

FACTSHEET

TITLE: CHANGE OF ZONE NO. 06002, from AG Agricultural District to H-3 Highway Commercial District, requested by John Zakovec, on property generally located at N.W. 48th Street and Highway 34.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 03/15/06
Administrative Action: 03/15/06

STAFF RECOMMENDATION: Approval.

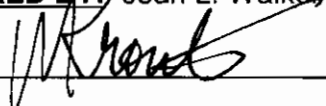
RECOMMENDATION: Approval (8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson voting 'yes').

FINDINGS OF FACT:

1. This is an expanded request to change the zoning from AG to H-3 on 7.6 acres generally located at N.W. 48th Street and Highway 34. An original proposal to change the zoning on 4.3 acres was recommended for approval by the staff and Planning Commission in April, 2004; however, the applicant did not proceed with the original application to the City Council and is now requesting the expanded area.
2. The staff and Planning Commission had previously recommended denial of the expanded area on February 1, 2006 (See staff report and minutes of the Planning Commission public hearing and action, p.8-26). However, after meeting with the applicant's representative, the Director of Planning agreed to send the expanded application back to the Planning Commission for a new hearing and recommended approval (See Memorandum of Marvin Krout dated March 3, 2006, and attached maps, p.2-5).
3. The testimony by the applicant's representative, Mark Hunzeker, at the new public hearing held on March 15, 2006, is found on p.6-8.
4. There was no testimony in opposition.
5. On March 15, 2006, the Planning Commission agreed with the revised staff recommendation and voted 8-0 to change their previous recommendation of denial to approval.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: March 21, 2006

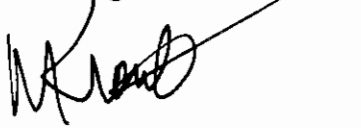
REVIEWED BY: 

DATE: March 21, 2006

REFERENCE NUMBER: FS\CC\2006\CZ.06002

MEMORANDUM

TO: Lincoln City-Lancaster County Planning Commission

FROM: Marvin Krout, Director of Planning 

SUBJECT: Change of Zone No. 06002, from AG Agricultural District to H-3 Highway Commercial District, on property generally located at N.W. 48th Street and Highway 34

DATE: March 3, 2006

cc : Mark Hunzeker
John Zakovec

On February 1, 2006, the Planning Commission heard this application by the applicant, John Zakovec.

Mr. Zakovec applied for a change of zone on a 4.3 acre portion of his property in April 2004 (Change of Zone No. 04022), to replace about 2.4 acres of land being taken by the Nebraska Department of Roads (NDOR) for a relocated N.W. 48th Street, on which he has operated a storage business. Staff supported the application and the Planning Commission voted to recommend approval.

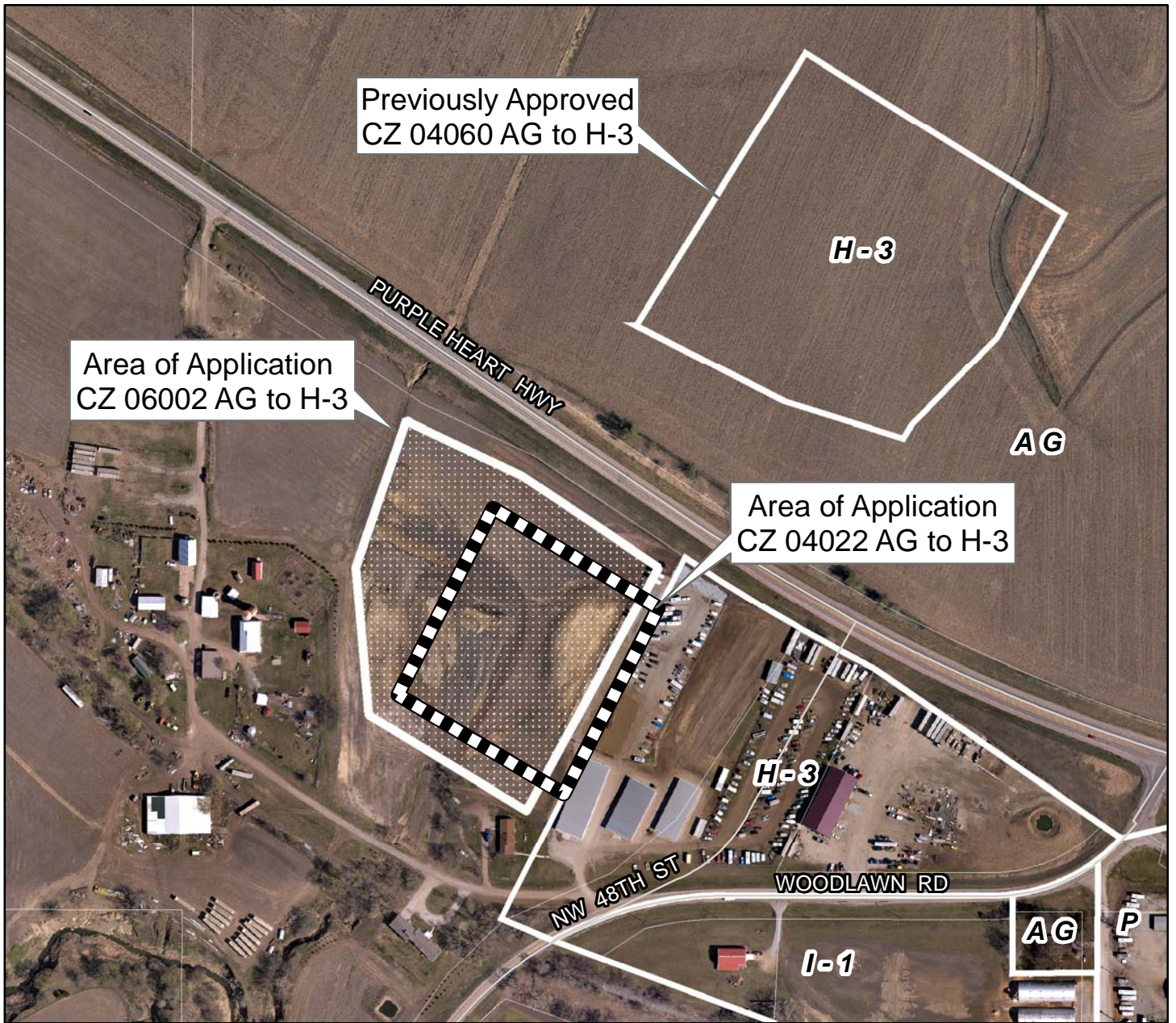
Mr. Zakovec requested that Change of Zone No. 04022 be placed on hold until late last year, when he filed this new application (Change of Zone No. 06002) for a somewhat larger area, amounting to 7.6 acres. He argued that the second request more closely resembled the H-3 zoning request recently approved across Highway 34 to the north (Change of Zone No. 04060). That approval allowed the relocation of a nearby convenience store that lost access to Highway 34 due to the road improvement project. The staff recommended denial of this second application because it seemed too large in terms of the land that was lost to the State, and extended closer to the current Highway 34 right-of-way.

