

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 05050**, from AG Agricultural District to H-2 Highway Business District, requested by Mark Hunzeker on behalf of Lincoln Sports Foundation, on property generally located at North 70th Street and Arbor Road.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 08/17/05
Administrative Action: 08/17/05

STAFF RECOMMENDATION: Approval, subject to an agreement to the satisfaction of Public Works & Utilities.

RECOMMENDATION: Approval, subject to an agreement to the satisfaction of Public Works & Utilities (8-1: Esseks, Krieser, Taylor Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'; Pearson voting 'no').

FINDINGS

1. This proposed change of zone request on property used for a recreational facility would give Abbott Sports Complex greater flexibility to expand its operation and offer its facility for rent to other users.
2. The staff recommendation to approve the change of zone request, subject to an agreement satisfactory to Public Works & Utilities, is based upon the "*Analysis*" as set forth on p.5-6, concluding that a change to a commercial district would allow a significantly higher density of development than currently exists on a site located within the floodplain. Although change of zone requests rarely require conditions, the applicant in this case has agreed to grading limitations designed to preserve floodplain storage by limiting the amount of fill material. Pursuant to such an agreement, this change of zone may be approved.
3. The applicant's testimony is found on p.8, wherein the applicant's agent, Mark Hunzeker, agreed to the agreement being requested by the staff.
4. There was no testimony in opposition.
5. On August 17, 2005, the majority of the Planning Commission agreed with the staff recommendation and voted 8-1 to recommend approval, subject to an agreement satisfactory to Public Works & Utilities. Pearson dissented because the Commission was not given an opportunity to review the agreement.
6. A "draft" of the proposed "Development and Conditional Zoning Agreement" is attached (p.15-18).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: October 3, 2005

REVIEWED BY: _____

DATE: October 3, 2005

REFERENCE NUMBER: FS\CC\2005\CZ.05050

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for August 17, 2005 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone #05050

PROPOSAL: From AG Agricultural to H-2 Highway Business

LOCATION: North 70th Street and Arbor Road

LAND AREA: 49.1 acres, more or less.

CONCLUSION: Change to a commercial district would allow a significantly higher density of development than currently exists on a site located within the floodplain. Although change of zone requests rarely require conditions, Applicant has agreed in this case to grading limitations designed to preserve floodplain storage by limiting the amount of fill material. Pursuant to such an agreement, this change of zone may be approved.

RECOMMENDATION:	Approval once an agreement is signed
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GENERAL INFORMATION:

LEGAL DESCRIPTION: The East ½ of Lot 48 I.T., located in Section 27 T11N R7E, Lancaster County, Nebraska.

EXISTING LAND USE AND ZONING: Recreational facility AG Agricultural

SURROUNDING LAND USE AND ZONING:

North:	Agriculture	AG Agricultural
South:	Salt Creek and NE treatment plant	P Public and AG Agricultural
East:	Agriculture	AG Agricultural
West:	Recreational facility	H-2 Highway Business

HISTORY:

Dec 2002 Change of Zone #3383 requested a change of zone on the land to the west, also part of Abbott Sports Complex, from AG Agricultural to I industrial. The change was instead approved for H-2 Highway Business.

Aug 2002 Administrative Amendment #02063 requested additional uses. According to the application, additional uses included “class reunions, public assemblies, picnics, trade shows, exhibitions and other group gatherings, political events, indoor and outdoor entertainment events and fund raising activities to benefit the sports complex or its programs. There will be no more than 45 days of accessory use in any one-year period.” The request was deemed beyond the scope of authority for administrative amendments, and was voided.

