 1928, Oak Creek Apartments Community Unit Plan (01R-316).

FINDINGS OF FACT:

1. This change of zone request and the associated Special Permit No. 1928, Oak Creek Apartments Community Unit Plan, were heard at the same time before the Planning Commission.
2. The staff recommendation to **defer** this change of zone request so that the proposal may be examined in a subarea plan or in the Comprehensive Plan update, is based upon the "Analysis" as set forth on p.5-7, concluding that the proposal should be approved only if it is incorporated into a development plan for the entire area. The staff report consists of all information contained on pp.2-32. Although most of the correspondence between the applicant and staff pertains to the associated community unit plan, copies are being incorporated herein for reference.
3. The applicant's testimony is found on p.9-13 and 16. The applicant indicated that they are working with the other property owners in the area and anticipate bringing a proposed subarea plan forward.
4. Other testimony in support is found on p.13, and the record consists of two letters in support (p.33-34).
5. Testimony in opposition is found on p.13-14, and the record consists of one letter in opposition and the photographs submitted by opponent Danny Walker (p.35-39). The issues of the opposition are development in the floodplain and the need for this type of housing.
6. The Planning Commission discussions with the applicant and the staff are found on p.12 and 14-16.
7. On October 17, 2001, the Planning Commission disagreed with the staff recommendation and voted 7-0 to recommend **approval** of this change of zone request. See Minutes, p.16-17.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: November 19, 2001

REVIEWED BY: _____

DATE: November 19, 2001

REFERENCE NUMBER: FS\CC\FSCZ3329

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3329
Special Permit #1928
Oak Creek Apartments C.U.P.

DATE: September 19, 2001

****As Revised by Planning Commission 10/17/01****

Note: This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

PROPOSAL: Change of Zone #3329 Amend the zoning map west of N. 1st Street and Charleston from I-1 Industrial to R-3 Residential

Special Permit #1928 A community unit plan consisting of 157 dwelling units, 96 of which are dwellings for non-related persons.

WAIVER REQUESTS:

- Stormwater detention/retention
- Screening for multiple family dwellings backing onto railroads
- Minimum separation for multiple family dwellings

LAND AREA: 38.77 acres, more or less.

CONCLUSION: This community unit plan demonstrates a site design that is sensitive to the existing wetlands, borrows most of its fill on-site, and meets the proposed requirements for dwellings for non-related persons.

The location of the site, however, overshadows the site design. By right, the properties to the east and the north could develop with any number of uses which are incompatible with residential development.

This proposal should be approved only if it is incorporated into a development plan for the entire area.

<u>RECOMMENDATION:</u>	Deferral so that the proposal may be examined in a sub-area plan or in the Comprehensive Plan update.
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GENERAL INFORMATION:

LEGAL DESCRIPTION: A part of Lot 82 I.T., in the S ½ of Section 15, Township 10 North, Range 6 East, and Lot 132 and a part of Lot 264, I.T., in the NE 1/4 of Section 22, Township 10 North, Range 6 East, Lancaster County, Nebraska, generally located at N. 1st Street and Charleston Street.

LOCATION: South of Charleston Street, west of N. 1st Street

APPLICANT: The Dinerstein Companies
6363 Woodway, Suite 1000
Houston, TX 77057

OWNER: Robert & Louise White
300 West Charleston
Lincoln, NE 68528

CONTACTS: **Change of Zone #3329**
J. Michael Rierden
645 "M" Street, Suite 200
Lincoln, NE 68508
(402) 476-2413

Special Permit #1928
Ron Ross
Ross Engineering
201 N. 8th Street, Suite 401
Lincoln, NE 68508

EXISTING ZONING: I-1 Industrial

EXISTING LAND USE: Residence and veterinary clinic

SURROUNDING LAND USE AND ZONING:

North:	I-1	Pfizer to the northwest across Oak Creek and mini-warehouses to the north
South:	R-3 & I-1	Vacant and, further south, the Westgate Park for Business and Industry
East:	I-1	Vacant
West:	R-3	Saline Wetlands Nature Center (west of the Union Pacific railroad tracks)

ASSOCIATED APPLICATIONS: Change of Zone 3328, a text change to allow dwellings for non-related persons within a C.U.P.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan designates this area as Industrial with Wetlands and Water Bodies.

Industrial Land (Purple) encompasses areas where manufacturing, warehousing and trucking and transportation facilities are the dominant land use. Residential uses are discouraged in industrial areas. (p 37)

From the Future Urban Residential Needs and Plan:

Goals

- *Provide an environment for each neighborhood that promotes the safety and well-being of the residents and provides a sense of community*
- *Enhance rural and urban neighborhoods through the preservation of their natural environment*
- *Encourage the development of housing that is appropriate to the requirements of households with special needs, including but not limited to, the elderly, the physically and/or mentally challenged, and households in crisis.*
- *Encourage efficient use of urban areas by providing for high density residential uses as an integral part of major, planned commercial and residential developments. (p 44)*

From Industrial Land:

Goals

- *Provide adequate and appropriately located areas for industrial development... (p 68)*

From Wetland and Water Bodies:

Goals

- *Maintain, preserve and enhance existing wetlands and restore degraded wetlands. (p 70)*

From Comprehensive Plan Implementation Strategies:

3. Public Policy Considerations

8. **Diversity and Unity.** In housing, a place should be found for the country estate and the city efficiency apartment, for the small private single family home and the large apartment suite, for the most affordable and most expensive dwelling unit, for completely independent living and for living within the care of others. Provision of the broadest range of housing options throughout the community improves the quality of life in the whole community. (pp 192-3)

HISTORY: This area was converted from K Light Industrial to I-1 Industrial in the 1979 Zoning Update.

UTILITIES: Sewer is available. The developer proposes extending water service to this property through a special assessment district.

TOPOGRAPHY: Generally flat, with the wetlands in depressions

TRAFFIC ANALYSIS: Charleston Street west of N. 1st Street is not classified. Charleston Street east of N. 1st Street to 10th Street is classified as a Collector. N. 1st Street is identified as a Collector in the existing and a principal arterial in the future Street and Road Classification.

