

FACTSHEET

TITLE: Letter of Appeal filed by Jason Thiellen of Engineering Design Consultants, on behalf of Thompson Creek, LLC, appealing Conditions #1.1.8, #1.1.9 and #1.3 of **USE PERMIT NO. 141A**, an amendment to the Thompson Creek Use Permit to add two commercial lots on property generally located at South 56th Street and Thompson Creek Boulevard.

STAFF RECOMMENDATION: **Denial**

ASSOCIATED REQUESTS: Change of Zone No. 05010 (05-35).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 03/02/05
Administrative Action: 03/02/05

PLANNING COMMISSION ACTION: **Conditional Approval**, Resolution No. PC-00905 (7-2: Sunderman, Krieser, Taylor, Larson, Marvin, Pearson and Bills-Strand voting 'yes'; Carroll and Carlson voting 'no').

FINDINGS OF FACT:

1. The proposed amendment to Use Permit No. 141 and the associated Change of Zone No. 05010 were heard at the same time before the Planning Commission.
2. This proposed amendment removes two lots for 75 residential units from the Thompson Creek Community Unit Plan and adds them as commercial lots to the Thompson Creek Use Permit; however, this proposal does not change the amount of commercial square footage in the use permit.
3. The staff recommendation to **deny** this amendment is based upon the "Analysis" as set forth on p.11-13, concluding that the proposed changes do not conform to the Comprehensive Plan or the approved Thompson Creek Use Permit and Community Unit Plan. The existing use permit was approved because it clustered commercial uses in a compact fashion and did not propose a strip development. This proposal spreads the same amount of commercial floor area over a greater area and increases the length of commercial development along South 56th Street.
4. The applicant's testimony is found on p.16-17. The applicant indicated that this change is market driven. The applicant also requested the following amendments to the conditions of approval proposed by staff if this use permit amendment is approved:
 - Delete Condition #1.1.8 (paragraph 2.a.viii of Resolution PC-00905), which requires paving in South 57th Street to be 33' wide;
 - Delete Condition #1.1.9 (paragraph 2.a.ix of Resolution PC-00905), which requires angle parking along South 57th Street; and
 - Delete Condition #1.3 (paragraph 2.c of Resolution PC-00905), which requires a traffic study.
5. There was no testimony in opposition.
6. The Planning Commission discussion with staff is found on p.18, and the response by the applicant is found on p.19.
7. On March 2, 2005, the majority of the Planning Commission disagreed with the staff recommendation of denial and voted 7-2 to adopt Resolution No. PC-00905 (p.4-8) which approves Use Permit No. 141A, with conditions as set forth in the staff report on p.13-15. The Planning Commission did not adopt the amendments requested by the applicant (Carroll and Carlson dissenting).
8. On March 8, 2005, Engineering Design Consultants filed a letter appealing Conditions #1.1.8, #1.1.9 and #1.3 (p.2-3). Staff intends to submit a separate memo to City Council justifying these conditions.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\2005\UP.141A Appeal

DATE: March 21, 2005

DATE: March 21, 2005



Engineering Design Consultants

2200 Fletcher Ave.
Suite 102
Lincoln, NE 68521
Ph 402-438-4014
Fx 402-438-4026

March 8, 2005

Joan Ross
City Clerk
Finance Department
City-County Building
555 South 10th Street, Suite 103
Lincoln, NE 68508

RE: Thompson Creek
Amendment to Use Permit #141
EDC Job #04-086-25

CITY CLERK'S OFFICE
2005 MAR 8 PM 2 55
CITY OF LINCOLN
NEBRASKA

Dear Ms. Ross,

On behalf of Engineering Design Consultants client, Thompson Creek L.L.C, we hereby request to appeal the following conditions of approval from the Lincoln Planning Commission meeting held on March 2, 2005, to the Lincoln City Council:

1. Comment 1.1.8, to show paving in South 57th Street to be 33' wide. This condition is being appealed due to the fact that design standards for private roadways do not require 33' wide paving. The maximum required paving width is 27' with or without parking. For safety purposes, the smaller paving width with parking stalls on both sides of the roadway will cause slower speeds due to a narrow feeling while driving. Wider paving gives a driver the perception of more room to maneuver and react, therefore, causing higher speeds.
2. Comment 1.1.9, to revise the parking along South 57th Street to be angled. This condition is being appealed due to the fact that design standards for parking along a private roadways does not require that parking stalls be angled. The drive aisle for the roadway is 27' wide, 3' - 4' wider than the parking aisle required for parking lots under the City of Lincoln Design Standards.
3. Comment 1.3, requesting a traffic study and show revisions based on the study. This condition is being appealed for the following reasons:
 - a. The intensity of use within the Thompson Creek Use Permit is being reduced instead of increased. The square footage approved under the Use Permit is not being increased, in fact, the square footage is being transferred to additional lots.
 - b. The uses that are being shown in the amendment are both uses allowed under the O-3 zone.

4. Given the following facts:

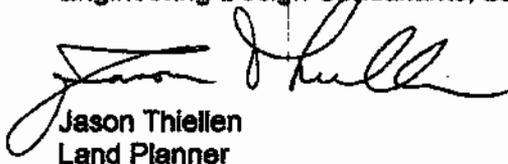
- a. The paving width and parking stall requirements as conditions of approval are not supported by the City of Lincoln Design Standard Regulations.
- b. The initial Amendment to the Thompson Creek Use Permit, which established the location, paving width, and parking stall configuration (Administratively approved by Planning Staff on 9-10-04) did not address or require any of the above conditions for approval. In addition, the conditions of approval will only apply to the section of South 57th Street located on Lot 1, Block 2 and would not apply to the portion of South 57th Street located in Outlot E, Block 2.
- c. The total amount of square footage approved for the site was 55,000 square feet and only 40,000 square feet of space could be used at the original office site due to parking requirements. The remaining square footage for the office use is being transferred to the lots being added to the Use Permit reducing the overall intensity of use for the site.
- d. The uses being shown are all allowed under the O-3 zone.

We feel that the conditions of approval, which are not required under the City of Lincoln Design Standards or Zoning Regulations, are an unfair requirement for approval of this Amendment and should be removed from the conditions of approval.

