

## **FACTSHEET**

**TITLE: CHANGE OF ZONE NO. 04001**, requested by the Directors of Planning and Public Works & Utilities, to amend Chapter 27.82 of the Lincoln Municipal Code relating to impact fees by amending Section 27.82.040 to revise the definition of Low-Income Owner-Occupied Housing; amending Section 27.82.060 to add eligibility criteria for Low-Income Owner-Occupied Housing exemptions from Impact Fees and modifying the provisions regarding when a request for exemption must be made; amending Section 27.82.080 to modify the provisions regarding approval of Owner-Occupied Low-Income Housing exemption and reimbursement of impact fees paid; and repealing Sections 27.82.040, 27.82.060, and 27.82.080 of the Lincoln Municipal Code as hitherto existing.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 02/18/04  
Administrative Action: 02/18/04

**RECOMMENDATION:** Approval, as revised on February 16, 2004 (8-0: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand voting 'yes'; Larson absent).

**STAFF RECOMMENDATION:** Approval, as revised on February 16, 2004.

### **FINDINGS OF FACT:**

1. The purpose of these three text amendments is to expand the reimbursement of impact fees for low and moderate income owner-occupied housing, to include buyers who are not using a local, state or federal assistance program, and to establish a system for locally checking income and processing the reimbursement.
2. The proposal was amended by the applicants on February 16, 2004, to comply with terminology used by HUD and Urban Development. (See Memorandum from Stephen Henrichsen dated February 16, 2004 on p.11).
3. The minutes of the Planning Commission are found on p.8-10.
4. There was no testimony in opposition.
5. On February 18, 2004, the Planning Commission agreed with the revised staff recommendation and voted 8-0 to recommend approval.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** February 23, 2004

**REVIEWED BY:** \_\_\_\_\_

**DATE:** February 23, 2004

**REFERENCE NUMBER:** FS\CC\2004\CZ.04001

# LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

## for February 18<sup>th</sup> PLANNING COMMISSION MEETING

**\*\*REVISED FEBRUARY 16, 2004\*\***

**P.A.S.:** Change of Zone #04001 Amendment to Impact Fee Ordinance

**PROPOSAL:** Three amendments are proposed in order to establish a system for checking income and processing reimbursement of impact fees for low and moderate income owner-occupied housing.

**CONCLUSION:** The proposed amendments to the impact fee ordinance are in conformance with the goals of the Comprehensive Plan. The amendments will aid in the processing of low and moderate income fee reimbursements.

**RECOMMENDATION:**

Approval

### **LEGAL DESCRIPTION:**

Amendments to the Zoning Code Chapter 27.82 on Impact Fees – to change the following:

- A. Section 27.82.040 to revise the definition of Low-to-Moderate Income Owner-Occupied Housing;
- B. Section 27.82.060 to add eligibility criteria for Low-to-Moderate Income Owner-Occupied Housing exemptions from Impact Fees and amend the processing deadline; and
- C. Section 27.82.080 to modify the provisions regarding approval of Owner-Occupied Low-to-Moderate Income Housing exemption and reimbursement of impact fees paid;

### **COMPREHENSIVE PLAN SPECIFICATIONS:**

These proposals are in conformance with the new 2025 Comprehensive Plan. Selected pertinent sections from the Plan include:

Guiding Principles for Financing Urban Infrastructure

**A Balanced Approach:** The community at large should provide more financing of maintenance and improvements in existing areas. Both new and existing development should pay its fair share of improvement costs due to growth and maintenance. In general, improvements which are of general benefit to the whole community should be paid by the community while improvements which are of special benefit to a specific area should be paid by that area.

**Develop a Fair & Predictable System:** Distribute infrastructure costs fairly among all property owners who benefit from the improvements. The goal of the financing system is that costs should be known in advance of development.