A future bicycle trail is shown along W. Charleston Street along the north side of this property.

PUBLIC SERVICE: The closest fire station is located at W. "O" Street and Sun Valley Boulevard.

REGIONAL ISSUES: Availability of student housing. Transitions between incompatible uses.

ENVIRONMENTAL CONCERNS: Construction in the flood plain and wetlands protection. Hazardous materials associated with industrial uses.

AESTHETIC CONSIDERATIONS: Preservation of open space.

ALTERNATIVE USES: Development which does not have the potential to be adversely affected should more industrial uses develop in the area.

ANALYSIS:

1. The Comprehensive Plan lists criteria for the review of zoning proposals. These include portions of Nebraska Revised Statutes Section 15-902;
 1. **Safety from fire, flood and other dangers;**
The entire site is within the 100-year flood plain. The Lincoln-Lancaster County Health Department reports that one of the adjacent rail lines has heavy traffic including many hazardous chemicals.
 2. **Promotion of the public health, safety, and general welfare;**
The applicant has mapped the former landfill site. According to the Terracon report, the apartments are all located west of the former landfill.
 3. **Consideration of the character of the various parts of the area, and their particular suitability for particular uses, and types of development;**
The area contains mini-warehouses, a vacant industrial building, undeveloped industrially zoned land, and the City's impound lot. The vacant industrial land could develop with any number of uses which are not compatible with residential.
 4. **Conservation of property values; and**
There are no apparent impacts.
 5. **Encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan.**
The Land Use map identifies this area as Industrial. If an application does not match the Land Use Map but does meet the zoning criteria, it can be found in conformance with the Comprehensive Plan.

There are seven specific criteria established in the Plan for review including;

a. Infrastructure: the availability of the water, sewer, drainage and the transportation systems.

Water and sewer are generally available, although the method of financing the construction of water lines has yet to be determined. The proposal includes sedimentation basins to reduce the impact of stormwater runoff on the wetlands. West Charleston Street must be paved to N. 1st Street in order to serve these apartments. The developer proposes that it can be accomplished through a paving district.

b. Compatibility: harmony and suitability with the surrounding land uses and the natural environment.

The Lincoln-Lancaster County Health Department considers this proposal to be incompatible with the surrounding industrial and rail uses.

c. Health and Safety: protection against natural and man-made hazards including noise; air, ground and water pollution; flooding; and hazards from industrial or agricultural processes or products.

The entire site is within the 100 year flood plain. The proposed apartments have only one access point to the road network. Although individual buildings will be elevated to one foot above the 100 year flood elevation, a flood could hinder access to the site. The Police Department indicates that an accident which blocks the driveway would delay emergency access to the residents of the apartments. The Health Department notes that “any industry or manufacturing facility with a possible myriad of hazardous chemicals, emissions, and/or processes could locate adjacent to the proposed Oak Creek student housing.” The apartment buildings are located no closer than 85 feet from the abutting I-1 properties and 100 feet from the railroad tracks.

d. Physiographic Features: the topography, suitability of proposed land uses with streams, lakes, soil types, natural vegetation or wildlife habitat.

The proposed C.U.P. does not fill any of the existing wetlands on site. According to the Grading Plan, 30,483 of 32,146 cubic yards of fill will be borrowed on-site. Lincoln’s current flood plain regulations do not require that any fill be borrowed on-site.

e. Accessibility: availability, or lack thereof, of public transportation, arterial connections and pedestrian linkages.

N. 1st Street is classified as an arterial in the future. Charleston Street is classified as a collector street from N. 1st Street to N. 10th Street. With its location near the ballpark and its pedestrian bridge, the site has the potential for pedestrian access with downtown. There are no sidewalks along W. Charleston Street, though. The developer is proposing a private shuttle bus to the UNL campus.

f. Open Space: availability of sufficient open space and recreational areas to accommodate a project's residents and employees.

At least 18 of the 38 acres within the C.U.P. will remain open space. The apartment layout includes a pool, basketball, and volleyball courts.

g. Fiscal Impacts: whether the proposed use does not create a burden to local tax revenues and/or available resources.

There are no apparent fiscal impacts.

2. The Department of Public Works & Utilities notes that the drainage outlets should be designed above minimum standards. The Parks & Recreation Department has concerns about using the existing saline wetlands as storm water routing. The outlets could be larger and could incorporate native plantings to help filter pollutants, for example. The borrow area west of the apartments should incorporate native plantings in its design.
3. The supplied information does not address the effect, if any, of the fill upon the flood plain.

4. The traffic impact of this project upon North Bottoms could be substantial. The applicant is proposing a private shuttle bus to provide transportation to the UNL campus. The bus will not travel to 10th Street via Charleston Street through the North Bottoms.
5. The shade trees in the parking areas exceed those required by Design Standards.

**CHANGE OF ZONE NO. 3329
and
SPECIAL PERMIT NO. 1928,
OAK CREEK COMMUNITY UNIT PLAN**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 3, 2001

Members present: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn; Bills and Krieser absent.

Staff recommendation: Approval of the change of zone and conditional approval of the special permit.

Jason Reynolds of the Planning staff submitted a letter in support from the West "O" Street Area Business Association and Chameleon & Company, Inc.

Proponents

1. Michael Rierden appeared on behalf of the applicant and agreed to a deferral of his presentation and deferral of the public hearing so that it remains with the text amendment previously deferred.

Motion to defer was made by Carlson, seconded by Hunter, with continued public hearing and administrative action scheduled for October 17, 2001. Motion carried 7-0: Newman, Duvall, Taylor, Steward, Carlson, Hunter and Schwinn voting 'yes'; Bills and Krieser absent.

2. Richard Wiese, testified in support on behalf of West "O" Business Association. He does not want to lose this opportunity. They have been working with Doc White for 3 ½ years on getting this planned development and he does not want to see it lost. We have worked too hard to better this area.