After the Planning Commission hearing on the second application, I was contacted by the attorney who had previously represented the convenience store owner, and we met to discuss this case prior to scheduling it for City Council. Upon closer review, I determined that the second application was not significantly different than the original request. The expansion to the north will take the H-3 boundary to a point 50 feet from the existing south right-of-way line of Highway 34, which will remain in the same location after the highway improvement. The new roadway is being constructed further north in this area, requiring the north right-of-way line to

be expanded to a point that is the same 50 feet from the approved H-3 zoning line for the proposed relocated convenience store. The proposed expansion to the west will take the zoning line to a drainage ditch, which seems a logical boundary to this zone. The percentage increase in land area requested by Mr. Zakovec is just about the same as the request approved for the convenience store.

In light of this change in the Department's view toward this request, I felt that it would be most appropriate to bring this case back to the Commission for rehearing and an opportunity to reconsider your recommendation.

Q:\pc\cz\06000\CZ.06002.Rehearing.memo



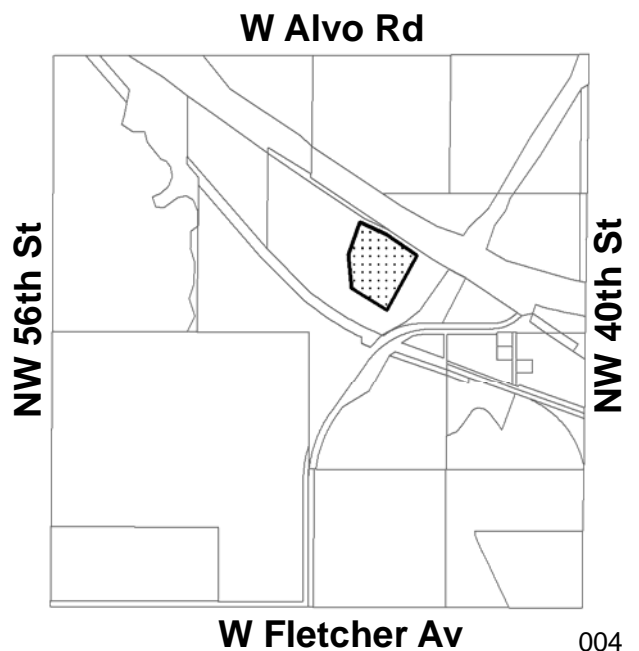
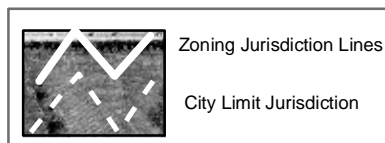
2005 aerial

Change of Zone #06002 NW 48th St & US Hwy 34

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. 31 T11N R06E





2005 aerial

Change of Zone #06002 NW 48th St & US Hwy 34

Zoning:

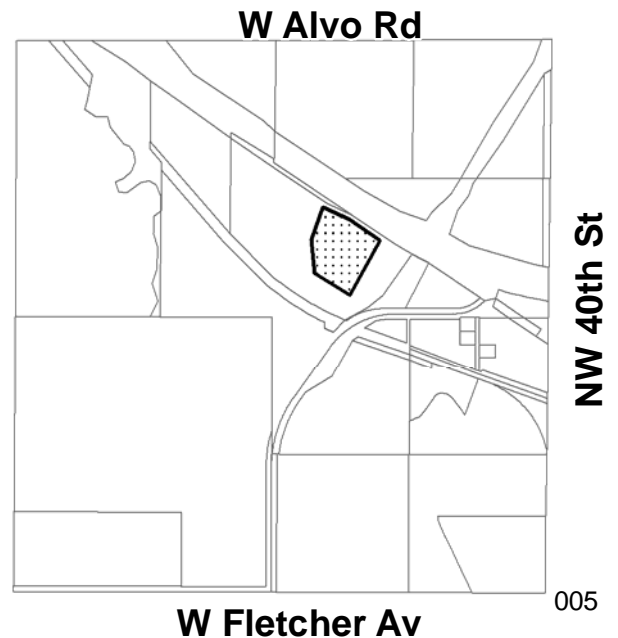
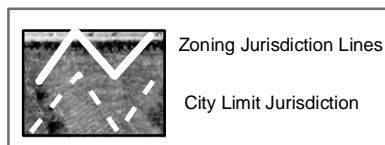
- R-1 to R-8 Residential District
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- H-4 General Commercial District
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- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile
Sec. 31 T11N R06E



NW 56th St

NW 40th St



CHANGE OF ZONE NO. 06002

NEW PUBLIC HEARING BEFORE PLANNING COMMISSION:

March 15, 2006

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

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. **Mark Hunzeker** appeared on behalf of **John Zakovec**, the owner of the property in question. This application was heard by the Planning Commission previously with a recommendation of denial based in part on some misunderstanding of exactly what was about to happen to this area in the way of highway improvements.

Hunzeker displayed a map and explained that the concern about setting the area back away from the highway is fairly obviated by the fact that the highway is moving more than the distance that the staff was concerned about for setting back from the highway. The property across the highway to the north was rezoned previously based on a 50' setback from the new right-of-way. The new zoning line for this application will be considerably further away from the new highway than the property to the north.

Mr. Zakovec currently operates a storage business on this property which is being severely affected by the realignment of N.W. 48th Street. In order to move buildings because of that realignment, he needs to get this area rezoned. There is a drainageway running through the property from north to south that is right along the boundary of the proposed change of zone. The smaller area previously approved would leave a rather irregular-shaped parcel between the drainage ditch and the area available for use by the business, creating an area that is not usable to farm and not usable in conjunction with the special permit that is on the property. After explaining this to the Planning Department after the last hearing, the Director of Planning agreed that the expanded area made sense and has revised the recommendation to approval.

Carroll noted that the question the Planning Commission had last time was the 200' versus the 50' setback. We do not know what will happen to the existing Highway 34 road when it moves north and what will happen to the property being vacated for the highway. Hunzeker stated that the vacated right-of-way will be maintained as right-of-way and owned by the state. In fact, there is an area where there is actually more right-of-way being taken because of grading that needs to be done to raise the road bed to elevate it for the crossing of the creek further to the east. The state is maintaining

ownership of that right-of-way. The description for this change of zone sets back 50' from the new right-of-way line, as it did on the north side. This application will be further away from the road surface on the south side than will the property on the north side.

Carlson believes that means it will be further to the north. Hunzeker disagreed. The actual right-of-way line is staying in the same place. "We will be 50' from the new right-of-way line regardless."

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

March 15, 2006

Strand moved approval, seconded by Larson and carried 8-0: Sunderman, Strand, Esseks, Krieser, Taylor, Larson, Carroll and Carlson. This is a recommendation to the City Council.