If you have any additional questions or concerns please contact me at 438-4014 or at jthiellen@edc-civil.com.

Sincerely,

Engineering Design Consultants, LLC

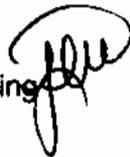


Jason Thiellen
Land Planner

c. Bob Lewis
Jean Walker, Lincoln Planning Department

**PLANNING COMMISSION FINAL ACTION
NOTIFICATION**

TO : Mayor Coleen Seng
Lincoln City Council

FROM : Jean Walker, Planning 

DATE : March 4, 2005

RE : **Use Permit No. 141A, Thompson Creek**
(Add two lots for commercial use - S. 56th Street & Thompson Creek Blvd.)
Resolution No. PC-00905

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, March 2, 2005:

Motion made by Larson, seconded by Krieser, to approve **Use Permit No. 141A**, with conditions, requested by Engineering Design Consultants on behalf of Thompson Creek, LLC, to remove two lots from the Thompson Creek Community Unit Plan and add them to the Thompson Creek Use Permit, on property generally located at South 56th Street and Thompson Creek Boulevard. Motion for conditional approval carried 7-2 (Sunderman, Krieser, Taylor, Larson, Marvin, Pearson and Bills-Strand voting 'yes'; Carroll and Carlson voting 'no').

The Planning Commission's action is final, unless appealed to the City Council by filing a Letter of Appeal with the City Clerk within 14 days of the date of the action by the Planning Commission.

Attachment

cc: Building & Safety
Rick Peo, City Attorney
Public Works
Jason Thiellen, EDC, 2200 Fletcher Ave., #102, 68504
Thompson Creek, LLC, 3801 Union Drive, 68516
Family Acres Association (2)

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RESOLUTION NO. PC-00905

USE PERMIT NO. 141A

1 WHEREAS, Thompson Creek, LLC has submitted an application in accordance
2 with Section 27.27.080 of the Lincoln Municipal Code designated as Use Permit No. 141A to
3 remove two lots (Lot 1, Block 2, and Lot 7, Block 1, Thompson Creek Addition) from the
4 Thompson Creek Community Unit Plan and add them to the Thompson Creek Use Permit on
5 property generally located at South 56th Street and Thompson Creek Blvd., and legally
6 described as:

7 Lot 7, Block 1, Lot 1, Block 2, Lots 13-30, Block 3, and Outlot A,
8 Thompson Creek Addition; Lots 1 through 4, Block 1, and Outlots
9 A and B, Thompson Creek Commercial Addition, Lincoln,
10 Lancaster County, Nebraska;

11 WHEREAS, the real property adjacent to the area included within the site plan
12 for this amendment to the community unit plan and use permit for commercial space will not be
13 adversely affected; and

14 WHEREAS, said site plan together with the terms and conditions hereinafter set
15 forth are consistent with the intent and purpose of Title 27 of the Lincoln Municipal Code to
16 promote the public health, safety, and general welfare.

17 NOW, THEREFORE, BE IT RESOLVED by the Lincoln City - Lancaster County
18 Planning Commission of Lincoln, Nebraska:

19 That the application of Thompson Creek, LLC, hereinafter referred to as
20 "Permittee", to remove two lots from the Thompson Creek Community Unit Plan and add them

1 to the Thompson Creek Use Permit be and the same is hereby granted under the provisions of
2 Section 27.27.080 of the Lincoln Municipal Code upon condition that the development of said
3 Community Unit Plan and Use Permit be in strict compliance with said application, the site plan,
4 and the following additional express terms, conditions, and requirements:

5 1. This permit approves 114,500 sq. ft. of office space which includes
6 37,000 sq. ft. of live-work office space and 16 dwelling units, along with all previously
7 approved waivers of the required setbacks, a reduction of the required parking, and a
8 reduction of the required open space for dwellings.

9 2. Before receiving building permits:

10 a. Revise the site plan to:

- 11 i. Show Lot 1, Block 2 served with sanitary sewer.
- 12 ii. Show 8" water mains serving the commercial area
13 with connections to Thompson Creek Blvd. and Union
14 Hill Rd.
- 15 iii. Revise note 5 to reflect the current R-3 zoning
16 designation.
- 17 iv. Revise note 8 to show 8" water lines serving the
18 commercial area.
- 19 v. Revise note 14 to replace the name "Trego Drive"
20 with "Crosslake Lane."
- 21 vi. Label the 60' easement along South 57th Street
22 "Public access, water main, and utility easement."
- 23 vii. Show sidewalks along both sides of South 57th Street
24 with connections to the commercial lots.
- 25 viii. Show the paving in South 57th Street to be 33' wide.
- 26 ix. Revise the parking along South 57th Street to be
27 angled.
- 28 x. Show additional right-of-way for the right turn lanes in
29 56th Street at Union Hill Road and Thompson Creek
30 Boulevard.

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xi. Add a note stating part of this development is located within the Country Acres Wellhead Protection Area. Best management practices will be utilized to decrease the risk of groundwater contamination, for example, being conscientious regarding the use of lawn chemicals/fertilizers and ensuring the proper storage of chemicals and/or fuels.

- b. Provide horizontal curve data and a street grade profile for South 57th Street.
- c. Submit a traffic study and show revisions based on the study.
- d. The permittee must submit a revised and approved final plan with 5 copies.
- e. The construction plans shall comply with the approved plans.
- f. Final plats within the area of this Use Permit shall be approved by the City.
- g. Change of Zone #05010 must be approved.
- h. An amendment to the Thompson Creek CUP must be approved removing these lots.

3. Before occupying the buildings all development and construction shall have been completed in compliance with the approved plans.

4. All privately-owned improvements shall be permanently maintained by the owner or an appropriately established association approved by the City Attorney.

5. The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

6. This resolution's terms, conditions, and requirements bind and obligate the Permittee, its successors and assigns. The building officer shall report

1 violations to the City Council which may revoke this use permit or take other such action
2 as may be necessary to gain compliance.

3 7. The applicant shall sign and return the letter of acceptance to the
4 City Clerk within 30 days following the approval of the special permit, provided,
5 however, said 30-day period may be extended up to six months by administrative
6 amendment. The clerk shall file a copy of the resolution approving the special permit
7 and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in
8 advance by the applicant.