- Jul 2001 Administrative Amendment #01052 allowed an increase in the area reserved for Lincoln Public Schools use by approximately 1/3 acre.
- Apr 2001 Administrative Amendment #01027 approved the reservation of 20 acres for use by Lincoln Public Schools.
- Mar 2001 Special Permit #1447A requested an amendment to show future baseball fields and volleyball, basketball, and roller hockey courts in the area east to Salt Creek. Issues arose during review dealing with utility services. The application was determined to be incomplete and was eventually closed.
- Sep 1998 Administrative Amendment #98054 approved the use of a mobile press box for the championship field, provided it is removed when there are floodplain warnings for Salt Creek.
- Sep 1996 Administrative Amendment #96074 approved a change in the location and reduction in size of the multi-purpose building.
- Sep 1994 Administrative Amendment #94049 approved the relocation of several soccer fields, including moving the championship field to its current location along North 70th Street.
- Nov 1992 Special Permit #1447 approved a soccer facility. The resolution states the facility may have “20 regular soccer fields, 1 championship field, 9 practice fields, several picnic shelters and picnic areas, a soccer lodge with tournament headquarters area, concession area, first aid area and restrooms, a concession building with announcer’s booth and restrooms, an indoor multi-purpose facility, maintenance building with restrooms, and 1206 parking stalls.” The championship field was allowed to have seating and be lighted.
- Nov 1992 Annexation #92013 approved annexing this property into the city limits.
- May 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 shows this area as Green Space. (F 25)

Green Space: Areas predominantly used for active recreational uses, such as parks, golf courses, soccer or ball fields, and trails. Green Space areas may be either public or privately owned. While some isolated environmentally sensitive features may be within these areas, they are predominantly for active recreation, with some passive recreation uses also possible. (F 22)

Commercial: Areas of retail, office and service uses. Commercial uses may vary widely in their intensity of use and impact, varying from low intensity offices, to warehouses, to more intensive uses such as gas stations, restaurants, grocery stores or automobile repair. Each area designated as commercial in the land use plan may not be appropriate for every commercial zoning district. The appropriateness of a commercial district for a particular piece of property will depend on a review of all the elements of the Comprehensive Plan. (F 22)

Commercial and Industrial Development Strategy

The commercial and industrial development strategy presented below seeks to fulfill two notable objectives: (1) the

approach is designed to provide flexibility to the marketplace in siting future commercial and industrial locations; while at the same time (2) offering neighborhoods, present and future home owners, other businesses, and infrastructure providers a level of predictability as to where such employment concentrations might be located. Balancing these two objectives in a meaningful way will require diligence, mutual understanding, and an ongoing planning dialogue. (F 37)

General Principles for All Commercial & Industrial Uses

Commercial and industrial districts in Lancaster County shall be located:

- within the City of Lincoln or incorporated villages
- outside of saline wetlands, signature habitat areas, native prairie and floodplain areas (except for areas of existing commercial and industrial zoning)
- where urban services and infrastructure are available or planned for in the near term
- in sites supported by adequate road capacity – commercial development should be linked to the implementation of the transportation plan
- in areas compatible with existing or planned residential uses
- in areas accessible by various modes of transportation (i.e. automobile, transit and pedestrian)
- so that they enhance entryways or public way corridors, when developing adjacent to these corridors
- in a manner that supports the creation and maintenance of green space as indicated in the environmental resources section of this Plan. (F 38)

Environmental Resource Features:

Floodplains: This feature refers to land that is susceptible to flooding or has flood prone soils. Floodplains provide multiple benefits to both the natural (flood storage, habitat, water quality) and built (recreation, public health and safety, economic) environments.

Basins and Streams: This feature refers to the region's watersheds and the waterways they produce. These area are demarcated by ridge lines that define the top of each basin. The primary basins and streams within Lancaster County include but are not limited to Salt Creek...Most of the county is within the Salt Creek basin. (F 53)

Core Resource Imperatives

Riparian, Floodplains, and Stream Corridors: Streams and their adjoining corridors snake their way through much of Lancaster County. Throughout the region, surface water runoff flows into these stream corridors that typically consist of floodplains and riparian areas. These are instrumental in providing habitat and water infiltration benefits, along with serving as connectors to natural areas. (F 55)

Current Planning and Development

Include the consideration of the "Core Resource Imperatives" and other natural resource features in the plan review process - i.e., subdivision plats, changes of zone, use permits, etc. This may involve preparing written guidelines for looking at site vulnerability, habitat fragmentation, long term land manageability, green space connectedness, and other elements that implement the Plan's natural resources concepts. (F 63)

Where setback and buffer provisions are provided for, the Planning Commission will consider requests for exception only if no economically viable use allowed within the designated area could occur as a result of the application of the setback and buffer provision, and that this circumstance is not purposefully brought about by any deliberate action of the owner or developer of the property. (F 64)

This area is located in **Priority A of Tier I:**

Tier I: Defines the City of Lincoln's near term growth area – generally a 40 square mile area which could reasonably expect urban services within the next twenty five year period. Land within this area should remain generally in the present use in order to permit future urbanization by the City.