Opposition

1. Danny Walker testified in opposition. It is fine with him if The Dinerstein Companies do not build in Lincoln. We have enough party houses as it is.

Members present: Carlson, Hunter, Taylor, Duvall, Newman, Bills and Schwinn; Krieser and Steward absent.

Proponents

1. Michael Rierden appeared on behalf of the applicant. He reported that the applicant has met with the Mayor's office and the Mayor's Neighborhood Roundtable. The Mayor has stated his support for the project. Rierden has also visited with the North Bottoms Neighborhood Association. Rierden acknowledged receipt of the letter from Carol Brown expressing concern about the parking for 20 guests. The applicant has agreed to amend the site plan to increase the guest parking to 75 stalls. Rierden also clarified that this application will not affect the BMX track which is owned by the City and run by the Parks Department.

2. Paula Barrerra of The Dinerstein Companies, the applicant, testified in support. The Dinerstein Companies will be the owner and developer of this project. For the last six years they have been geared toward building in university cities where there has been a need for housing for students. The property is geared towards students but she acknowledged that they cannot discriminate. The property is rented by the bedroom. Leases are guaranteed by the parents, which gives more control over the tenant. Three violations of the lease agreement is eviction. Barrerra could only remember one time in the 27 properties where they have leased to someone other than a student. This happened to be on a short term basis for a displaced family due to a flood.

The Dinerstein Companies has a strong management team that is trained to deal with special issues. Their standing operating procedures book is 3 ½ inches thick. They attempt to hire local people to staff the complex. There will be nine employees on the site. They will be trained in the policies and procedures that work best for this type of housing. The housing will be co-ed, the same as on any other college campus or apartment complex. Tenants are allowed to select their own roommates or the company will help match them up. To make the properties more secure, a licensed law officer is hired to live on the site. The property is patrolled on a regular basis by vehicle and on foot. After office hours, any calls going to the answering service are directed to the courtesy officer and are dealt with immediately. It is important to provide a safe environment for the students. The Dinerstein Companies is spending 15 million dollars on this project and the goal is to maintain and keep it up. They offer a shuttle bus from the property to the campus every 15-30 minutes during morning and afternoon classes. They also provide on-site parking for all residents and try to accommodate as many guests as possible. They do enforce local towing regulations. The residents are provided with a parking sticker and anyone parking on the property without a sticker is towed. They also enforce residency numbers--one person per bedroom--by the lease agreement. The room size is only big enough to accommodate one person comfortably. The units are furnished with a desk and computer hookup with Internet access.

Newman inquired as to the age of the oldest complex. Barrerra referred to their first property at Texas A&M. That same year they built in Auburn, AL and Baton Rouge, LA. Five properties were built in 1996-97. Newman was seeking to find a commitment to keeping these going. Barrerra stated that The Dinerstein Companies owns, operates and maintains each facility.

Hunter asked about their experience with security. Barrerra indicated that it is to the company's advantage to have a courtesy officer on-site. They do not tolerate under-age drinking. The experience has been that their biggest advertising is the students themselves.

Duvall inquired whether there is entertainment or supervised activities provided by the complex. Barrerra acknowledged that they do have a sand volleyball court, basketball court, pool, hot tub, and equipped exercise room. The management staff puts on different parties and activities for the students, but they are usually seasonal.

Taylor confirmed with Barrerra that this is completely backed up by parents and the parents must sign the lease. No one can take a unit there without parental permission. Barrerra clarified that if a tenant is over age 21 and has established credit, they can sign their own lease. Anyone under the age of 21 has to have a parent or guardian guarantee their rent. There has only been one incidence in 27 properties where they have ever leased to anyone other than a student. The applicant believes it is a stricter environment than living in any college dormitory. Every tenant must fill out an application and is screened. On-site parking is provided for all residents and this site will have 75 guest parking spaces, with a total of 664 parking stalls on the site. This site provides a separate living unit for the courtesy officer.

Barrerra went on to state that this year The Dinerstein Companies opened several properties in communities with college enrollments of 10,000 students or more, which is one of their criteria. The 4 occupants per unit allows them to meet the rental requirements of \$275-300 per occupant.

Hunter sought clarification of the lease violations. Barrerra stated that lease violations include under-age drinking, keeping someone in your room you are not supposed to have over an extended period, partying, disturbing the peace, and non-payment of rent. Drug use is immediate eviction.

3. Ron Ross of Ross Engineering, Inc. testified on behalf of the applicant. The applicant has dealt with the complex environmental issues on this site, which was the requirement of the lender on this project. The developer and its representatives have to be accountable and be responsible for the projects they represent. What is really frustrating is when people come forward and portray with their dialogue that they understand and have researched all the issues when they have not. Ross started work on this project the end of January and they have put a lot of heart and soul into this and have dealt with many, many issues.

Ross has been extremely impressed with The Dinerstein Companies. You have to take a look at their track record. In a short amount of time, they have constructed 27 projects. Under construction now are Greenville, NC; Cedar Falls, IA; Laramie, WY; Austin, TX; and Bowling Green, NC, among others. Others being planned include Lincoln, NE; Charlottesville, WV; Lubbock, TX; and Charlotte, NC, among others. Some of these have gone through the same exercise as the City of Lincoln. They are very, very successful. He wholeheartedly supports this project--it is in the right neck of the woods and it is not surrounded by neighborhood groups.

This project is 38 acres of land zoned I-1, with a change of zone request to R-3, located generally at 1st and Charleston. There are two tracts of land. The major tract being developed is 22 acres. To the west between two railroad tracks are 16.5 acres of 35% wetlands. The rest of the property is being

acquired from Doc White. They will be excavating the dirt and bringing it into the site for fill and turning it into wetlands and deeding a substantial portion to the NRD. They would have deeded all of the 16.5 acre tract, but Planning wants them to keep enough density to support the 157 units and the 589 bedrooms. About 11 acres will be deeded to the NRD plus a conservation easement. The western 1/3 is where a pond will be built. There will be a clubhouse, multi-purpose court, volleyball, shuttle bus, mail kiosk, and other activities.