9 8. The site plan as approved with this resolution voids and
10 supersedes all previously approved site plans, however all resolutions approving
11 previous permits remain in force unless specifically amended by this resolution.

Dated this 2nd day of March, 2005.

ATTEST:

/S/ ORIGINAL SIGNED BY

MARY F. BILLS-STRAND

Chair

Approved as to Form & Legality:



Chief Assistant City Attorney

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for March 2, 2005 PLANNING COMMISSION MEETING

P.A.S.: Use Permit #141A, Thompson Creek

PROPOSAL: Remove 2 lots from the Thompson Creek CUP and add them to the Thompson Creek Use Permit.

LOCATION: South 56th Street & Thompson Creek Boulevard

LAND AREA: 2.16 acres, more or less

CONCLUSION: The changes to this use permit do not conform to the Comprehensive Plan or to the approved Thompson Creek Use Permit and CUP.

<u>RECOMMENDATION:</u>	Denial
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GENERAL INFORMATION:

LEGAL DESCRIPTION:

Lot 7, Block 1, Lot 1, Block 2, Lots 13 and 15-30, Block 3, and Outlot A, Thompson Creek Addition; Units 1 and 2, Thompson Creek Blvd. Condominium Regime; Lots 1-4, Block 1, and Outlots A and B, Thompson Creek Commercial Addition, all located in the NW 1/4 of Section 21 T9N R7E, Lancaster County, Nebraska.

EXISTING LAND USE AND ZONING:

Vacant; planned for multiple-family residential R-3 Residential

SURROUNDING LAND USE AND ZONING:

North:	Vacant	AG Agricultural
South:	platted single-family	R-3 Residential
East:	platted single-family attached	R-3 Residential
West:	plated multiple-family	R-3 Residential

ASSOCIATED APPLICATIONS: CZ#05010, AA #05008 to SP #1930

HISTORY:

Sep 2004 Administrative Amendment #04053 to Use Permit #141 approved several site plan changes, including a revised parking lot layout, new easement over Outlot E, and revised land use table.

Jun 2004 Administrative Amendment #04044 to Use Permit #141 revised general site plan note 10.

Jan 2004 Administrative Amendment #04003 to Use Permit #141 corrected the dimensions of Lot 14, Block 3.

- Aug 2003 Administrative Amendment #03096 to Special Permit #1930 approved several site plan changes, including conversion of some lots from two-family to single-family, note revisions, and street name changes.
- Mar 2003 Final Plat #02046 Thompson Creek Addition approved.
- Jul 2002 Use Permit #141 approved 114,500 sq. ft. of office space, which included 37,000 sq. ft. of live/work office space and 16 dwelling units. Preliminary Plat #01015 approved Thompson Creek with 285 lots and 8 outlots. Special Permit #1930 approved Thompson Creek CUP with 352 dwelling units. Change of Zone #3338 changed the zoning designation of the CUP from AG Agricultural to R-3 Residential. Change of Zone #3339 changed the zoning designation of the Use Permit from AG Agricultural to O-3 Office Park. Annexation #01007 annexed the Thompson Creek development.
- Mar 1979 The zoning for this area was changed from A-A Rural and Public Use to AG Agricultural as part of the 1979 zoning update.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan identifies this area as Urban Residential. (F 25) This site is identified as a Neighborhood Center. (F 41)

Guiding Principles applying to all Commerce Centers include:

Commerce Centers should develop as compact clusters or hubs with appropriate site design features to accommodate shared parking, ease of pedestrian movement, minimize impacts on adjacent areas, and possess a unique character.

Commerce Centers should generally contain a mix of land uses, including residential uses. Higher density residential uses should be included in and/or adjacent to all commerce centers.

Strip commercial development is discouraged. Commerce Centers should not develop in a linear strip along a roadway nor be completely auto oriented.

New or established commercial uses should not encroach upon, or expand into, existing neighborhoods.

The most intensive commercial uses, such as restaurants, car washes, grocery stores, gasoline/convenience stores and drive thru facilities should be located nearer to the major street or roadway and furthest from the residential area. (F 41, 42)

UTILITIES: Lot 1 Block 2 does not have abutting sanitary sewer. There are no connections shown for the water main at Thompson Creek Boulevard or Union Hill Road. Design standards call for an 8" water main in commercial areas rather than the 6" shown in the notes.

TRAFFIC ANALYSIS: South 57th Street will now be a through street from Thompson Creek Boulevard to Union Hill Road and will have to accommodate the higher volumes and truck traffic associated with commercial uses. The difference in traffic volume between the previous apartment use and the proposed commercial uses, specifically the drive-in bank, needs to be addressed. Additional right-of-way needs to be shown for the right turn lanes in 56th Street at Union Hill Road and Thompson Creek Boulevard.

ENVIRONMENTAL CONCERNS: Part of this development is located within the Country Acres Wellhead Protection Area. Best management practices should be utilized to decrease the risk of groundwater contamination, for example, being conscientious regarding the use of lawn chemicals/fertilizers and ensuring the proper storage of chemicals and/or fuels.

AESTHETIC CONSIDERATIONS: The Thompson Creek plan was originally proposed as a new urbanism concept, specifically including a compact, dense commercial area adjacent to single-family attached residential units taking access from a jointly shared alley. These single-family attached units provided a buffer between larger, more standard, front access residential lots and the commercial area. The apartments approved with the CUP also provide a transition between the commercial area and future residential to the south, and provide a residential use across from existing residences to the west. The proposed changes to both the Use Permit and CUP eliminate these features.

ANALYSIS:

1. This is a proposal to remove 2 lots from the Thompson Creek CUP and add them to the Thompson Creek Use Permit; doing so will eliminate 72 multiple-family dwelling units.
2. This use permit is in an area shown as Urban Residential in the Land Use Plan. The approval of this plan was based upon the mixture of low and medium density residential around a common, dense commercial area.
3. The proposed use of these lots is to pick-up unused floor area from the existing use permit. No additional floor area is being proposed.
4. The existing use permit was approved because it clustered commercial uses in a compact fashion and did not propose a strip development. This proposal spreads the same amount of commercial floor area over a greater area and increases the length of commercial development along South 56th Street from 800' to 1,320'.
5. Applicant offers the following reasons to support this proposal:

Lot 7, Block 1 has an LES easement running through the middle of the lot, making the lot very difficult to develop as a multiple-family lot.