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for February 1, 2006 PLANNING COMMISSION MEETING

P.A.S.: Change of Zone #06002

PROPOSAL: A change of zone from AG Agriculture to H-3 Highway Commercial

LAND AREA: 7.64 Acres, more or less

CONCLUSION: This application is not in conformance with the Comprehensive Plan and is premature relative to the Comp Plan/LRTP update. The previous zoning application (CZ # 04022) addressed the loss of zoned land due to the road realignment.

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

LEGAL DESCRIPTION: A 7.64 acre part of the remaining portion of Lot 1, Woodlawn West located in the NE 1/4 of Section 31, T 11 N, R 6 E of the 6th P.M., Lancaster County NE. Metes and Bounds description attached.

LOCATION: Generally located at N. W. 48th Street and Hwy 34.

EXISTING ZONING: AG Agriculture with a Heritage Center Special Permit (a "heritage center" allows additional uses by special permit for a historically significant era or activity).

EXISTING LAND USE: pasture/farming

SURROUNDING LAND USE AND ZONING:

North: Ag land, zoned AG Agriculture and H - 3 Highway Commercial

South: Ag land, zoned AG Agriculture

East: Commercial land, zoned H-3 Highway Commercial

West: Ag land, zoned AG Agriculture. "GrandPa John's" Heritage Center Special Permit.

ASSOCIATED APPLICATIONS: None

HISTORY: Change of Zone 04022, from AG to H - 3 on 4.3 acres was approved by the Planning Commission on April 28, 2004. This has been on hold at the request of the same applicant since that date. Special permit for a Heritage Center approved in February 1994. Changed from County AA Rural and Public Use to AG Agriculture in the 1979 Zoning Update. The land to the east changed from AG to H-3 in April 1995 (cz 2892).

COMPREHENSIVE PLAN SPECIFICATIONS: This area is shown as Agriculture adjacent to Commercial on the Land Use Plan (pg F 23). This is in the Lincoln growth Tier III. A Comprehensive Plan Amendment was approved that reflects this area and suggests it be studied for suitability for Tier II (see italic). The 2025 Comprehensive Plan states:

Northwest Tier Study: a review should be conducted of the Tier III growth areas, from approximately N.W. 27th Street, north of Highway 34, to West "O" Street, west of N.W. 56th Street, to determine which, if any areas, are appropriate for Tier II designation. Pg 32

Existing businesses flourish and there are opportunities for new businesses within Lincoln and the incorporated communities. The Plan provides new employment locations and supports retention of existing businesses. Pg F 16 Encourage renovation and reuse of existing commercial centers. Infill commercial development should be compatible with the character of the area and pedestrian oriented. Maintain and encourage retail establishments and businesses that are convenient to, and serve, neighborhood residents, yet are compatible with, but not intrusive upon residential neighborhoods. Expansion of existing commercial and industrial uses should not encroach on existing neighborhoods and must be screened from residential areas. Pg F 49

During the planning period, improvements are planned for Interstate 80 and many of the existing Nebraska State Highways in Lincoln and Lancaster County. These improvements can generally be categorized as the widening of roadways or construction of interchanges. All of the projects listed below are considered to have funds committed to their construction during the planning period:

US-34, West, city limits west to county line 4 lanes + turn lanes
West "O" St., N.W. 48th St. to N.W. 56th St. 4 lanes + turn lanes

UTILITIES: No utilities are available

TOPOGRAPHY: Flat

TRAFFIC ANALYSIS: Highway 34/ Purple Heart highway is a Federal highway with limited access and a 50' from centerline building line district. Northwest 48th/Woodlawn is a city major street with a 50' from centerline building line district. The State of Nebraska is in the process of a project to realign N.W. 48th and N.W. 40th Streets to a common intersection on Hwy 34, on a portion of the applicants property.

PUBLIC SERVICE: This is served by the Malcolm Rural Fire District, County Sheriff, and Malcolm School District #148.

REGIONAL ISSUES: NA

ENVIRONMENTAL CONCERNS: No historic or environmental resources are noted on this. Much of the site is in the 500 year flood plain but not in the 100 year flood plain. The soil types at this site are classified as "Prime". The Airport Authority notes this is in an Airport Environs Noise District. This is under the approach to runway 14.

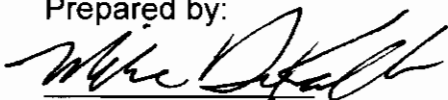
AESTHETIC CONSIDERATIONS: Entrance to the city. This is not in an identified Capital View Corridor.

ALTERNATIVE USES: Agriculture and continued use of the special permit.

ANALYSIS:

1. This proposal is for a change of zone from AG to H-3 on a 7.6 acre parcel to replace land lost due to road realignment. The Planning Commission has already recommended approval to a 4.30 acre portion of this parcel to replace currently zoned land and buildings being lost to acquisition by the Department of Roads of Right - of - Way for the realignment of NW 48th and NW 40th Streets at this location. About 2.4 acres appears to be directly impacted by the R O W acquisition and two buildings will be impacted by the new drive.
2. This is currently outside the Future Service Limits of the Comprehensive Plan and is shown as Tier III and Agriculture. The Plan calls for a Northwest Tier Study to determine appropriateness for Tier II. This is part of the LRTP update.
3. The potential for this area to be served by city services is being studied as part of the 2030 Comp Plan/LRTP update. This currently is being shown on the Draft Land Use map as Tier II, next to the Future Service area and in an area of a Potential Large Employer Opportunity Area across Hwy 34 to the north.
4. The landowner will be compensated by the State for land and damages in the road realignment.
5. The area of Special Permit # 1481 must be amended if this or the prior zoning application is approved.
6. If approved, the zoning should be pulled back at least 200 feet from the Hwy 34 to reflect the zoning previously approved and that this is an entryway to the City.
7. In light of the Planning Commission recommendation of approval of CZ# 04022 to accommodate the road realignment and the review of this area in the LRTP update, this application is premature and should be denied..

Prepared by:



Mike DeKalb, AICP, 441-6370, mdekalb@ci.lincoln.ne.us

Planner

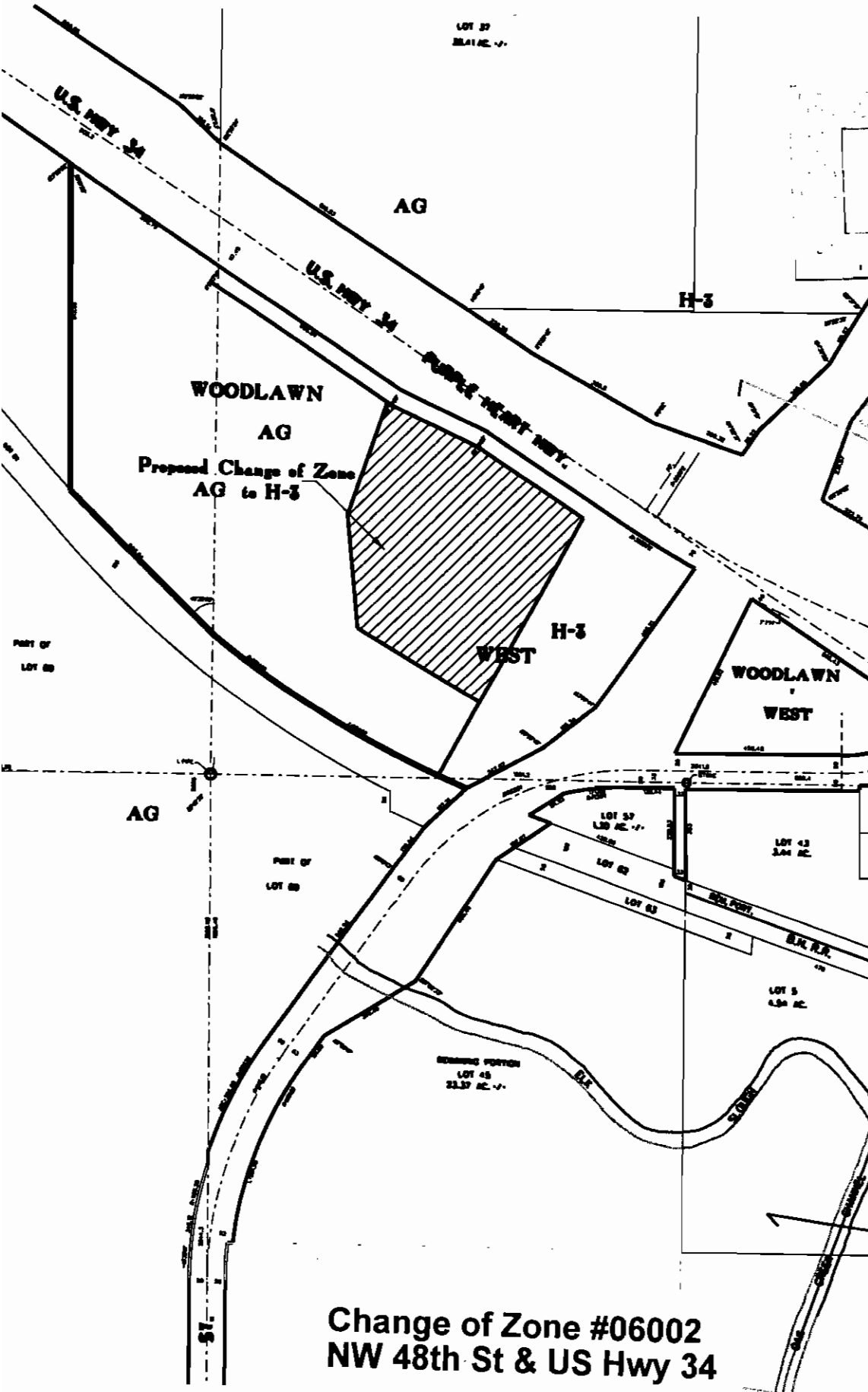
January 23, 2006

APPLICANT: Lyle Loth ESP
601 Old Cheney Road, Suite A
Lincoln, NE 68512
(402) 421-2500

OWNER: John Zakovec
6625 N.W. 48th Street
Lincoln, NE 68524
(402) 470-2450

CONTACT: Lyle Loth ESP

RECEIVED
JAN - 5 2006
PLANNING DEPARTMENT



Change of Zone #06002
NW 48th St & US Hwy 34

A Metes and Bounds Description of a part of the remaining portion of Lot 1, Woodlawn West, located in the NE ¼ of Section 31, T. 11 N., R 6 E., of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the SW corner of said NE ¼ and extending thence East along the south line of said NE ¼ a distance of 627.43 feet; thence N. 28° 32' 52" E., 246.19 feet to the point of beginning;

Thence continuing N. 28° 32' 52" E., 597.35 feet;

Thence N. 56° 06' 29" W., 353.78 feet;

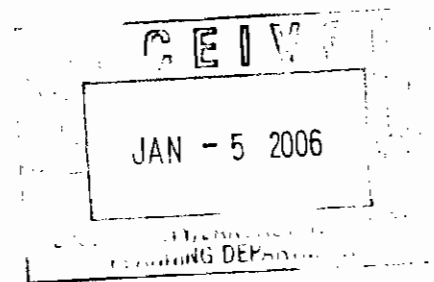
Thence N. 64° 43' 55" W., 261.70 feet;

Thence N. 56° 07' 55" W., 15.73 feet;

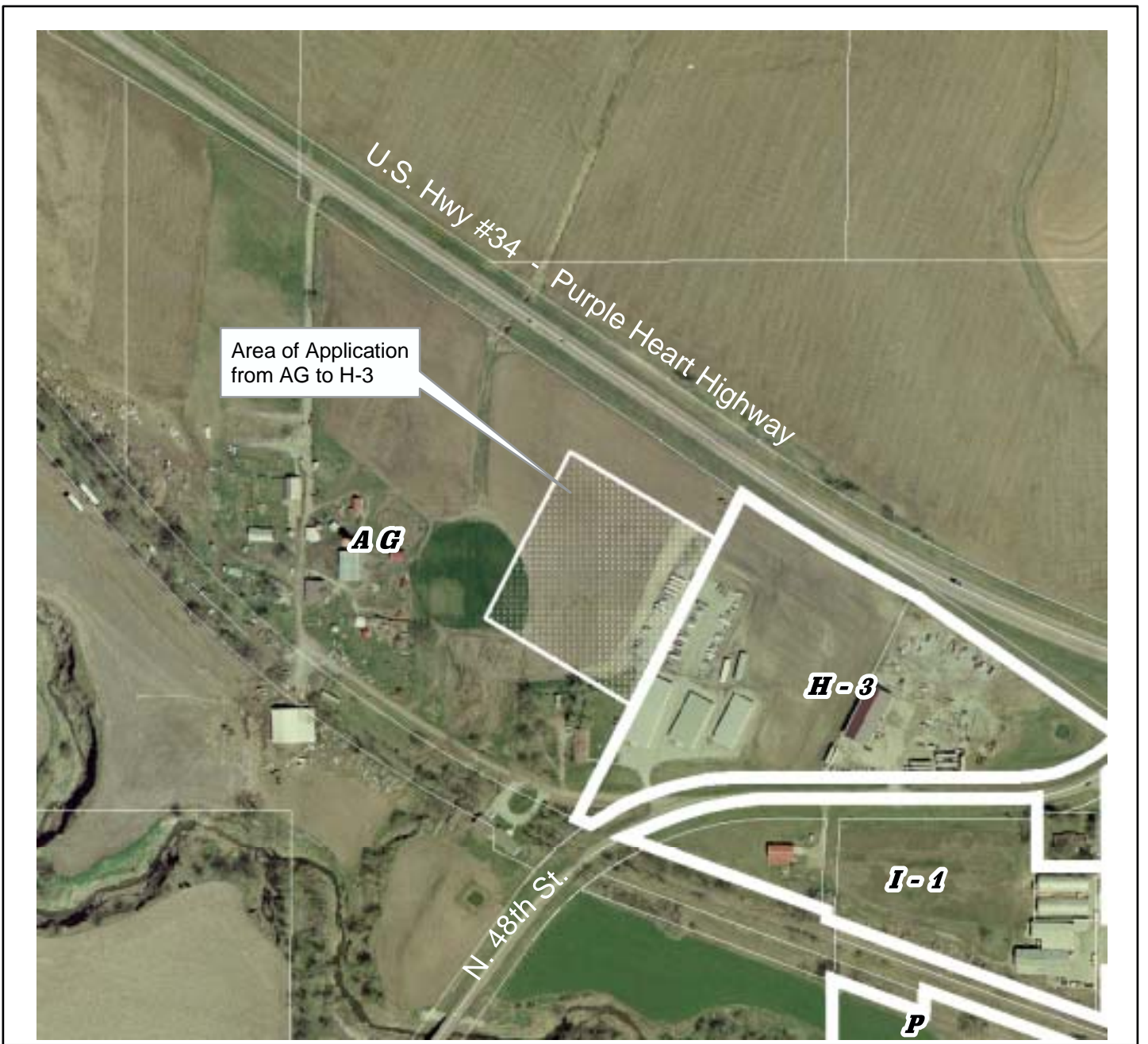
Thence S. 19° 00' 25" W., 335.41 feet;