A key issue is the parking. A typical conventional apartment complex requires 2 parking spaces per dwelling unit. Ross suspects the average in Lincoln might be 2.5 bedrooms, with 2 parking spaces. This project provides one parking space per bedroom and another 75 parking stalls for guests as a result of the Mayor's Neighborhood Roundtable meeting. The revised site plan which adds more parking for guests will be resubmitted.

Ross referred to the public improvements which are a part of this project. Charleston Street is partially concrete and partially brick. The applicant is requesting a paving district in conjunction with the developer to the south. The project also needs an 8" water main for about 1,000 ft., which will be done either under an Executive Order or a district. If they can gain support of the developer to the north, they would prefer to do the water main by Executive Order.

Ross acknowledged that this is being developed in a floodplain. There is going to be new criteria for floodplain development coming forward in the next 6-9 months. Ross submitted that this developer has gone a long ways toward adapting that criteria. There will be an average of 3-4' of fill under the units. Within the entire area, there are 57,000 yards of fill required. Only 13,000 yards will be brought in from off-site. The rest comes from the pond that is being built and the existing area within the railroad tracks. If you spread that 13,000 yards over the entire area, it amounts to 0.21 feet spread out over the whole site. Planning and Public Works have supported this concept.

Ross also acknowledged that this project is in an area of wetlands. There are four isolated wetlands of about 6.5 acres and this project does not touch one of them. The site has been refined several times to work around it. This project creates more wetlands.

Ross advised that the majority of the developer's time, effort and money was spent on the area of the old landfill. They did an electromagnetic study and they know where the landfill is not. That is the property they are purchasing. They are buying only land outside the landfill. The buildings will be vented even if there is no methane gas.

With regard to the change of zone to R-3, Ross advised that there is one tract that is not being purchased which will remain in Doc White's possession. It is a saline wetland and will stay there at least with a conservation easement.

Ross noted that the Lincoln saline wetlands center is located to the west of this site. This developer will deed at least 11 of the 16.5 acres to expand that nature center. There will also be enhanced wetlands created by this developer.

Ross noted that the staff initially thought this probably was not the right tract of ground because it was all zoned I-1. The developer went to work to figure out how to go about this. Since that time, the recommendation in the staff report is now deferral for the Comprehensive Plan update or a subarea

plan—not denial. One of the options we were given to allow us to move forward are the conditions of approval and Ross agrees with the conditions of approval.

With regard to the Land Use Plan, Ross stated that this developer has been working extensively with the developer to the east. A change of zone to H-3 is being submitted on that property. The developer is also working with two neighbors to the north and anticipates bringing in a proposed subarea plan. This area includes the 38 acres, 15 acres of Chameleon property, and 6.5 acres to the north, north of Charleston. They are also working with Mark Becker who has 4.9 acres to the south, which will be shown as industrial in the subarea plan just to be allowed the 15' setback; however, the property will be developed in the future for commercial uses—not high density industrial. The industrial setting is being changed to highway commercial in the subarea plan with more upscale types of uses.

Ross advised that the Mayor has indicated that he sees this as a redeveloping revitalizing area. With the realignment of Sun Valley Blvd., the 15 million dollar Dinerstein project to the west, and commercial upscale uses in a subarea plan, it will really change the character.

Newman expressed that her biggest concern, as raised by the Health Department comments, is getting those kids out of there if anything does happen. You only have one access. Ross advised that Sun Valley Blvd. is being looked at by the City and Department of Roads for realignment to get people to the ball complex. Instead of going straight north, it is curving back around the city tow lot and will link into the intersection of 1st & Charleston. There will be a future public street which links to the entrance into the ballfield complex. We also have another future street system—Charleston is being widened to 33'. With that widening and the future street network in the area, there will be alternate access within the area. Ross also pointed out that the neighbor to the north is the mini-storage area. There is a private driveway system through the mini-storage area that will come into the back door of this development on the north side of Charleston, providing another alternate entrance for emergency vehicles.

Carlson asked for further walk-through on the site plan. Ross displayed the map and commented that none of the Dinerstein project is within that old landfill property. West Charleston is the entrance into the complex. It is necessary to start a surcharge and move dirt in this fall. Come spring, they will be ready to build and will have to have fire protection. They anticipate building the water main in January or February so that it is built prior to breaking ground. An EO process is much, much faster where private funds are put up, it is designed and built. A district would take six months. This developer, along with the developer to the south and hopefully the developer to the north, will pay for the water main.

Carlson wondered whether there has been any discussion about commercial zoning to the east. Ross noted that the 50 acres to the east has 2.2 acres of wetlands. The whole premise in dealing with them is that there is landfill there. The tow lot has venting of methane gas. The smaller scale upscale uses are more conducive to development in this area. We see this as smaller users—not the larger industrial type uses. There will be no vehicular traffic across the wetlands.

Rierden then proceeded with his testimony and proposed amendments to the conditions of approval:

- 1.2.7 Provide grading and drainage over the entire area covered by the Community Unit Plan, except existing wetlands located in the 16.5 acre tract which will not be disturbed, as requested by the Department of Public Works & Utilities.
- 1.2.10 Revise the plans to show the connection to the trail system on the south side of Oak Creek and provide a level plane for the trail system to go through in the area abutting the property.
- 1.2.21 Provide parking lot screening which meets design standards along the east property line, except where adjacent to existing wetlands.
2. This approval permits ~~456~~ 157 dwelling units, ~~96~~ 120 of which are dwellings for non-related persons with ~~384~~ 480 occupants, and waives the following:

Support

1. Rich Wiese testified on his own behalf in support. He lives in this area and three owners purchased the saline wetlands so that undesirable homes would not be built on that property. Through the Department of Interior Foundation they received a \$75,000 grant to protect the saline wetlands. They purchased the property and deeded it to the NRD. With the Doc White property deeded to the NRD, it will complete the preservation of those saline wetlands.