Priority A of Tier I: Areas designated for near term development are generally contiguous to existing development and should be provided with basic infrastructure within 12 years of the adoption of the Plan. Some of the infrastructure required for development may already be in place. This area includes some land already annexed, but is still undeveloped and without significant infrastructure. Areas with this designation are the next priority for infrastructure programming. Some infrastructure improvements may be done in the near term while others, such as road improvements that are generally more costly, may take longer to complete.

TRAFFIC ANALYSIS: North 70th Street is shown as a Collector currently, and a Minor Arterial in the future. (E49, F103) Collectors serve as links between local street and the arterial system, provide access and circulation within residential, commercial, and industrial areas, and carry moderate to low traffic volumes. (F 105) Minor Arterials serve trips of moderate length, interconnect with and augment principal arterials, distribute traffic to smaller areas, place some emphasis on land access, and carry moderate to heavy traffic volumes. (F 103) This site has only one access onto North 70th Street. Both North 70th Street and Arbor Road in this area are proposed for improvement to 4 lanes plus turn lanes. (F 111) Currently, both North 70th Street and Arbor Road in this location are substandard streets, being either rural paved asphalt or substandard width with curb and gutter.

ENVIRONMENTAL CONCERNS: Public Works has commented that the area is adjacent to Salt Creek and entirely within the 100-year floodplain. It is in the Existing Urban Area for the purposes of flood standards, and would not be required to meet the flood standards for New growth Areas regarding compensatory storage and No Net Rise. The intensification of land use that could occur if the zoning is changed to H-2 for businesses and services that would be allowed by right without a site plan review could have an adverse impact on the floodplain.

ANALYSIS:

1. This is a request to rezone property used for a recreational facility from AG Agricultural to H-2 Highway Business.
2. Applicant has requested this change in order that Abbott Sports Complex may have greater flexibility to expand its operation and offer its facility for rent to other users.
3. The recreational facility that currently exists is allowed by special permit. The special permit approved a “soccer park,” and Applicant desires to provide other sports activities and alter fields for other sports as needed without amending their permit each time. The H-2 zoning district allows recreational facilities as a permitted use, and would allow these proposed revisions without the need for plan amendments.
4. The existing special permit does not have provisions to allow non-recreational functions, such as class reunions, trade shows, and political events, etc. previously requested. The H-2 district allows “club” as a permitted use, which allows gatherings for social, educational, or recreational purposes without the need for plan amendments.
5. If this zoning request is granted, the existing special permit for recreational facilities should be voided to the extent that the existing uses are permitted in the H-2 district.
6. The existing special permit has a provision that allows the championship field to be lighted. The H-2 zoning district requires a special permit for outdoor lighting for recreational facilities. If this zoning request is granted, the existing special permit may be continued as applied to the lighting for championship field, or a special permit for outdoor lighting for recreational facilities under the H-2 district may be requested.

Several other fields have lighting as well, none of which appears to be approved with the special permit. This lighting must be brought into conformance with the zoning ordinance.

7. The existing special permit allows the championship field to have stadium style seating. The H-2 zoning district allows recreational facilities as a permitted use, however, the definition for recreational facilities specifically states that it does not include arenas or stadia used primarily for spectators to watch athletic events. If this zoning request is granted, the existing special permit may be continued as applied to the seating for championship field.

Applicant has discussed the possibility of the Nebraska Tennis Center locating on a portion of this site with a stadium for tournament play. Such a stadium is not a permitted use in the H-2 zoning district. However, given the large size of this outdoor recreation complex, and the existing stadium for championship field, an additional stadium for one tennis court appears to be reasonable as an accessory use.

8. Due to the proximity of this area to Salt Creek, the floodplain covering the entire area, and the potential for significant increases in development density, the Public Works Department had originally opposed this request. However, through subsequent meetings, the Applicant and City Staff agreed on conditions under which this request could be approved. Those conditions deal largely with the grading of the area, limitations on the amount of fill, and using on-site fill material. This agreement should be signed prior to advancing this request to the City Council.