**Minimize Impact on Affordable Housing:** Infrastructure financing should not increase the cost of affordable housing in Lincoln and the City should encourage retention of affordable new housing in existing neighborhoods. (Pages F 160 -161)

Establish an impact fee at time of building permit for road improvement costs in developing areas. Fees should not be at full capital recovery cost for residential uses. Large traffic generators, like commercial and industrial businesses, will pay a majority of the costs due to their traffic impact. Some mechanism should be employed so that the road impact fee does not impact affordable housing.” (Page F 162)

## **ANALYSIS:**

1. At the time the impact fee ordinance was adopted in January 2003, it was noted that as the impact fee system was implemented, there may be some housekeeping matters to bring forward at a later date.
2. In December 2003 the City Council approved Change of Zone #3399 which included several minor modifications to the Impact Fee ordinance, including one change to the processing of low and moderate income housing reimbursements. At the time of the public hearing before the Planning Commission in October 2003, the Realtor’s Association noted some areas in the processing of low and moderate income reimbursements that they thought should be addressed. These changes have been reviewed and worked out over the past few months.
3. The proposed amendments in this change of zone were reviewed by the Realtor’s Association of Lincoln, Home Builders Association of Lincoln, Neighborhoods Inc. and several others who work with low and moderate income housing. This item is was presented to the Mayor’s Neighborhood Roundtable on February 12<sup>th</sup>.
4. The change in Section 27.82.040, Definitions, is to remove the requirement that Low-to-Moderate Income Owner Occupied housing be subject to “local, state or federal regulations.” This provision was included in the original ordinance so that staff would not necessarily have to review each application to determine if the person met the income thresholds. It was thought that by requiring an applicant be in a “local, state or federal” low income housing program that this would eliminate duplication and speed the processing time. However, this was found to not be the case. Many programs will not share information or their income criteria vary. Thus, it was determined that the City would have to eliminate this provision.
5. By eliminating the participation in other programs, this means the City will need to determine the household’s income and establish some program limits. These amendments are done in Section 27.82.060 (a) (6). These amendments to Section 27.82.060 (a) (6) do the following:
  - Part (i) is a new provision that “the housing has an initial purchase price that does not exceed the FHA mortgage limit for the Lincoln Area as determined by the United States Department of Housing and Urban Development (HUD).” Currently this will equate to \$160,176.00 for a single family house. The purchase price will be verified using the purchase contract. The limit is included to ensure the reimbursement program is not abused and is consistent with limits of federal low and moderate income housing programs.

- Part (ii) requires that the person have an adjusted gross taxable income (as shown on tax returns) less than 80% of median income – which is the definition of moderate income. The City is using “~~taxable~~” rather than adjusted gross income, similar to the Urban Development Dept., because it will be easier to use tax returns to verify income.
  - Part (iii) establishes that a person may only receive this reimbursement once in a five year period. Section 27.82.080 © ) is being amended to provide that the reimbursement goes to the home buyer. Thus, the five year provision was added to avoid abuse of the reimbursement, while still allowing a low income builder to apply for the reimbursement which each new home. The once in five year provision is for the buyer, not the builder.
6. As mentioned earlier, the last amendment is to Section 27.82.080 © ), provides that reimbursement must be applied for within 10 days of closing on the house, rather than at time of occupancy and that the reimbursement will go to the home buyer.

Prepared by:

Stephen Henrichsen, AICP  
Principal Planner

**\*\*Revised February 16, 2004\*\***

#### **APPLICANTS:**

The Directors of Planning and Public Works & Utilities Departments

#### **CONTACTS:**

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**PROPOSED AMENDMENTS TO IMPACT FEE ORDINANCE**

**\*\*REVISED FEBRUARY 16, 2004\*\***

A. "Section 6. That Title 27 of the Lincoln Municipal Code be amended by adding a new section numbered 27.82.060 to read as follows:

**27.82.040 Definitions.**

~~**Income Area, Low.** An area where 50% or more of the households within a census block make 60% or less of the median gross income adjusted for household size.~~

~~—————**Income Area, Moderate.** An area where 50% or more of the households within a census block make 80% or less of the median gross income adjusted for household size.~~

**Low-to-Moderate-Income Area.** An area determined by the United States Department of Housing and Urban Development (HUD) to be a low-to-moderate income area based upon census data.

**Low-to-Moderate-Income Owner-Occupied Housing.** An owner-occupied unit, under local, state, or federal regulations, which is sold to or built by a household whose adjusted gross income is 80% or less of the area median gross income adjusted for household size.

**Low-to-Moderate Income Rental Housing.** A tenant-occupied unit which is rented to a household whose adjusted gross income is 80% or less of the area median gross income adjusted for household size and which is rent restricted under local, state or federal regulations, to households whose adjusted gross income is 80% or less of the area median gross income adjusted for household size, and which restrictions through means of a land use restriction agreement or similar legal document runs with the property for an initial period of at least fifteen years.