The LES power lines were existing when this project was originally proposed. Just as Applicant now proposes a commercial building on this lot, with parking in the easement area, a similar layout could be used for a multiple-family building. Applicant has always maintained this lot would be developed based on a specific apartment design. Buildings on multiple-family lots are approved within this use permit up to 50 feet in height.

Lot 1, Block 2 is also fairly small for a multiple-family lot making the parking ratio requirement difficult to achieve with maximum density.

This lot is 1.00 acre in size, approved for 36 units, and buildings up to 50 feet of height. By comparison, Design Standards allow a maximum density of 30 dwelling units per acre under R-4 zoning, 54 under R-5 zoning, and 75 under R-6 zoning. Applicant established the size of this lot within the preliminary plat and subsequent final plat. Based on Applicant's plans for this lot up to this point and comparison to the Design Standards, this lot is of sufficient size for 36 multiple-family units.

Lots 2, 15-17, Block 2 were approved for 55,000 square feet of office space, however, only 40,534 square feet of office space has been platted to date, leaving 14,466 square feet of building space unused for the area. This makes the existing commercial area a less intensive office use reducing the negative affect on the attached single-family units adjacent to the office property.

The layout for this area was based on the new urbanism concept of a dense commercial area serving nearby residents. The commercial area was intended to be concentrated, not strung along 56th Street in a strip development. Applicant had sole control over the number of square feet developed on these lots.

The approval of 55,000 square feet of commercial area adjacent to these residences was deemed appropriate by the approval of the use permit. Although reducing the amount of commercial area could reduce the impact on neighbors, a commercial neighbor is still a commercial neighbor. The original proposal addressed the negative impact on adjacent neighbors by providing a 40' setback to their rear yards. Potential neighbors have notice of what will be built next to them, and residences are already under construction on several adjacent lots.

6. Applicant has proposed removing the alleys from Blocks 1 and 2, stating:

Units on Lots 3-6, Block 2 are being built with front loading garages insuring that the rest of the lots on that block will be front loading as well. The look of the block will be consistent with having like units facing each other as units on Block 4 have always been shown as front loading Attached Single family units.

Although building permits were issued for these four lots, they are in violation of the approved CUP, which includes a provision that access for these lots was to be provided off the alley. This provision was part of Applicant's original concept for this development. The issuance of these permits was an oversight, but does not insure the remaining lots will have access to the street. Rather, now that Building and Safety has been alerted to this issue, future buildings on the affected lots will be required to take access from the alley. The consistent appearance of this block has not been an issue, given that Applicant has proposed all along to have rear loaded units on one side and front loaded on the other.

7. Additional information must be provided demonstrating how Lot 1, Block 2 will be served with sanitary sewer, and showing 8" water mains with connections to Thompson Creek Blvd. and Union Hill Rd.
8. The 60' easement along South 57th Street needs to be labeled "Public access, water main, and utility easement."
9. Horizontal curve data and a street grade profile for South 57th Street need to be provided.
10. Sidewalks must be shown for South 57th Street.
11. Although there are no design standards that differentiate commercial from residential private streets, Public Works recommends that 57th Street be widened to 33', the public street standard for commercial areas, in order to accommodate commercial traffic.
12. The parking shown along South 57th Street should be revised to show angled parking to accommodate backing out of stalls without crossing the centerline.
13. A traffic study is necessary to address the difference in traffic volume between the previous apartment use and the proposed commercial uses, specifically the drive- in use.
14. Additional right-of-way needs to be shown for the right turn lanes in 56th Street at Union Hill

Road and Thompson Creek Boulevard.

15. Should the Planning Commission choose to recommend approval, Planning Staff recommends the following conditions should apply.

CONDITIONS:

Site Specific:

1. Before receiving building permits:

- 1.1 Revise the site plan to:

- 1.1.1 Show Lot 1, Block 2 served with sanitary sewer.

- 1.1.2 Show 8" water mains serving the commercial area with connections to Thompson Creek Blvd. and Union Hill Rd.

- 1.1.3 Revise note 5 to reflect the current R-3 zoning designation.

- 1.1.4 Revise note 8 to show 8" water lines serving the commercial area.

- 1.1.5 Revise note 14 to replace the name "Trego Drive" with "Crosslake Lane."

- 1.1.6 Label the 60' easement along South 57th Street "Public access, water main, and utility easement."

- 1.1.7 Show sidewalks along both sides of South 57th Street with connections to the commercial lots.

- 1.1.8 Show the paving in South 57th Street to be 33' wide.

- 1.1.9 Revise the parking along South 57th Street to be angled.

- 1.1.10 Show additional right-of-way for the right turn lanes in 56th Street at Union Hill Road and Thompson Creek Boulevard.

- 1.1.11 Add a note stating part of this development is located within the Country Acres Wellhead Protection Area. Best management practices will be utilized to decrease the risk of groundwater contamination, for example, being conscientious regarding the use of lawn chemicals/fertilizers and ensuring the proper storage of chemicals and/or fuels.

- 1.2 Provide horizontal curve data and a street grade profile for South 57th Street.

- 1.3 Submit a traffic study and show revisions based on the study.

- 1.4 The permittee must submit a revised and approved final plan with 5 copies.

- 1.5 The construction plans shall comply with the approved plans.
 - 1.6 Final plats within the area of this Use Permit shall be approved by the City.
 - 1.7 Change of Zone #05010 must be approved.
 - 1.8 An amendment to the Thompson Creek CUP must be approved removing these lots.
2. This approval permits 114,500 sq. ft. of office space which includes 37,000 sq. ft. of live-work office space and 16 dwelling units, with all previously approved waivers of the required setbacks, a reduction of the required parking, and a reduction of the required open space for dwellings.