2. Rich Wiese also testified in support on behalf of the **West “O” Area Business Association**. This is a good location for this project.

Opposition

1. Danny Walker testified in opposition. He submitted pictures of the Oak Creek levee which he believes to be relevant. A major portion of the stormwater runoff from this project is going to be shuffled over to Oak Creek. There is “home base storage” located right on the edge of Oak Creek. The pictures showed erosion that has taken place on the south side of the levee, the erosion being at least 3-5 feet deep. The pictures also showed fill. What is this development going to do to no net rise? No one has discussed this issue. He believes everything is on the fast track because of the regulations forthcoming on development in the floodplain. There is a tremendous amount of fill out there already. It is very easy to get a fill permit.

In addition, Walker pointed out that the entire project lies within the 100 year floodplain which will require fill and it is irrelevant as to where the fill is obtained. He appreciates the additional parking which the applicant has agreed to provide, but we’re still putting hard surface in floodplain area on top of dirt. Evidently the project could not meet no net rise provisions. Portions of the complex are located in the proximity of railroad tracks utilized to transport hazardous materials. The proposed development is in proximity of the city of Lincoln tow lot which is also located within the 100 year floodplain. The tow

lot only has provisions for only 20 tie-downs to accommodate 400-600 vehicles in the event of a major flood. This is an additional risk to the proposed development. A major portion of the stormwater runoff from the proposal will drain into Oak Creek which currently handles runoff from home base storage at 1701 No. 1st and the saline wetlands at 1st & Cornhusker. There is drainage into the saline wetlands from Cornhusker Highway.

Walker asked the Commission to keep in mind the fact that Oak Creek drains into Salt Creek which is a major flood threat as a result of very poor planning. How will vehicles enter in the event of a major flood? This is a very high risk area because of what was dumped into that landfill. There is a large amount of fill being placed in surrounding areas which will add to the risk of flooding. What is proposed to be built in the other fill areas? Will it be compatible with the proposed development?

Walker attended the Mayor's Neighborhood Roundtable meeting. He takes exception to the fact the way the Mayor stepped forward and endorsed this project. That is the purpose of the Planning Commission and City Council—not the Mayor. It would seem that there might be special interests. He believes the Mayor's conduct is questionable.

2. Richard Halvorsen testified in opposition. He questions the need for this project. The student population at UNL has been decreasing. There is a 2% increase this year, but that was mostly in the upper class areas. The University has taken two wings of their student housing and converted them to classrooms. Niehardt Hall is now half classroom use. If there is such a need for housing, why are they converting the housing on campus into classroom? Halvorsen also does not see too many students attracted to a 12-month lease. Halvorsen's main concern is building in an industrial area. How are we going to get these people out? We have no idea what might be built in the adjacent industrial areas in the future. Plumes of toxic chemicals can cover large amounts of areas and travel a pretty far distance.

Staff Questions

Duvall asked staff to respond to the amendments to the conditions proposed by the applicant. Reynolds agreed with the proposed amendments; however, staff is still recommending deferral. The change from 156 to 157 units includes the caretaker unit.

Carlson asked staff to show the trail connection. Reynolds displayed the map and explained that there is a proposed trail connection along the south side of West Charleston Street to connect up to the Oak Creek area.

Carlson asked staff to talk about the erosion control required. Reynolds advised that there are standards for erosion control set forth in the design standards which must be complied with. Public Works is responsible for the supervision of the grading plan. There are also requirements by the NRD.

Carlson then inquired about the waiver of stormwater retention/detention. Reynolds stated that Public Works noted in their report that because of the work they were doing in constructing the additional pond area, they did not need to meet the strict standards of stormwater retention/detention. Dennis Bartels of Public Works clarified that all of the runoff from the fill that was proposed in the area drains to the existing wetlands and pond that are being enlarged on the west side of the project, which eventually

outlets through Oak Creek, so they are providing the typical benefits of stormwater detention which slows the water down before it discharges into Oak Creek. He does not believe there is a need to go through the calculations to match the flow requirements. He believes it comes close to meeting the requirements and does meet the intent. The detention requirements do not require them to look at the overall effects on Oak Creek. The outlets into the Creek will have to be approved by the NRD. Bartels was comfortable that this project will control the erosion that might occur.

Hunter asked the staff to address the concern about ingress and egress in case of a flood situation or evacuation. Bartels stated that he also raised this concern in his report. Charleston is below the 100-year flood level. There would be warning capabilities but if you were trapped there during the flood it does not appear that there would be street access to get out of this complex. Street grades by our adopted standards can be 1' below the 50-year design storm.

Carlson clarified that the staff is still recommending deferral. Reynolds concurred. He also advised that the Planning Department did receive a letter from Ross Engineering proposing a subarea plan or an amendment to the upcoming Comprehensive Plan. The deadline for submittals for the new Comprehensive Plan is this Friday, October 19, 2001.

Taylor asked staff to explain the problem if the application is not deferred. Reynolds stated that the primary concerns are outlined in the staff report and they have to do with the I-1 zoning of the properties to the east and north, which are shown as industrial in the Comprehensive Plan. There are any number of uses in the I-1 district that are incompatible with residential that could be built by right without public hearing. Taylor inquired whether there is anything the Commission can do to move this project forward that would provide staff with the safeguards the staff needs in the future because of the timeframe which this development is working within. Reynolds reiterated that the primary concern is the zoning on the adjacent property. The Commission does not have the ability to change that zoning at this time.

Schwinn asked whether the staff assumes that between now and the time this reaches City Council there will be some sort of subarea plan submittal. Reynolds indicated that the applicant has stated that they intend to get the subarea plan in by Friday; however, we do not have an application submitted at this time.

Taylor asked if there is any way to send this project forward and have safeguards regarding the things that have not been done. Rick Peo, City Law Department, stated that the Planning Commission has no control on the uses on the abutting property at this time. The property is zoned I-1 and an I-1 use can be developed by right. The issue is the risk and likelihood of that happening. Unless there is a change of zone to rezone the abutting property we don't have any effective control over what might be built adjacent to this use.