9. Public Works comments:

- 9.1 The Abbott Sports Complex is served for transportation needs by North 70th Street abutting it and Arbor Road from 56th to 70th providing access from the I-80 and 56th interchange. Arbor Road and North 70th are shown as future 4-lane plus center turn lane future arterials in this vicinity. Arbor Road and North 70th are substandard streets (rural paved asphalt or substandard width curb and gutter streets).

- 9.2 Expansion of the recreation facilities beyond the present use may raise traffic concerns. If the change of zone allows expansion and construction by right of additional facilities by only a building permit and the limited off-site improvements that can be required by building permit, Engineering Services is concerned that the expansion could occur without addressing transportation needs.

10. The traffic concerns generally surround ingress/egress for the site, as well as overall site access from the surrounding community and out-of-town visitors.

11. The H-2 district does provide a special permit for the sale of alcohol. Although no such use has been specifically proposed at this time, the Tennis Center has proposed a sports bar in the past. Should the sale of alcohol be desired, it may not be one that can be approved. The State regulations require a separation of 150 feet from a school, and Lincoln Public Schools is using a portion of this site. The City regulations do not require separation from a school.

PRIOR TO SCHEDULING THIS REQUEST ON THE CITY COUNCIL AGENDA, APPLICANT MUST:

- 1.1 Sign an agreement to the satisfaction of the Public Works and Planning Department and provide necessary documentation to supplement the agreement.

Prepared by:

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

Date: August 5, 2005

**Applicant
and
Contact:** Pierson, Fitchett, Hunzeker, Blake & Katt
Mark Hunzeker and Shanna Cole
1045 Lincoln Mall, Suite 200
Lincoln, NE 68508
476.7621

Owner: Lincoln Sports Foundation
7600 North 70th Street
Lincoln, NE 68517

CHANGE OF ZONE NO. 05050

PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 17, 2005

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

Staff recommendation: Approval, subject to an agreement satisfactory to Public Works & Utilities.

Ex Parte Communications: None.

Proponents:

1. **Mark Hunzeker** appeared on behalf of the **Lincoln Sports Foundation**, owner of the subject property. Three years ago, the applicant requested a change of zone from AG to I-1 on this property. At that time, the owner agreed with the staff that they did not need to have the entire parcel rezoned and agreed to have only the west half zoned H-2. The owner is now in the process of expanding the facilities to include tennis and construction of a facility for tennis use which will extend into the east half of the site. This change of zone is needed in order to maintain the ability to use the site without having to come back each and every time there is a minor modification of a tennis court or soccer field or to construct some sort of a concession stand or restroom facility or the like.

Hunzeker acknowledged that the owner has met with the staff about the concern expressed by Public Works relative to the floodplain. He believes they will reach agreement before this change of zone is scheduled on the City Council agenda. The owner's intent is to take whatever fill is needed to elevate the buildings out of the floodplain from the existing floodplain on the site, and to maintain that policy going forward.

Esseks requested that Hunzeker elaborate as to how the grading plan will result in no significant increase in flooding potential downstream. Hunzeker's response was that the area to the east is very low and, in fact, is far too low for any realistic opportunities for construction of any buildings. There is a wetland area in that vicinity which is going to be restored as part of this project, and they will be extracting soil for fill from that area. It is all within the floodplain and all of the fill will come out of that floodplain area.

Carroll inquired about traffic egress and ingress and whether there will be another entrance. Hunzeker stated that there will not be a need for another entrance at this time. There has been discussion, with some small amount of progress, toward the possibility of a motocross track at the northeastern portion of the site. In the event that occurs, they will definitely need additional access, and at that time they would expect Arbor Road to be improved into the site.

There was no testimony in opposition.

Staff questions

Pearson referred to page 6 of the staff report which states that the agreement between the applicant and city staff should be signed prior to advancing the change of zone to the City Council. Pearson was interested in having the opportunity to review that agreement. Greg Czaplewski of Planning staff indicated that the agreement has not yet been drafted because Public Works has not yet received some of the grading information. The applicant and Public Works have reached an agreement in general terms, but as of now there is no written agreement. The agreement will address the amount of fill being used and how much development can occur that close to Salt Creek. Pearson was not comfortable forwarding the change of zone without reviewing the agreement.