**27.82.060 Exemptions From Impact Fees. {Reflects amendment to Section (a)}**

(a) Exemptions From All Impact Fees. The following types of development shall be exempted from payment of all impact fees otherwise due pursuant to this ordinance:

(1) Replacement of a destroyed or partially destroyed residential building or structure with a new building or structure of the same use, and with the same number of residential units, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(2) Replacement of a destroyed or partially destroyed nonresidential building or structure with a new building or structure of the same gross floor area and use, provided that the rebuilding or replacement occurs no later than fifteen years after the demolition or removal of the previous structure.

(3) Installation or replacement of a mobile home on a lot or site where all impact fees for such lot or site have previously been paid pursuant to this ordinance or where a mobile home legally existed on such lot or site on or prior to June 2, 2003.

(4) Room additions, remodeling, rehabilitation or other improvements to an existing structure, provided that there is no increase in the number of dwelling units for residential use or in the amount of gross square footage for nonresidential use.

1 (5) Construction pursuant to a building permit based upon a complete application filed with  
2 the City prior to June 2, 2003, provided the construction proceeds according to the terms of the building permit.  
3 If said building permit application expires, application for a new building permit shall be treated the same as a  
4 new development. A building permit application shall not be deemed to be complete until the application,  
5 together with all required attachments, information, or other accompanying documents, are filed with the City.

6 (6) Low-to-Moderate Income Owner-Occupied Housing; provided that:

7 (i) The housing unit has an initial purchase price that does not exceed the FHA  
8 mortgage limit for the Lincoln Area as determined by the United States Department of Housing and Urban  
9 Development (HUD):

10 (ii) The housing unit is the principal residence of an owner whose household has  
11 an adjusted gross income which is 80% or less of the area median income adjusted for household size; and

12 (iii) Neither the owner nor any member of the owner's household whose combined  
13 adjusted gross income is 80% or less of the area median income adjusted for household size has purchased  
14 housing which qualified for a Low-Income Owner-Occupied Housing exemption within the immediately preceding  
15 five years.

16  
17 (i) An Owner-Occupied unit which is sold to a household whose adjusted gross income is 60% or  
18 less of the area median ~~gross~~ income adjusted for a household size shall be entitled to a 100% exemption from  
19 all Impact Fees.

20 (ii) An Owner-Occupied unit which is sold to a household whose adjusted gross income is more than  
21 60% but is 80% or less of the area median ~~gross~~ income adjusted for a household size shall be entitled to a 50%  
22 exemption from all Impact Fees.

23 (7) Low-to-Moderate Income Rental Housing located outside of a low or moderate income area.

24 (i) A Tenant-Occupied unit which is restricted to rental to a household whose  
25 adjusted gross income is 60% or less of the area ~~medium-gross~~ median income adjusted for household size  
26 shall be entitled to a 100% exemption from all Impact Fees.

27 (ii) A Tenant-Occupied unit which is restricted to rental to a household whose  
28 adjusted gross income is 80% or less of the area ~~medium-gross~~ median income adjusted for a household size  
29 shall be entitled to a 50% exemption from all Impact Fees.

30 (8) Development or construction by any governmental entity for which the governmental  
31 entity has the statutory power of eminent domain shall not pay any impact fees since these entities are exempt  
32 from local zoning.

33 (9) Development or construction by the Housing Authority of the City of Lincoln pursuant to  
34 the Nebraska Housing Agency Act.

35  
36 **27.82.060 Exemptions From Impact Fees. {Reflects amendment to Section c}**

37 c) Request for Exemption Required. If a permit is required for the proposed development, any such  
38 claim for exemption must be made no later than the date of the application for the permit for the proposed  
39 development except that a claim of exemption for Low-to-Moderate Income Owner-Occupied Housing must be  
40 made no later than ~~60~~ ten days following ~~the date the housing is first occupied~~ execution of the purchase  
41 contract. If the issuance of a permit is not required for the development, then any such claim for exemption must  
42 be made no later than the occurrence of any one of the following events, whichever occurs first:

- 1 (1) Completion of any connection to the City's water and wastewater systems; or  
2 (2) The date when any part of the development opens for business or goes into use.  
3 Any claim for exemption not made at or before that time provided above shall be deemed waived.  
4