Schwinn believes that H-3 is compatible with residential. Peo concurred, if the other properties are later rezoned and nothing is built in the interim.

Carlson asked whether the staff has a time recommendation associated with the deferral. Reynolds advised that the time recommendation is that this should be reviewed in the larger setting and the forum to do that is at the Comprehensive Plan level. This application should be deferred until such time as it can be reviewed through the Comprehensive Plan. In terms of timing now, that would mean submitting documents to the Comprehensive Plan Committee by Friday, October 19th, and having their

review for potential inclusion in the 2025 Comprehensive Plan, which effectively is a deferral until the 2025 Comprehensive Plan is approved or a subarea plan is approved. The Department goal is to have the 2025 Comprehensive Plan before the Planning Commission in January, 2002.

Carlson asked if it is necessary to have a full subarea plan. Reynolds indicated that there is a different process for subarea plans. This area is nicely bounded by Oak Creek, the railroad tracks, Sun Valley Blvd. and Hwy 6, and could constitute a subarea; however, right now is the opportunity to look at it with the Comprehensive Plan and because of the time commitment that the Comprehensive Plan requires, that is probably the best.

Response by the Applicant

Rierden addressed the timing of this project. It is critical. The developer respects the Planning staff's recommendation of deferral and it came as no surprise, but this project cannot wait for the Land Use Plan to be changed in the Comprehensive Plan. It is necessary to have the permits and close on the sale of property in November. Surcharge will take 60-90 days, which takes us into February. Construction starts and takes us into March or April of 2002. He urged that the Commission approve this project and move it forward. The other property owners will be coming forward. Ross has authority to submit that change of zone. They will also be submitting a proposed subarea plan. Out of 48 acres, this immediate project is 12 acres. The rest of it is open space and wetlands. The developer had hoped to be through this process by mid-October.

Ross proceeded to rebut the items that the first speaker in opposition commented upon. This project does not impact Oak Creek. They have requested a waiver to detention because the NRD and Public Works do not want us to provide 100-year detention storage and release that water at a slower rate downstream. Doc White has not experienced a flood situation in that area. The developer will have a floodplain management document in their operations manual. Unfortunately, hazardous waste goes through the rest of our community. There are several approved fill permits, one of which is underway. This project will bring in 13,000 yards of fill for the entire project.

As far as the timeframe, Ross pointed out that the timing is critical and we are now down to the end of our construction season. He urged the Commission to move this project along and let them develop a good project for the city of Lincoln.

Public hearing was closed.

CHANGE OF ZONE NO. 3329

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Duvall moved approval, seconded by Taylor.

Duvall believes it is time to move ahead.

Schwinn commented that this is an evolving area and in that particular spot we have a very well used park and very popular city park, and a very popular baseball diamond which will be used about 6 months out of the year. It is an area prime to be moved away from industrial uses and into more compatible commercial uses. He will vote in support. He understands that they need to move forward and this does go to the City Council. If there are problems between now and then, the City Council will be the catchall.

Taylor expressed that he does have some concerns. He is pretty confident in The Dinerstein Companies and with the engineer. Therefore, he is really for this project going forward. There are similar situations that don't look as clearly defined as this that he would not support.

Carlson agreed that it is a positive if this area were to move from industrial to some other type of use, i.e. commercial. He is not satisfied with the concept of open-ended deferral because it sounds like there is a coordinated activity here. He is inclined to vote for the change of zone, regardless of the use because it is a better change.

Hunter stated that she will vote in favor; however, she is not ever going to be comfortable with changing zoning in the hopes that it is all going to get changed appropriately. In some ways she thinks that doing this almost forces those other properties to become rezoned.

Motion for approval carried 7-0: Carlson, Hunter, Taylor, Duvall, Newman, Bills and Schwinn voting 'yes'; Krieser and Steward absent.