Esseks pointed out that Public Works has to approve the grading plan. He wondered whether there is some standard so that the Planning Commission can be confident, such as an even exchange – the increase in the water retention capacity because of the wetland restoration will equal the increase in the amount of fill that goes on. Marvin Krout, Director of Planning, believes that Nicole Fleck-Tooze of Watershed Management in the Public Works Department will be very careful about how the agreement is written. It is possible that they will not reach agreement on the details but he believes there is a good understanding of the generalities. There is a portion being used now that is in the floodplain and that area, with the exception of some possible small future building sites, would be left in the floodplain. The fill that would be required would be limited to a certain number of cubic yards and the fill would have to come from the property in the floodplain. There would be direct transfer of excavation of fill within the site. This is in Salt Creek in an existing developed area so this property owner could go out and get a fill permit. Staff appreciates their cooperation in dealing with the floodplain issues.

Response

Hunzeker agreed with Mr. Krout. The owner has the ability to get a fill permit to bring fill in from outside the site today; however, the owner is agreeing with Public Works to be subjected to an agreement that is much more restrictive than existing regulations. Hunzeker likened it to an annexation where the Planning Commission approves the annexation but does not review the annexation agreement.

ACTION BY PLANNING COMMISSION:

August 17, 2005

Larson moved approval, subject to an agreement satisfactory to Public Works & Utilities, seconded by Sunderman.

Pearson stated that she is having a hard time approving something she has not seen. She disagrees that an annexation agreement is similar to a change of zone. While they have the right to fill to wherever they want with offsite fill, she is doubtful they would do that. She is confident that the applicant will do the right thing but she has a hard time forwarding it without seeing the document. She would prefer a two-week delay to see the agreement.

Bills-Strand commented that it is not unusual for the Planning Commission to leave the details to be worked out before they get scheduled on the City Council agenda.

Motion for approval, subject to an agreement, carried 8-1: Esseks, Krieser, Taylor, Sunderman, Carroll, Larson, Carlson and Bills-Strand voting 'yes'; Pearson voting 'no'. This is a recommendation to the City Council.



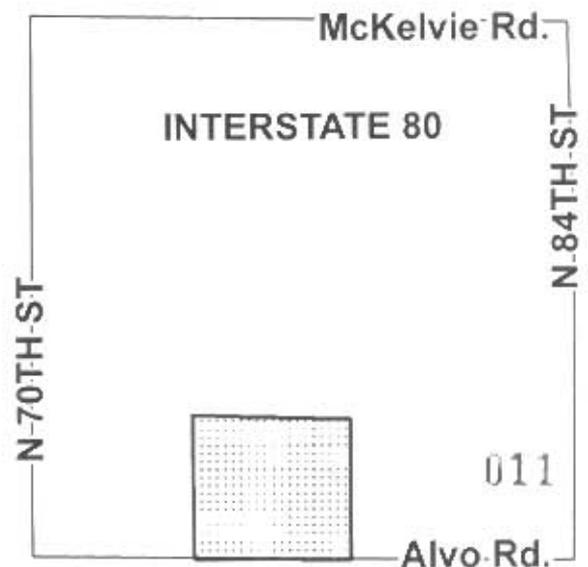
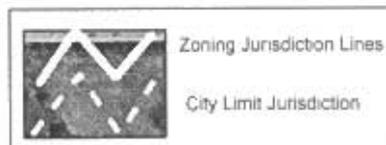
2005 aerial

Change of Zone #05050 N. 70th & Arbor 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. 27 T11N R7E



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Shanna L. Cole
Jason L. Scott

Gary L. Aksamit
of Counsel

July 7, 2005

Marvin Krout
Director of Planning
Lincoln-Lancaster County Planning Dept.
555 South 10th Street, Suite 213
Lincoln, Nebraska 68508

Re: *Change of Zone Application for Lincoln Sports Complex*

Dear Mr. Krout:

I certify that the owner of the property located at 7600 N. 70th Street, Lincoln, Nebraska 68517, and legally described as the East ½ of Lot 48 I.T., Section 27, Township 11 N, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska is Lincoln Sports Foundation.