STANDARD CONDITIONS:

3. The following conditions are applicable to all requests:
- 3.1 Before occupying the buildings all development and construction shall have been completed in compliance with the approved plans.
 - 3.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established association approved by the City Attorney.
 - 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns. The building officer shall report violations to the City Council which may revoke this use permit or take other such action as may be necessary to gain compliance.
 - 3.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the applicant.
4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Greg Czaplewski
441-7620, gczaplewski@lincoln.ne.gov

Date: February 14, 2005

**Applicant
and
Owner:** Thompson Creek, LLC
3801 Union Drive, Suite 102
Lincoln, NE 68516
434.5650

Contact: Jason Thiellen
Engineering Design Consultants
2200 Fletcher Avenue, Suite 102
Lincoln, NE 68521
438.4014

**CHANGE OF ZONE NO. 05010
and
USE PERMIT NO. 141A,
AMENDMENT TO THOMPSON CREEK**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 2, 2005

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

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. Jason Thiellen of Engineering Design Consultants, testified on behalf of the applicant, **Thompson Creek LLC**, which is proposing to amend the Thompson Creek use permit by adding two lots that are currently under the CUP and changing the zoning on those two lots from R-3 to O-3. After three years of marketing these lots as residential, they have determined that there is no interest for residential lots at this time. All of the existing lots in the commercial area or office area have been sold. This proposal adds just a little more than two acres to the use permit, bringing the total acreage for office use to 7.5 acres.

Thiellen went on to state that the applicant understands that the initial intent was not to have a strip mall look along S. 56th, and this was agreed upon before the uses to the south of this plat were known. At this time, there is a fire station adjacent to the plat. Thiellen does not believe that adding these two lots as office use will result in the strip mall commercial look that is undesired. The existing commercial/office area is not a strip mall look at all. It is a cluster of buildings. There are residential units past the fire station that are being built at this time. The developer is losing 72 residential lots by making this change.

Thiellen then addressed the conditions of approval and advised that the 12" water main in Union Drive and the 8" water main in S. 56th Street will fulfill Conditions #1.1.1, #1.1.2 and #1.1.4. There is also sanitary sewer in S. 57th Street, which will be extended and provide the sewer in relation to Condition #1.1.4.

Condition #1.1.7 requires sidewalks along both sides of So. 57th Street with connections to the commercial lots. Thiellen pointed out that sidewalks were not originally required for S. 57th Street; however, the developer will not object to constructing the sidewalks.

Condition #1.1.8 requires paving in South 57th Street to be 33' wide. Thiellen does not believe that this was ever a requirement and it is not a design standard. Therefore, he requested that Condition #1.1.8 be deleted.

Likewise, Condition #1.1.9 requires angle parking along South 57th Street. Angle parking was never required with the previous amendment and it is not a design standard. Therefore, Thiellen requested that Condition #1.1.9 be deleted.

Thiellen advised that they do have the right-of-way or easement for the turn lanes required by Condition #1.1.10.

Thiellen requested that Condition #1.3 be deleted, which requires a traffic study. This proposal reduces the total amount of use for this area that the original traffic study envisioned. In fact, the proposed uses will decrease the traffic. Therefore, Thiellen does not believe there is an additional need for a traffic study.

With regard to Comprehensive Plan conformance, Thiellen suggested that the Comprehensive Plan is a working document much like development. It needs to be flexible and subject to change when the situation calls for it. This is one of those situations. The applicant needs some flexibility because they cannot make the original intent of the development work due to market demands.

Bills-Strand inquired whether the four buildings have employees. Thiellen stated that they do not. Those four buildings were just platted a few months ago. One building is under construction at this time.

Bills-Strand clarified that the two areas the applicant is seeking to change would be along an arterial and are not the most desirable for single family use. Thiellen agreed, adding that he did receive a phone call from the west residential property owner and she was not opposed to the new use.

Carroll noted that there are residential lots to the east of Block 1, Lot 7. Are those built? Thiellen advised that they have not been built upon at this time.

2. Bob Lewis of Hampton Development, the applicant, reiterated that this development sits on 80 acres. There are some elements of new urbanism that the developer has been trying to incorporate into this development over the past three years. They have come back to Planning numerous times with changes in the lot sizes for the residential and some changes on the commercial. The approved O-3 area has been replatted. These two lots do abut S. 56th Street. All of the infrastructure conditions that are required can be met. This request is market driven. There has been no interest in additional multi-family residential over the last three years in this area, but there has been interest in commercial.

Lewis noted that staff is concerned about strip development along 56th Street, but at the time of the original approval, the property to the south was not developed. There is a 60' wide LES easement directly south that will have a future bike trail to serve the school, and south of that is a platted property owned by the City for a future fire station. The use across the street is owned by Lincoln Housing Authority. This proposal for additional commercial area does not encroach on any new neighbors.

Bills-Strand clarified that the Campbell property adjoins to the north. Lewis concurred and believes that Campbells will continue to use the garden center as a commercial use. There is a connection to the north at Cross Creek Drive. Immediately abutting Campbells is a commercial development on the east side of Cross Creek and a required detention structure on the west side.

There was no testimony in opposition.

Staff questions

Considering that So. 56th Street will at some point become a connector to the beltway, Marvin assumes it would be a main thoroughfare at that point. Which is more viable at that point – apartments or commercial along 56th Street? Greg Czaplewski of Planning staff suggested that the apartments that have been shown there work better with this plan and work well along 56th St. Single family is probably not appropriate along 56th, but these were apartments and were a good use between a major arterial and single family to the east.

Taylor inquired as to the reason for the staff recommendation of denial. Czaplewski suggested that it goes back to the original plan and the new urbanism element they were trying to incorporate -- with a compact density populated area, alleyways and rear loaded lots in the single family lots all combined together to make this development as unique as it is. They are chipping away at the new urbanism elements by putting the commercial along 56th Street, which would not seem to conform to the Comprehensive Plan. The staff is more interested in the plan that was originally approved.

Taylor inquired about the need for the traffic study. Czaplewski noted that the drawings show a drive-thru facility of some kind. That use has prompted the interest in a revised traffic study. Dennis Bartels of Public Works & Utilities acknowledged that a local traffic study was done with the initial development of the commercial area. The drive-up facility was noted on this proposal, presumably a bank, and the traffic study did not show that kind of intense use at that location. At this point, he does not know whether it will show more or less traffic, but since they were required to submit a traffic study with the original application, Public Works is requesting they revise the traffic study to conform to the application as submitted.