Thence S. 4° 58' 26" E., 320.00 feet;

Thence S. 58° 40' 36" E., 397.32 feet to the point of beginning, containing 7.64 acres, more or less.



**Change of Zone #06002
NW 48th St & US Hwy 34**



2002 aerial

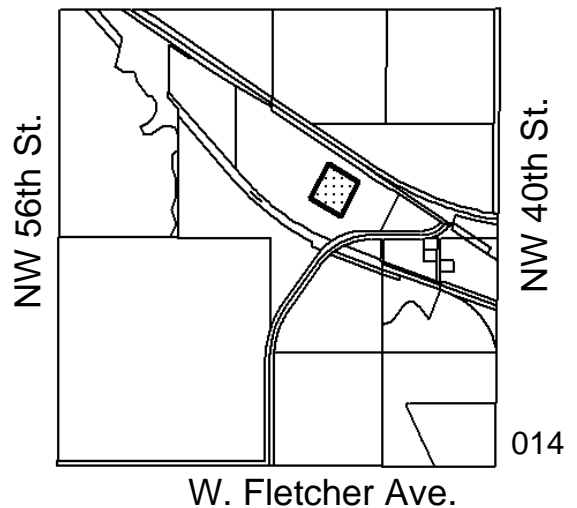
**Change of Zone #04022
4801 NW Hwy 34**

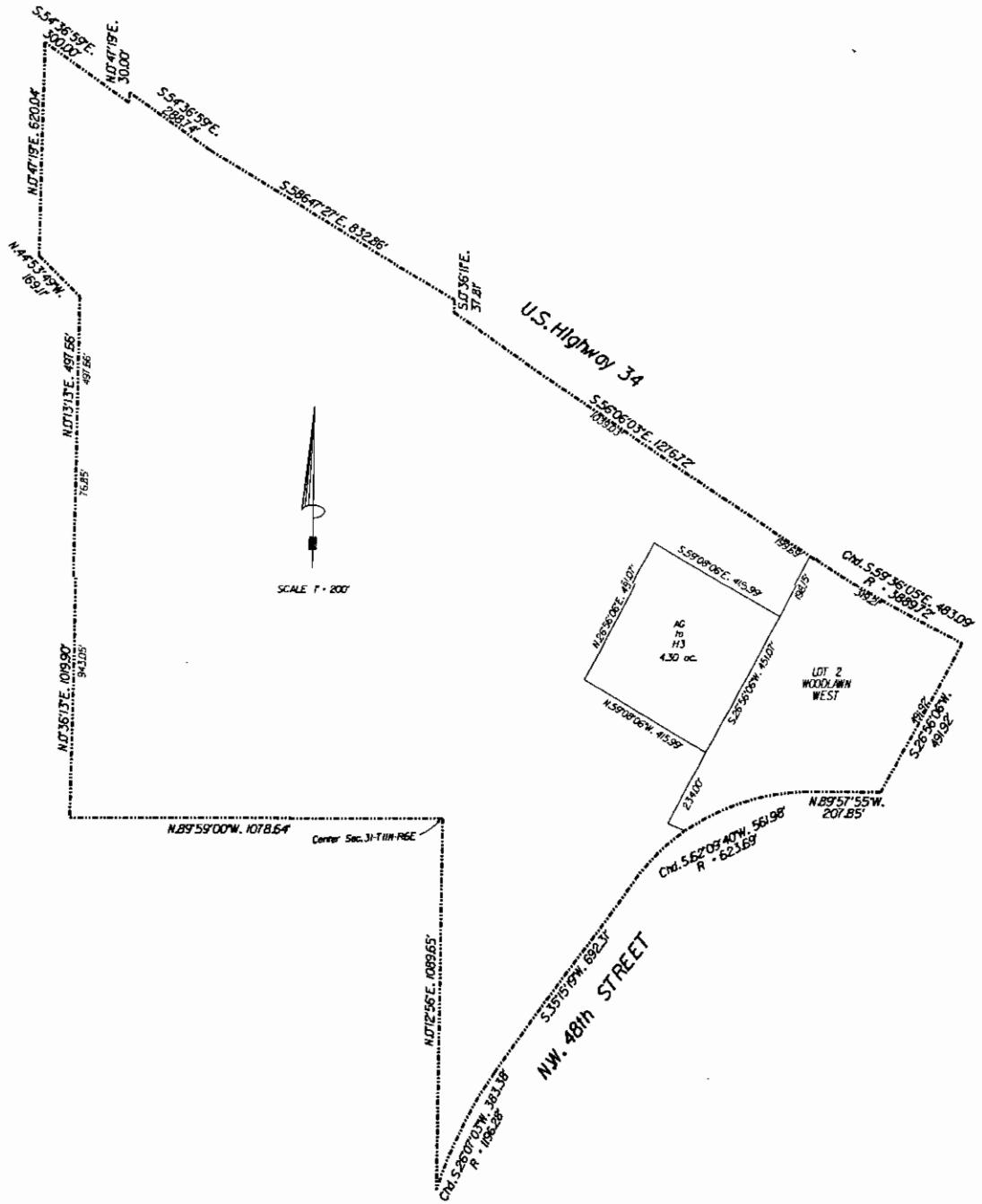
Prior Application - March 04
W. Alvo Rd.