The purpose of the change of zone application is to allow a greater flexibility for the Abbott Sports Complex to expand its facility.

Please feel free to contact Mark Hunzeker with questions.

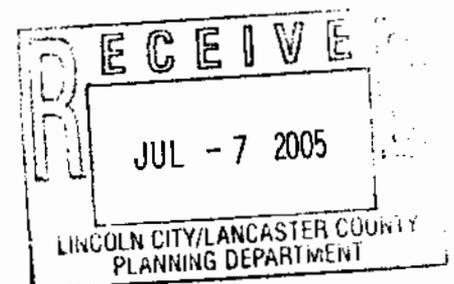
Sincerely,

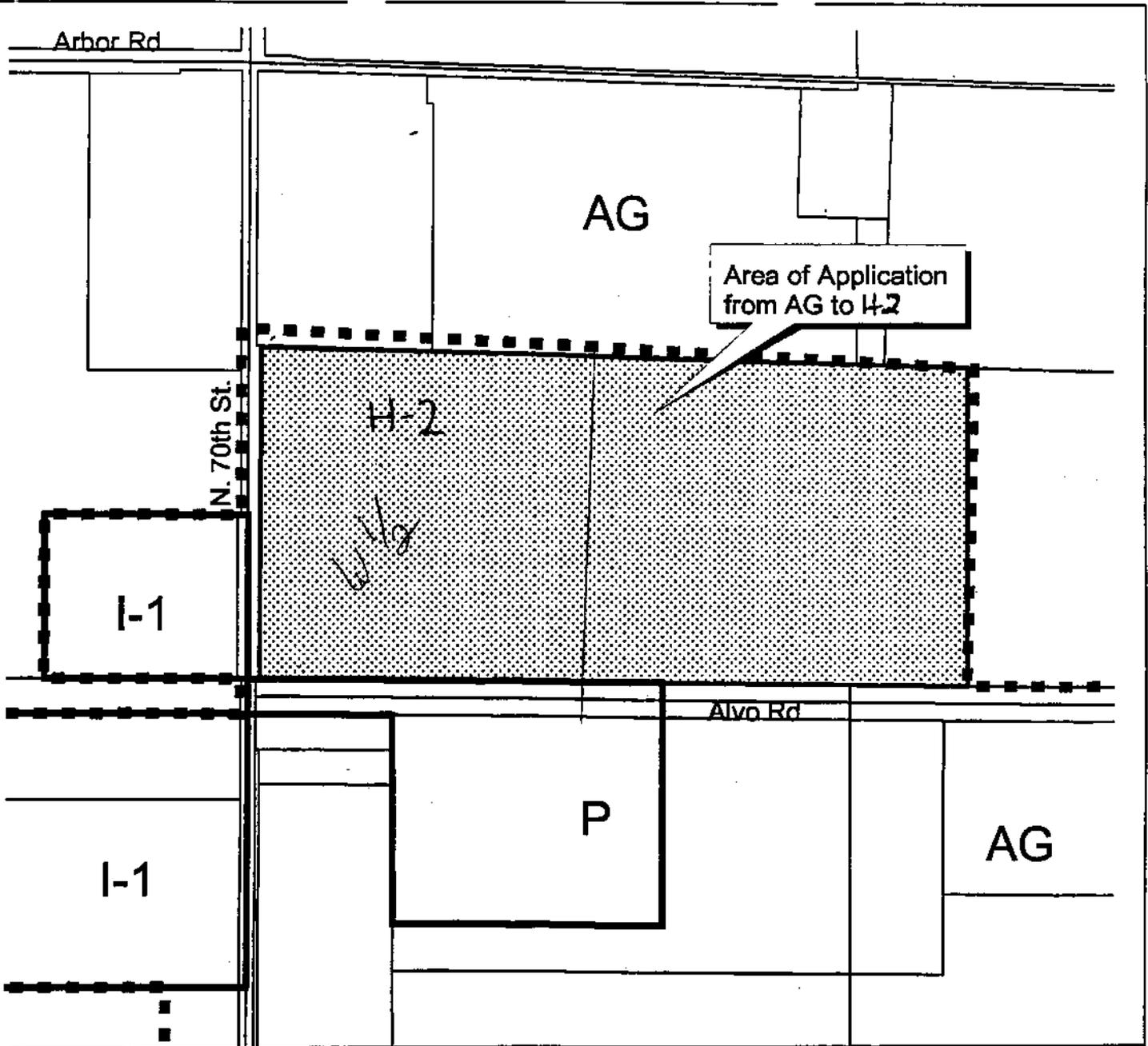


Shanna L. Cole
For the Firm
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SLC:lt