SPECIAL PERMIT NO. 1928

OAK CREEK COMMUNITY UNIT PLAN

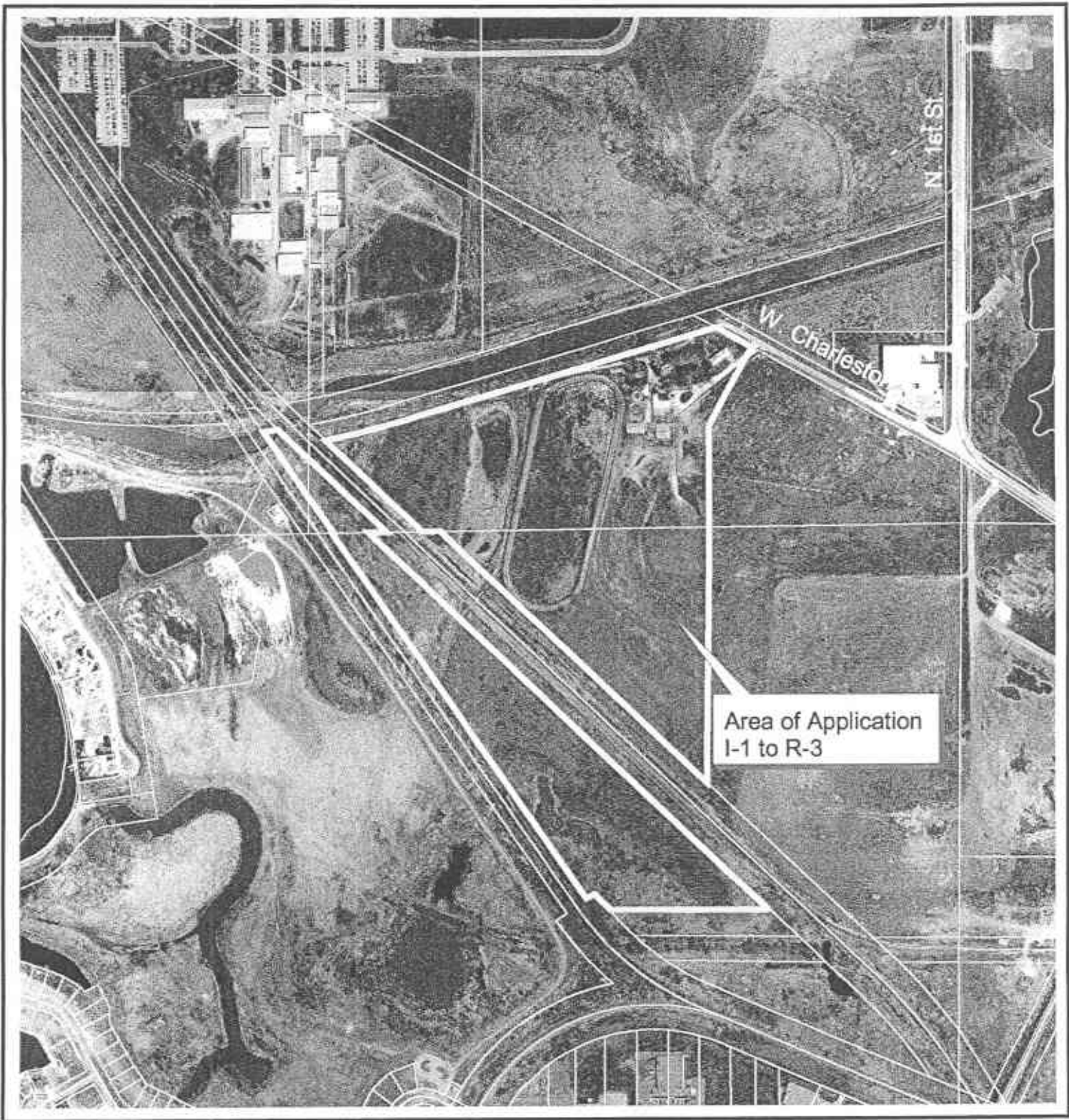
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

October 17, 2001

Duvall moved approval, with conditions, with the amendments as requested by the applicant, seconded by Hunter.

Newman stated that she really wants to vote for this but there are two issues. She knows we need alternative housing for students. She thinks it is a wonderful project and the developer has been responsible. But she is still bothered by the fact that there is only one access point in an area where things can happen, i.e. floods and hazardous materials on the railroad. The second part of the issue is, where do they belong? This applicant has tried to be responsible by putting this project someplace where it will not impact the neighborhood, but the access really bothers and she is voting in opposition based on the one access point.

Motion for conditional approval, with amendments, carried 6-1: Carlson, Hunter, Taylor, Duvall, Bills and Schwinn voting 'yes'; Newman voting 'no'; Steward and Krieser absent.



**Change of Zone #3329
N. 1st & Charleston**

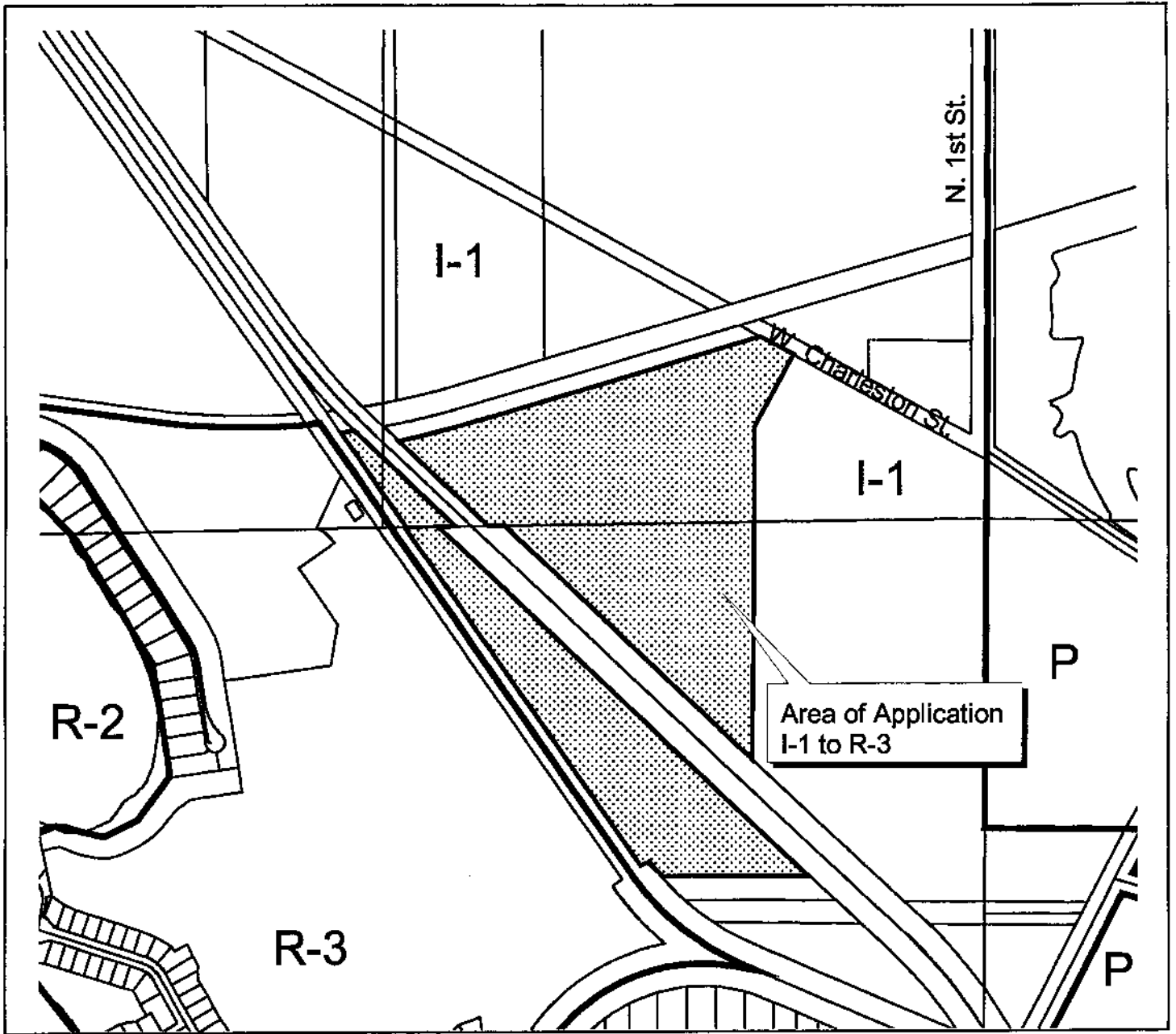


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Lincoln City - Lancaster County Planning Dept.