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
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- O-3 Office Park District
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One Square Mile
Sec. 31 T11N R6E

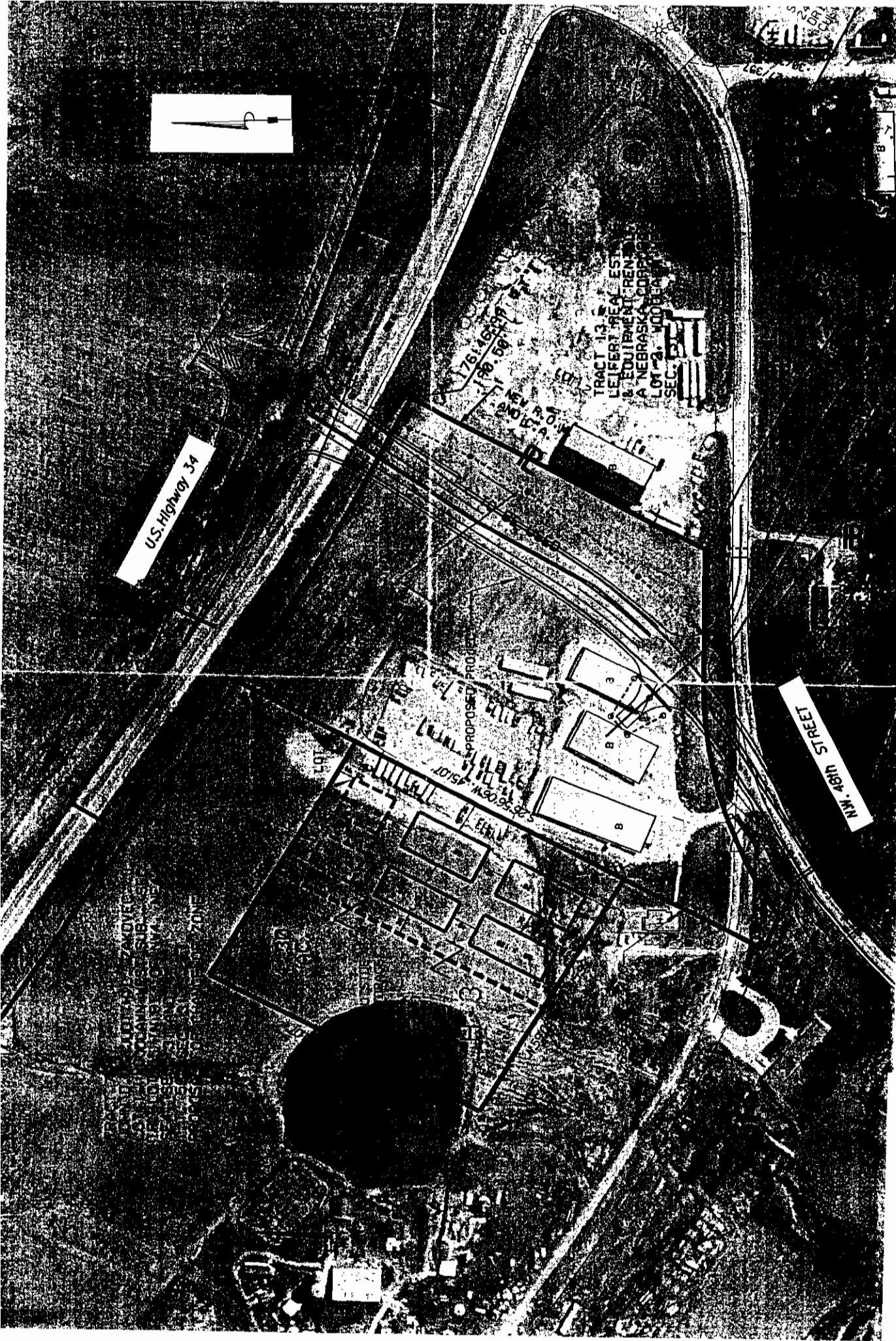




Prior Application - March 04

015

Change of Zone #04022
 4801 NW Hwy 34



U.S. Highway 34

NM 4801 STREET

TRACT 13-5
LEISERT REAL EST
& EQUIPMENT RENT
A NEBRASKA CORP
LOT 2, MOORE
SEC. 27

PROPOSED PROJECT

Prior Application - Mar 04

Change of Zone #04022
4801 NW Hwy 34



LYLE L. LOTH, P.E./L.S.

File No. 00-0016
January 5, 2006

Planning Department
555 S. 10th Street
Lincoln, NE 68510

Suite A - 601 Old Cheney Road
Lincoln, NE 68512

Phone (402) 421-2500
Fax (402) 421-7096

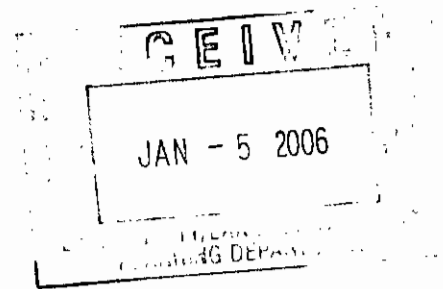
Email: lyle@espeng.com

RE: Zakovec—NW 48th & Hwy. 34

On behalf of our client, John Zakovec, we are requesting a change of zone from AG to H3 to offset the loss of H3 zoning that was taken with the acquisition of right of way by the Department of Roads. Included with this letter are the application, filing fee and site plan with legal description. Please let me know if you have any questions or concerns. Thank you for your assistance.

E-S-P
Engineering-Surveying-Planning


Lyle L. Loth



**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Mike DeKalb	DATE: January 11, 2006
DEPARTMENT: Planning	FROM: Chris Schroeder
ATTENTION:	DEPARTMENT: Health
CARBONS TO: EH File EH Administration	SUBJECT: Zakovec CZ #06002

The Lincoln-Lancaster County Health Department has reviewed the change of zone application and does not object to the approval of this application.

Memorandum

To: Mike DeKalb, Planning Department
From: Charles W. Baker, Public Works and Utilities
Subject: Zakovec Change of Zone #06002, Northwest 48th and Highway 34
Date: January 17, 2006
cc: Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the Zakovec Change of Zone #06002, Northwest48th and Highway 34 from AG to H-3. Public Works has no objections.

CHARLES THONE
DONALD H. ERICKSON
WM. E. MORROW, JR.
DANIEL B. KINNAMON
THOMAS J. GUILFOYLE
VIRGIL K. JOHNSON
CHARLES V. SEDERSTROM
CHARLES D. HUMBLE
ALAN M. WOOD
WILLIAM F. AUSTIN
JOHN C. BROWNRIGG
THOMAS J. CULHANE
RICHARD J. GILLOON
SAMUEL E. CLARK
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MARK M. SCHORR
JERALD L. RAUTERKUS
WILLIAM T. FOLEY
PATRICK R. GUINAN

LAW OFFICES
ERICKSON & SEDERSTROM, P.C.
A LIMITED LIABILITY ORGANIZATION

SUITE 400
301 SOUTH 13TH STREET
LINCOLN, NEBRASKA 68508-2571
TELEPHONE (402) 476-1000
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OMAHA OFFICE
10330 REGENCY PARKWAY
DRIVE, SUITE 100
OMAHA, NEBRASKA 68114
(402) 397-2200

January 19, 2006

Mr. Lyle L. Loth
ESP, Inc.
Suite A, 601 Old Cheney Road
Lincoln, NE 68512

Re: Zakovec-NW 48th & Hwy. 34
Our File No.: 24751.49440

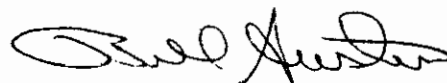
COPY

Dear Lyle:

I'm writing on behalf of the Lincoln Airport Authority. Enclosed is a copy of an Avigation Easement that the Airport Authority would request that your clients execute in conjunction with the approval of Change of Zone 06002 (AG to H-3). The property in question is located within the Airport Environs Noise District and is subject to the provisions contained in Chapter 27.58 of the Lincoln Municipal Code. This would require the provision of Avigation Easements for any subdivision, community unit plan, special permit, use permit, or building permit within the area and, while not specifically required for a change of zone, it would be more convenient to have one Avigation Easement covering the property at this time, rather than obtain separate easements as special permits or building permits are issued.