(G:\WPData\Sc\Lincoln Sports Foundation Krout 7-7.ltr.wpd)





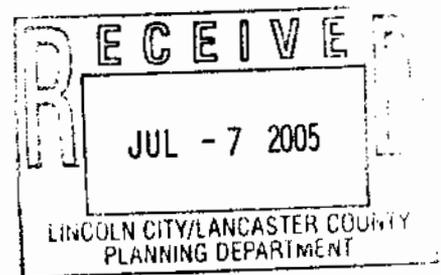
RECEIVED

JUL - 7 2005

LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

The East ½ of Lot 48 I.T., Section 27, Township 11 N, Range 7 East of the
6th P.M., Lincoln, Lancaster County, Nebraska

(G:\WPData\Sc\Lincoln Sports Foundation Legal Description.wpd)



DRAFT

DEVELOPMENT AND CONDITIONAL ZONING AGREEMENT

This Development and Conditional Zoning Agreement is hereby certified and agreed to this ____ day of _____, 2005, by and between Lincoln Sports Foundation, Inc., a Nebraska nonprofit corporation, hereinafter referred to as "Developer," and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City".

RECITALS

I.

Developer is the owner of Lot 48, Irregular Tract, located in Section 27, Township 11 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, hereinafter the "Property." Developer has petitioned the City for a Change of Zone from AG Agricultural District to H-2 Highway Business District upon the following described portion of the Property:

[Need Legal]

II.

The request for a change of zone is to expand an existing recreational facility to include a tennis complex on the south side of the road running west to east from 70th Street, and potential future development on the north side of said road.

III.

The proposed expansion of the recreational facility for the tennis complex and future development is located in the floodplain and the City is concerned about excessive fill being placed in the floodplain.

IV.

The Developer has represented to the City that, if a portion of the Property is rezoned to H-2 Highway Business District, Developer will develop the H-2 zoned portion of the Property as described above and agree that no more than 27,600 cubic feet of fill shall be placed on any portion of the Property located on the north side of the road as shown on Attachment A and that any fill material to be placed on the Property, either north and/or south of the west-to-east road will come from on site.

V.

Since the Property is located in the Existing Urban Area, the Property is not subject to the enhanced flood regulations for New Growth Areas. Therefore, the City and Developer desire to enter into this Agreement to be assured that the Developer will develop the Property and limit fill in the floodplain as represented should the Property be rezoned to H-2 Highway Business District.

NOW, THEREFORE, Developer and City mutually agree to the following terms and conditions as the Development and Conditional Zoning Agreement for the subject property.

1. The City hereby agrees to grant Developer's petition to change the zoning map from AG Agricultural District to H-2 Highway Business District on the Property.
2. In consideration for the City rezoning the Property to H-2 Highway Business District, the Developer agrees that no more than 27,600 cubic feet of fill shall be placed on the north side of the road running west to east from North 70th Street to the east property line of the Property as shown on Attachment A and that said 27,600 cubic feet of fill shall come from on site.

3. This Agreement is binding upon the parties herein and their respective successors and assigns.

4. This Agreement, when executed by the parties herein, shall be recorded by the City in the office of the Register of Deeds of Lancaster County, Nebraska. Filing fees shall be paid by Developer.

IN WITNESS WHEREOF the parties herein place their signatures on the day and year set forth above.

LINCOLN SPORTS FOUNDATION, INC.,
a Nebraska nonprofit corporation

By: _____
President

DRAFT

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2005, by _____, President of Lincoln Sports Foundation, Inc., a Nebraska nonprofit corporation, on behalf of said corporation.

Notary Public