Carlson confirmed that this proposal does not increase the amount of square footage for commercial uses. Czaplewski concurred. From a planning perspective, Carlson inquired as to the advantage of this proposal. He knows that it gains more parking spots, but what's the advantage of using this land by spreading out the commercial? Czaplewski believes that the reason they did not ask for an increase is because they had surplus for what has not been built. They do not have anywhere to put it in their commercial area as proposed. Czaplewski suggested that keeping that commercial area more compact and putting that additional square footage into that commercial area would probably be a better decision.

Bills-Strand questioned the 33' wide paving requirement on S. 57th Street. Bartels advised that the design standards do not specifically address commercial streets, but 33' is the minimum size for a public street in a commercial area. There were no public or private streets to the commercial area in the initial application. It was all one lot and they decided to get a public water main, changed it and put a private street in here. A second amendment moved some lots around, and now we have a third amendment showing private and public streets. The right angle parking stalls off a 26' wide street would require using the entire roadway width to back out of the parking stalls. This would not be allowed on a 26' wide street. They are showing it as a private street connecting to two through streets so the public will have the right to drive through there and it should be made a safe public street.

Response by the Applicant

Bob Lewis stated that they are keeping the same commercial square footage in exchange for the loss of two lots that they could potentially market and sell as multi-family units. That was a decision that was made by the developer in-house based on the time/value of money and how long they wanted to sit on those two empty lots versus the transfer to the use permit.

Lewis also commented that the traffic study was originally done with 4.2 acres approved for 55,000 sq. ft. When they got to the point of marketing the units and laying them out to sell the property, the buyers came back and said they have to have five parking stalls per 1,000 sq. ft. That is the market. That is how they came to the lesser square footage. They could not fit the square footage on 4.2 acres.

Lewis also pointed out that this is an office complex zoned O-3. To meet the design standards to serve this with public water, they had to have a private roadway that allowed the city to get in to maintain the water main. In addition, they had to put in private water, at a cost of \$50,000 to put in a meter house. So the developer elected not to do that.

With regard to the paving width (33' versus 26'), Lewis stated that the developer wants new urbanism and they want cluster, and now the city is wanting more paving and wider streets. This developer is trying to be as dense as possible with the 26' wide private roadway to try to maximize the property. It was all a market decision.

Thiellen added that a smaller street with parking up against it always gets people to slow down and makes it a safer environment. The developer is opposed to the 33' in order to keep the traffic movement safe. Thiellen also pointed out that the developer did advise Planning of the developer's intentions with this piece when they came forward with the first amendment. They knew staff was going to oppose it, but the developer has been very up front about this plan. Lewis added that when they determined they could not get the square footage, they advised the staff that they would be coming back for this proposal.

Thiellen advised that the drive-thru lot is a concept only, which can be removed if it is a problem. Lewis pointed out that the drive-through could have been done on the original plan.

CHANGE OF ZONE NO. 05010

ACTION BY PLANNING COMMISSION:

March 2, 2005

Larson moved approval, seconded by Bills-Strand.

Larson commented that they are taking two lots that are marginally acceptable as residential and using already allocated office space. There is no chance that it is going to spread further, so he thinks it is natural and should be approved.

Bills-Strand believes that there is a need to allow the Comprehensive Plan to change with market demands because it is hard to predict the market 20 years from now.

Carlson believes this is a tough decision because the Comprehensive Plan does call to encourage new urbanism. The officials are pleased when a developer brings in something that shows those concepts, and then they make a market decision to go a different way later, which makes it tough.

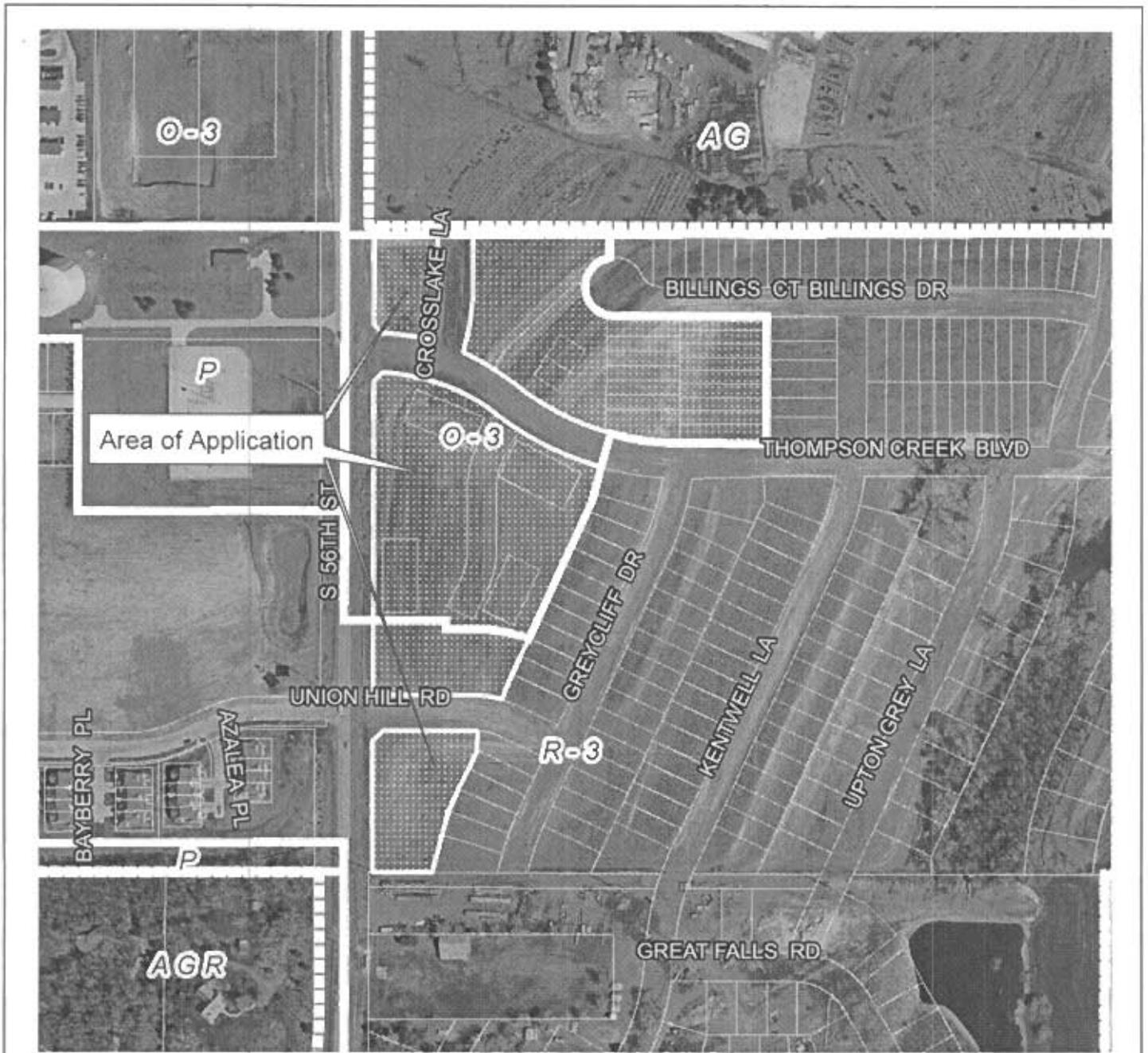
Motion for approval carried 7-2: Sunderman, Krieser, Taylor, Larson, Marvin, Pearson and Bills-Strand voting 'yes'; Carroll and Carlson voting 'no'. This is a recommendation to the City Council.