If your clients are agreeable to executing the Easement, would you please have them do so, and when executed, return it to me for filing at the time of approval of Change of Zone 06002.

Sincerely,



William F. Austin

WFA:rln
Enclosure
c: Jon Large, Deputy Director of Engineering
Mike DeKalb, Project Planner

JAN 20 2006

019

January 10, 2006

Mr. Mike DeKalb, Project Planner
City-County Planning
555 So. 10th
Lincoln, NE 68508

Project Name: Zakovec – NW 48th & HWY 34
Change of Zone (PUD) #06002 AG to H-3

Mr. Dekalb:

After reviewing the subject submittal, I have the following comments:

This area is within the Airport Environs Noise District and subject to the provisions contained in Chapter 27.58 of the Lincoln Municipal Code. This will require an appropriate Avigation and Noise Easement and Covenant Agreement as a condition of approval for this permit.

In addition, it appears that a number of the permitted uses in an H-3 zone are required to incorporate acoustical features as a condition of Building permit issuance, as described in Section 27.58.060 of the same chapter.

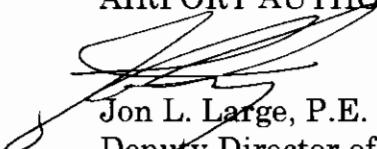
This area is located within an inner approach area, as defined in Chapter 27.59 and shown on the Lincoln Airport Zoning Map. This will require height permits for construction in the area, per Section 27.59.060 of Chapter 27.59.

Finally, given the types of construction we would anticipate in this area and its proximity to Runway 14, building proponents should also complete and submit a Form 7460-1C, Notice of Proposed Construction or Alteration, to the FAA. This submittal to the FAA begins an airspace review process to ensure that the proposal does not create a hazard to air navigation.

If you have any questions concerning my comments, please advise.

Sincerely,

AIRPORT AUTHORITY


Jon L. Large, P.E.
Deputy Director of Engineering

JLL/lb
cc: Bill Austin, w/enclosures

CHANGE OF ZONE NO. 06002

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 1, 2006

Members present: Esseks, Pearson, Taylor, Sunderman, Carroll and Carlson (Strand, Krieser and Larson absent).

Ex Parte Communications: None

Staff recommendation: Denial.

The staff submitted a corrected zoning map.

Proponents

1. **John Zakovec**, the applicant, stated that he owns and operates Northwest Storage, formerly known as Grandpa John's. He still has Grandpa John's Pumpkin Patch and holds private tours and parties. Zakovec showed maps and explained the specific location for this change of zone request and the realignment of the four-lane road which will go through his property. He also showed a map of the property taken by the State for the realignment of the highway, including two buildings and over 200' of highway frontage. Zakovec also pointed out that Larry Coffey received approval of a change to H-3 zoning across the highway.

Zakovec acknowledged that he received approval from the Planning Commission for a change of zone on a 4.3 acre portion of this property last spring; however, he has not yet proceeded with that request to the City Council. Zakovec is now requesting the additional area in this change of zone request.

Zakovec pointed out that this will no longer be a storage facility in ten years, after the water and sewer services get there. He can use extra steel and cement to develop a strip mall, but his developer needs the additional property zoned to make that work.

Zakovec showed other areas which he believes to be similar that are designated in the Comprehensive Plan. In March of 2004, Zakovec paid Mark Hunzeker to represent his interest for making this property a part of the Comprehensive Plan, but he does not know why it did not happen.

Zakovec does not know why the staff is wanting the 200' setback between the highway and the commercial zoning.

Zakovec clarified that he will use the 7.6 acres for storage units because there is no water and sewer there at this time. He will have to move his buildings that the State took, and he would anticipated moving those buildings onto this property and expand on that.

Upon further discussion, it was clarified that there is not 50' buffer on the east – just on the north side.

Esseks inquired as to how many square feet of storage the applicant will have lost because of the State's taking. Zakovec stated that one building is 50 x 120 and the other is 60 x 120. He also has outside storage for boats and campers, which is over 200 spaces. The state made him clean the storage area out as of July 1st. He received 23 cents per square foot for the property.

Esseks inquired about the property across the highway to the north. Zakovec explained that Mark Hunzeker was successful in getting approval of H-3 zoning for Larry Coffey at that location. The Gas N Shop did not lose any property to the State, but did lose access.

There was no testimony in opposition.

Staff questions

Carroll inquired as to the uses allowed under the AG zoning. Can he use it as storage? Mike DeKalb of Planning staff stated that AG zoning does not allow commercial uses. The applicant currently has a special permit for the Heritage Center. He needs the zone change to do the commercial storage.

Esseks commented that on the surface, this looks to be a very reasonable trading of land. The State takes away and he is asking to do the same business a few hundred feet to the west. It seems reasonable. What is the community interest in turning it down? DeKalb explained that the staff supported the prior application of 4.3 acres. DeKalb also suggested that the State is supposed to pay fair market value for property taken and any damage. When the applicant brought the previous change of zone forward on the 4.3 acres, the State was taking 2.3 acres and the applicant needed additional land to relocate buildings and setbacks. The staff and Planning Commission recommended approval of that change of zone because it was determined to be appropriate to change the zone on the 4.3 additional acres to allow the applicant to recoup everything that he had lost to the State. However, the applicant asked that it not proceed to City Council pending negotiations with the State Department of Roads. That application is still being held between Planning Commission and City Council, at the request of the applicant.

With regard to the Coffey property on the north side of the highway, DeKalb advised that it was a similar kind of approach as far as replacement of a loss. The State was cutting off their access to Hwy 34 and it was a substantial longer way back around to get to the old gas station. Staff took the position that Coffey should be able to replace that facility and the zoning on the north side was large enough to accommodate the truck stop type use.

Esseks asked whether the staff would still support the change on the 4.3 acres. DeKalb answered in the affirmative and reiterated that the Planning Commission also

supported it and that it is ready to be scheduled at the City Council. It was not scheduled at the applicant's request.