5 **27.82.080 Refunds of Impact Fees Paid.**

6 (a) Passage of Time. Any monies in any impact fee account that have not been spent or  
7 encumbered within eight years after the date on which such fee was paid shall, upon application to the Impact  
8 Fee Administrator by the fee payor, be returned to such person with interest since the date of payment at the  
9 rate earned by the City on the fees. Fees shall be deemed to be spent on the basis that the first fee collected  
10 shall be the first fee spent. Within six months of the end of the eight-year period from the date on which the  
11 unspent impact fee was paid, the Impact Fee Administrator shall notify the fee payor of eligibility for a refund  
12 at the address listed with the Impact Fee Administrator. In order to receive such refund, the fee payor shall be  
13 required to submit an application for such refund within twelve months after the expiration of such eight-year  
14 period. Any monies in an impact fee account for which no application for a refund has been timely made shall  
15 be retained by the City and expended on the type of Impact Fee Facilities reflected in the title of the account  
16 without further limitation as to time of expenditure.  
17

18 (b) Expiration of Permit. If a person has paid an impact fee required by this ordinance and has  
19 obtained a building permit or any other permit for a development or extensions thereto, and the permit or  
20 extension for which the fee was paid later expires without the possibility of further extension, and the  
21 development activity for which the impact fee was imposed did not occur and no impact has resulted, then such  
22 fee payor shall be entitled to a refund of the fee paid, with interest. In order to be eligible to receive such  
23 refund, such fee payor shall be required to submit an application for such refund within six months after the  
24 expiration of the permit or extension for which the fee was paid.

25 ©) Approval of ~~Owner Occupied~~ Low-to-Moderate Owner Occupied Income Housing Exemption.  
26 If, after an impact fee has been paid pursuant to this ordinance for a development which subsequently qualifies  
27 for an ~~Owner Occupied~~ Low-to-Moderate Owner Occupied Income Housing Exemption pursuant to Section  
28 27.82.060(a)(6), then such ~~fee payor~~ purchaser shall be entitled to a reimbursement of the fee paid, without  
29 interest. In order to be eligible to receive such reimbursement, such ~~fee payor~~ purchaser shall be required to  
30 submit an application for such exemption and reimbursement no later than ~~60~~ ten days following the ~~date such~~  
31 ~~housing is first occupied~~ execution of the purchase contract.  
32  
33

# CHANGE OF ZONE NO. 04001

## PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 18, 2004

Members present: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Approval.

Ex Parte Communications: Marvin reported that he spoke with Mr. Rauthaus of the Realtors Association of Lincoln regarding the median home price in Lincoln, which is \$122,000. He also visited with Steve Henrichsen in the Planning Department as to the fund used to refund impact fees. He found that the refunds come out of the general fund.

### Proponents

**1. Steve Henrichsen** of Planning staff submitted a memo and revised language. It was pointed out by the Urban Development Department that the language needs to be consistent with that used by HUD and Urban Development. For example, “low income housing” has been clarified and changed to “low to moderate income housing”. “Taxable income” has been changed to “adjusted gross income”.

In general, Henrichsen advised that this proposed amendment is one that is consistent with the ordinance previously approved, which allowed the city to have a reimbursement for low and moderate income persons. This amendment sets up a system for processing those amendments because the city cannot rely on other agencies to provide the income data. The city will have to obtain that information on its own.

Marvin noted that in some places it refers to AGI (adjusted gross income), but then there is median income adjusted for household size. Are the two the same or different? Michaela Hansen of Public Works & Utilities explained that median income relates to the income limits established by HUD as far as qualification for low and moderate income. For 60% of median income, the reimbursement is 100%, for 80% of median income, the reimbursement is 50%. To determine what the individual's income is, you would look at their tax return and then apply that number to the HUD chart. Marvin then surmised that census data would be used to find the number locally. Hansen stated that the information is published by HUD once a year. It is indexed to the area income and to the purchasability of homes in the area. She offered to provide this information and how the information is updated.

Marvin noted that the Realtors Association states that the median home price in Lincoln is \$122,400 as of 2003. The information in the ordinance suggests that the median home price could go all the way up to \$160,000. Hansen suggested that we need to keep in mind that 1) they have to qualify for a loan at the bank before purchasing the home, and 2) if you have a family of two versus a family of eight, the size of the home you need and the dollars will vary. You have to use the scales of balance. They are going to have to qualify financially for the low to median income chart to qualify for the 60% or 80%. The \$160,176 number is from the US Dept. of Housing and Urban Development—that is the number



used by the city and Neighborhoods, Inc. through block grant funding. NIFA has limits in targeted and outside targeted areas, but as of yesterday, NIFA has determined that it is going to transfer over to the HUD purchase price cap as well.