USE PERMIT NO. 141A

ACTION BY PLANNING COMMISSION:

March 2, 2005

Larson moved approval, with conditions as set forth in the staff report, seconded by Krieser and carried 7-2: Sunderman, Krieser, Taylor, Larson, Marvin, Pearson and Bills-Strand voting 'yes'; Carroll and Carlson voting 'no'. This is final action, unless appealed to the City Council within 14 days.



2002 aerial

Use Permit #141A S. 56th & Union Hill Rd.

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

One Square Mile
Sec. 21 T9N R7E

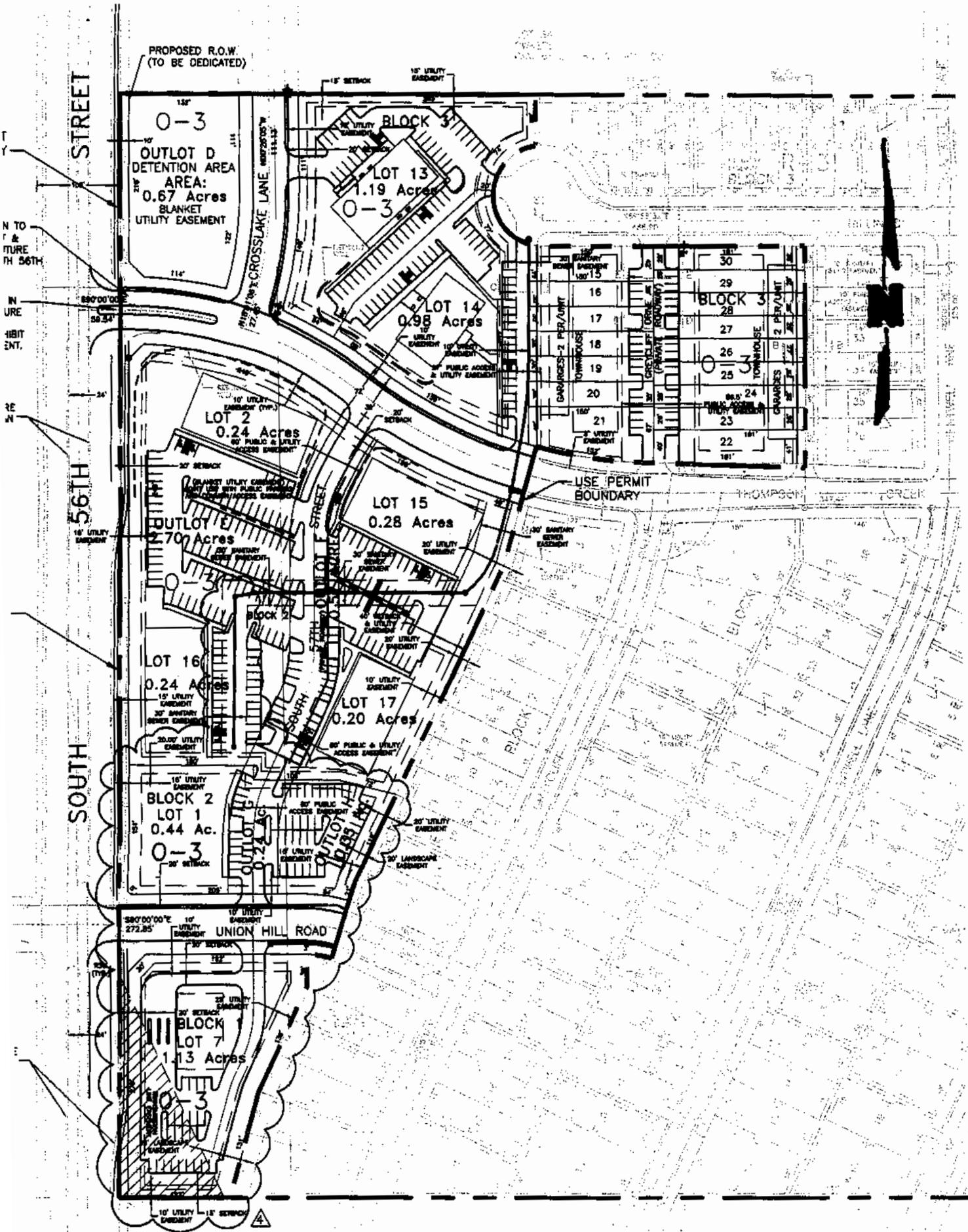


Zoning Jurisdiction Lines

City Limit Jurisdiction



021





Engineering Design Consultants

January 26, 2005

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Planning Department
City-County Building
555 South 10th Street
Lincoln, NE 68508