Esseks inquired whether this application involves that same land. DeKalb stated that it does – this application is an expansion of that application. DeKalb also pointed out that the Planning Commission is currently in the process of a five-year update of the Comprehensive Plan. When Mr. Hunzeker previously made application for a Comprehensive Plan amendment, he did talk about studying a redesignation of this area from Tier III to Tier II. The current plan for the update not only includes service in the area across the creek immediately to the south, but also includes the economic opportunity immediately across the road to the north for services. The previous change of zone application replaces what was lost to the State. The longer term scenario of providing services for other developments in that intersection will be under review. DeKalb indicated that he has suggested the applicant become part of that review action and that possibly this change will be the right thing to do at that time.

Pearson was interested in the comparative size of the Coffey proposal as she believes it looks a little bigger than this proposal. DeKalb pointed out that the Coffey change of zone was not replacement of land for land, but was configured and approved to accommodate a full truck service station and septic systems. The Coffey proposal included a site plan that said they needed a certain amount of land to support the use. It was considered as a replacement for the gas station that was forced to be closed because of access.

Response by the Applicant

Zakovec stated that the Coffey property is larger than what he is requesting. He also stated that some of the 4.3 acres is being taken by the State and the staff is wanting a 200' setback. He wants the same highway frontage that he had previously.

Esseks asked how much square footage of storage the applicant could have on the 4.3 acres. Zakovec stated that he planned to move the buildings and grow with the highway. Eventually, he could add four more buildings but he will not do that right away. He does not want to have to make change of zone requests incrementally as he grows. He cannot go any further than the creek to the south.

In order to keep his income flowing and business alive, Esseks wondered whether the applicant could start on the 4.3 acres and wait for the Comprehensive Plan update to be completed. The problem for Zakovec is that he would have to stay 200' from the highway. He is trying to plan for the future. His developer does not want the 200' setback. Zakovec believes there will be 200' when the highway is moved, but what do you use it for?

Esseks again asked how much of the 4.3 acres that is already approved can be used for the applicant's business. Zakovec indicated that it would be full by the fall. The outside storage plus the buildings could not fit on the 4.3 acres. They would need to

come back and seek more zoning to continue their business. They cannot live with the 200' with what they want to do after the water and sewer gets there.

ACTION BY PLANNING COMMISSION:

February 1, 2006

Carroll moved to deny, seconded by Sunderman.

Carroll believes the staff is correct that it is premature to change the zoning on any more of the property at this time. The 4.3 acres will allow him to expand. He believes the 200' distance to Highway 34 is appropriate because this is an entryway into the city. We need to keep the 200' buffer as a good planning idea. It is premature to increase the acreage at this time.

Pearson stated that she will vote against the denial because she believes this application acknowledges the 200' setback, so she does not see the problem on that issue. The Coffey's were given a significant increase in the area of their land, apparently based on having a good attorney to speak for them. These landowners have property across the road in the same situation. They are asking for a little bit more land for future growth, which is the exact same reason the Coffey's used for the application across the road. She does not understand why that does not work for both applications. This proposal is adjacent to property owned by Zakovec anyway. She believes this is a reasonable request – asking for more land for future growth. It seems to be 50% more than what they are losing and she believes it is reasonable.

Taylor stated that he will vote to deny because it does not conform to the Comprehensive Plan. He believes the Comprehensive Plan Update will be soon enough.

Esseks stated that he will vote against the motion. It seems that when the State takes property and interrupts the business, the business has to be transferred and we have to make sure the owner is not constrained by lack of acreage. He is persuaded by Pearson's comments, although he wishes there were clearer evidence as to how many acres the applicant needs.

Carroll pointed out that the applicant is asking us to waive the 200' setback because their application goes closer to the highway. The Coffey land has accounted for that setback. Even if this is approved, he does not think it would allow the applicant to go within the 200' setback.

It is Pearson's understanding that this proposal is 50' from the current road and the road will move 150', so they wouldn't be able to move anything onto the 200' until the road is moved. Thus, they will be 200' from the future road. They are just not 200' from the road today.

Additional staff questions

In response to the Planning Commission discussion on the motion to deny, DeKalb pointed out the future alignment of the road. On the previous 4.3 acres and on the Coffey proposal, the staff tried to maintain similar setbacks on both sides of the entryway to the city. With the existing zoning in place, the applicant can use their property all the way to the property line. He assumes that Zakovec is talking about the vacated right-of-way. The difference between the area recommended for approval last time appeared to be about 200' from the alignment as best we knew. We tried to reflect that on the north side, and this proposal brings it up within 50'. There would be no setback requirement by the State other than the land that the State owns. Carroll commented that it is an unknown as to whether the State will give back the vacated right-of-way. DeKalb did not know whether they would sell it as surplus or maintain it for right-of-way. If the State keeps the land, the setback shown is 50'.

Esseks believes this to be an issue of fairness and justice. His concern is that the applicant be allowed to move his business and not lose clientele or cash flow because of something the State has done. The issue to him is whether the applicant can move this business using the 4.3 acres plus whatever is left of the original parcel, and the applicant is saying "no". DeKalb pointed out that: 1) the State has to purchase the property at fair market value plus damages; 2) as far as continuing the business, the staff had this same philosophy in recommending approval of the prior change of zone, which added 4.3 acres to replace a loss of right-of-way of 2.4 acres; and 3) the setback in the land that is not taken that goes up to the existing right-of-way stays. DeKalb suggested that the total area zoned H-3 with the previous change of zone approval would increase the area by about 2 acres.

Additional Response by the Applicant

Zakovec believes the highway will be about 100' from his property and he is staying back another 50 feet.

As far as fair market value, he received 23 cents per square foot, and the neighbor right across the fence line got \$1.70 per square foot five years ago.

Esseks asked Zakovec how many usable acres he had for his business before the State taking. Zakovec stated that it was 7.5 acres. He believes he now has 3+ acres. He lost the buildings and about 200 spaces of outside parking. There is not enough land for his future plans for development after water and sewer get there. He can't go any further south because of the creek.

Carroll pointed out that it is not the Planning Commission's responsibility to determine whether the applicant has been compensated for loss by the State. The issue for the Planning Commission is the zoning. The issue of compensation has nothing to do with it.

Esseks thinks he should have the same number of acres that he can use.

Pearson does not understand why land on the north side of the highway in the middle of a field is in the Comprehensive Plan and the land on the south side, which is along the roadway and is developed, is not in the Comprehensive Plan. She believes that has everything to do with having an attorney represent you as opposed to an individual applying for their own change. It might not be the State and we might not have to worry about compensation, but it is a form of government and she thinks the Planning Commission should be fair. We can't give him back money that the State may have taken, but at least we can be fair in how we evaluate a person's use of the land. They own the land. We are saying you cannot move your business to a piece of property you already own just because the State took it away from him, and she disagrees.

Motion to deny carried 5-1: Esseks, Taylor, Sunderman, Carroll and Carlson voting 'yes'; Pearson voting 'no'; Krieser, Strand and Larson absent. This is a recommendation to the City Council.