Carroll referred to page 7 of today's submittal and inquired whether "execution of the contract" refers to the closing date. Hansen explained that the purchase contract is when they go to the builder and sign an agreement with the builder. 10 days from the date of that signature is when they need to come to the city to make application for exemption. The application for impact fees is made at the time of building permit. That would be the point that triggers the impact fee. The individual is going to sign the contract with the builder and it is at that point when the new homeowner needs to come in and make application for the exemption reimbursement. The reimbursement of impact fees will be made at the time of closing. It will be used to reduce the mortgage and the fees paid at the closing.

Carlson recalled that the original proposal had referenced existing government programs or private programs as qualifiers. What is your expectation of the increase or decrease in applicants, and what is your analysis of the cost, since this will be a general fund reimbursement? Hansen explained that there is no benchmark to use as far as the low to moderate income individuals outside of using Urban Development and Neighborhoods, Inc. The home builders' expectations were pretty low, possibly 25-50 a year. Carlson wondered why the data is not accessible. Henrichsen explained that as the staff was making some of these estimates a year ago, it was difficult to determine the income of the individual purchasing the home or the number of people who might be in new construction, owner occupied. Habitat would be about the only organization serving people under 60% in the owner-occupied. Carlson thinks the \$160,000 will surprise people as the benchmark for low to moderate income housing. Henrichsen reiterated that the qualification is based on the income and not the price of the house. Carlson believes that the \$160,000 creates a pool that seems large. To what degree will it shrink the pool?

Bills-Strand does not think the \$160,000 will be applied. In real estate, when you bring in a buyer and are using Neighborhoods, Inc., they are going to try to hold them to 29% of their gross monthly income for that house payment, which includes taxes and insurance. The price range is usually \$80,000, \$90,000 or maybe the low \$100's. The relevance is the housing ratio that they have to go by to qualify for the loan. It is the entire household income.

Marvin asked whether the city has a budget estimate for these reimbursements. Hansen stated that a rough estimate would be around \$200,000 a year. Bills-Strand also pointed out that most of the homes sold in those programs are existing homes—not new construction. Impact fees only apply to new construction. Hansen advised that there have only been five that have qualified so far.

Carlson wants to make sure we are serving the target population.

Bills-Strand suggested that the desire to not tie the reimbursement to any kind of government loan program is because occasionally there might be an elderly couple that is selling a two-story home and needs a one-story home, and they would need the low income housing exemption.

There was no testimony in opposition.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 18, 2004


Carroll moved approval, with the revisions as submitted today, seconded by Sunderman, and carried 8-0: Pearson, Krieser, Carroll, Sunderman, Carlson, Marvin, Taylor and Bills-Strand voting 'yes'; Larson absent. This is a recommendation to the City Council.

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## MEMORANDUM

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**TO:** Planning Commission

**FROM:** Stephen Henrichsen, Planning Department 

**SUBJECT:** Revised Staff Report on Change of Zone #04001: Impact Fee Amendment for Low-to-Moderate Income Owner Occupied Housing

**DATE:** February 16, 2004

**COPIES:** Michaela Hansen, Margaret Remmenga, Public Works & Utilities  
Marc Wullschleger, Steve Werthmann, Urban Development  
Rick Peo, City Attorney  
Marvin S. Krout, Ray Hill, Planning

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Change of Zone #04001 is proposed in order to establish the system for checking income and processing reimbursement of impact fees for low and moderate income owner-occupied housing. The reimbursement was part of the previously approved impact fee ordinance. The proposed amendment alters the processing of these reimbursements.

After the publication of the staff report on this amendment, the Urban Development Department brought to our attention some minor wording clarifications. The attached amendments and revised staff report clarify that the reimbursements are for "low-to-moderate" income persons, rather than using the general term "low income" persons.

In addition, the previous proposal used the term "taxable" income in regards to using tax returns to establish income. Instead the more exact term "adjusted gross income" which is on tax returns will be used.

None of the amendments changes the intent or purpose of the proposal. These amendments were presented to the Mayor's Neighborhood Roundtable on February 12<sup>th</sup> and were sent to the various private groups involved with this proposal.

I:\PC\CZ\04000\cz04001 memo to pc Feb 16 2004.ssh.wpd