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Suite 102
Lincoln, NE 68521
Ph 402-438-4014
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**RE: Thompson Creek
Amendment to Use Permit #141
Administrative Amendment to Community Unit Plan #1930
Change of Zone
EDC Job #04-086**

Dear Brian,

On behalf of Engineering Design Consultants and our client, Thompson Creek L.L.C, the following applications are hereby submitted per the subdivision review process:

1. Application for an Amendment to Use Permit #141
2. Application for an Administrative Amendment to Community Unit Plan #1930
3. Change of zone from R-3 to O-3

Thompson Creek L.L.C is proposing to remove Lot 7, Block 1 and Lot 1, Block 2 from the Community Unit Plan and add them to the Use Permit. We feel that an office use for these lots is a better use for the following reasons:

- Lot 7, Block 1 has an LES easement running through the middle of the lot, making the lot very difficult to develop as a multiple family lot.
- Lot 1, Block 2 is also fairly small for a multiple family lot making the parking ratio requirement difficult to achieve with maximum density.
- Lots 2, 15 – 17, Block 2, were approved for 55,000 square feet of office space, however, only 40,534 square feet of office space has been platted to date leaving 14,466 square feet of building space unused for the area. This makes the existing commercial area a less intensive office use reducing the negative affect on the Attached Single Family units adjacent to the office property.

We are proposing to transfer the remaining square footage from Lots 2, 15 – 17, Block 2 to the lots being added to the use permit area. Thompson Creek L.L.C is not seeking additional square footage for the proposed office lots; they only want the remaining portion of the approved square footage to be transferred over to the lots being added to the Use Permit.

The following changes have been made to the Thompson Creek Use Permit #141:

1. Lot 7, Block 1 and Lot 1, Block 2 has been removed from the Community Unit Plan and added to the Use Permit.

2. The Use Permit boundary and legal description has been revised to reflect the addition of Lot 7, Block 1 and Lot 1, Block 2.
3. A change of zone has been requested for Lot 7, Block 1 and Lot 1, Block 2 from R-3 to O-3.
4. South 57th Street has been extended into Lot 1, Block 2 to provide access into the lot and through the entire commercial area.
5. The Land Use/Parking Table has been updated to show the additional lots, use, and square footage.
6. Lot 1, Block 2 parking will be located within an outlot and the building location will be shown as a separate lot as the parking will be built by Thompson Creek L.L.C to maintain the proper parking ratio and layout.
7. The public access easement has been removed from behind the lots located on Block 2 and from behind lots located on Block 1. Units on Lots 3 – 6, Block 2 are being built with front loading garages insuring that the rest of the lots on that block will be front loading as well. The look of the block will be consistent with having like units facing each other as units on Block 4 have always been shown as front loading Attached Single Family units. The landscape easement on Block 2 has been maintained to provide a buffer between the office use and the residential use. Considering the overall look of the block, we feel it makes sense to remove the public access easement from behind lots on Block 1.
8. A 20 foot landscape easement is being maintained between Lot 7, Block 1 and Lots 1 – 6, Block 1 to provide a buffer between the office use and the residential use.
9. General Site Note #10 has been revised to state, "BUILDINGS AND INDIVIDUAL LOT LANDSCAPING WILL BE REVIEWED AT THE TIME OF BUILDING PERMITS. THE PARKING LAYOUT SHOWN IS CONCEPTUAL AND THE ACTUAL LAYOUT MAY ALSO BE REVIEWED AT TIME OF BUILDING PERMITS PROVIDED CONTINUOUS ACCESS THROUGH AND BETWEEN PARKING AREAS TO ALL LOTS IS MAINTAINED."

The following changes have been made to the Thompson Creek Community Unit Plan #1930:

1. A change of zone for Lot 7, Block 1 and Lot 1, Block 2 from R-3 to O-3 has been requested.
2. Lot 7, Block 1 and Lot 1, Block 2 has been removed from the Community Unit Plan and added to the Use Permit.
3. The boundary and legal description has been revised to reflect the removal of Lot 7, Block 1 and Lot 1, Block 2.
4. The alley and public access easement located behind Lot 7, Block 1, Lot 1, Block 2, Lots 1 – 12, Block 3, and Lots 1 – 14, Block 7 has been removed as

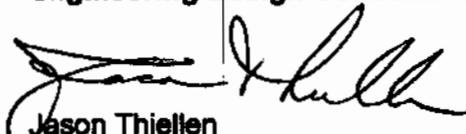
Thompson Creek L.L.C, Cambells Nursery, or the builders want to show rear loading lots at these locations.

5. General Site Note #15, Lots and Use Table has been revised to the following:
 - a. Lot 7, Block 1 – Office
 - b. Lot 1, Block 2 – Office
6. General Site Note #16 has been revised to state, "BLANKET UTILITY EASEMENTS GRANTED ON OUR LOTS A, B, C, D, E, F, G, & H.
7. General Site Note #26 has been removed as the note was in conflict with the Lots and Use Table.
8. General Site Notes #30, #31, & #32 have been removed as the notes apply to a multi-family lots and are no longer needed as the multi-family lots have been removed from the Community Unit Plan.
9. General Site Note #33 has been revised to state, "LOCATION AND LAYOUT OF BULIDINGS MAY BE CONSTUCTED ANYWHERE WITHIN THE SETBACKS SHOWN." The wording "Building Envelopes" has been removed reflecting that individual lots are shown for building envelopes.
10. General Site Note #36 has been removed as the allowed signage for the O-3 zone will refer to the zoning ordinance.
11. General Site Note #41 has been removed as the removal of the alley and public access easements in back of Lots 3 – 14, Block 2, Lots 1 – 6, Block 1, Lots 1 – 12, Block 3 and Lots 1 – 14, Block 7 requires that the lots have access to a public street or private roadway.

If you have any additional questions or concerns please contact me at 438-4014 or at jthiellen@edc-civil.com.

Sincerely,

Engineering Design Consultants


Jason Thiellen
Land Planner

Enc: Check for \$1,605.00
Change of zone exhibit
Added lots exhibit
Updated legal descriptions for UP & CUP
Ownership Certificate

Cc: Bob Lewis