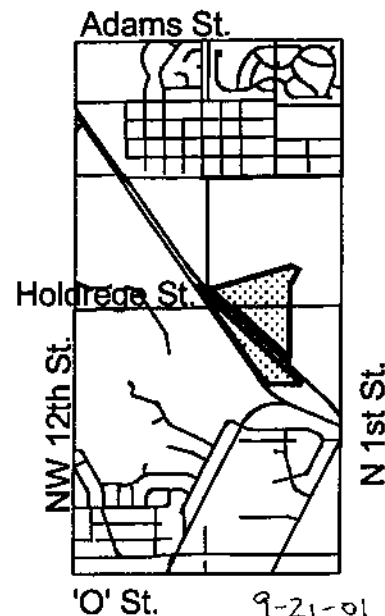
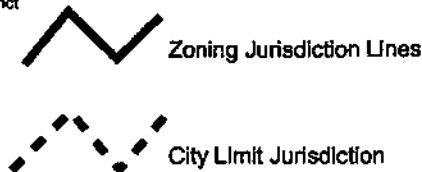


Change of Zone #3329 N. 1st & Charleston

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

Two Square Miles
Sec. 15 T10N R6E
22 T10N R6E

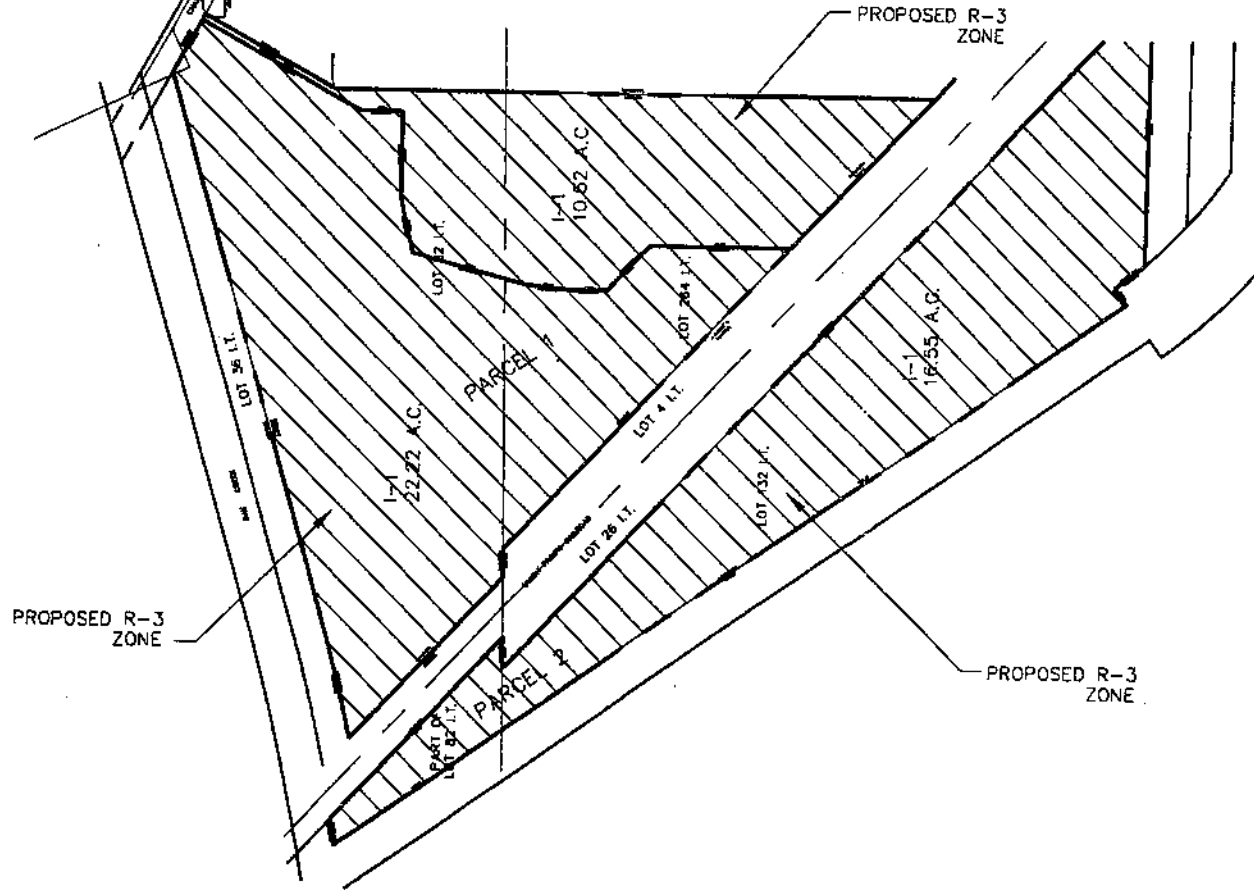


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Ross
Engineering,
Inc.

CHANGE OF ZONE EXHIBIT FOR OAK CREEK APARTMENTS



AUG 27 2001

CHANGE OF ZONE EXHIBIT
I-1 TO R-3 RESIDENTIAL



DRAWING No.: 129801EXB
Aug. 27, 2001 REI Project No.: 129801B Zone Change