

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 12005**, from AG Agriculture District and R-2 Residential District to H-3 Highway Commercial District, requested by Derek Zimmerman on behalf of the owner, on property generally located at Highway 2 and First Street (Cheney).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/18/12
Administrative Action: 04/18/12

STAFF RECOMMENDATION: Denial.

RECOMMENDATION: Approval, subject to a conditional zoning agreement (6-3: Lust, Sunderman, Francis, Hove, Butcher and Weber voting 'yes'; Esseks, Gaylor Baird and Cornelius voting 'no').

ASSOCIATED REQUESTS: Conditional Zoning Agreement (12R-95)

1. This is a request to change the zoning on a 2.54 acre tract of land located at the north edge of Cheney adjacent to Highway 2. The tract has split zoning where approximately the north ½ is zoned AG and the south ½ is zoned R-2. The purpose of this request is to allow mini-warehousing, a use which is not allowed in the AG or R-2 zoning districts.

2. The staff recommendation of denial is based upon the "Analysis" as set forth on p.4-6, concluding that approval of this request would serve to further establish a pattern of commercial zoning and land uses in an area designated for future residential land uses in the 2040 Comprehensive Plan. Given the predominance of residential land uses, combined with inadequate infrastructure, additional commercial zoning is not appropriate. The 2001 Southeast Lincoln/Highway 2 Subarea Plan determined that residential use was appropriate for this area. The proposed request is not consistent with the surrounding land uses, and is not consistent with the 2040 Comprehensive Plan. The staff presentation is found on p.8-9.

3. The applicant's presentation is found on p.9-12, and testimony in support is found on p.12. Two letters in support are found on p.21-22. The applicant pointed out that the abutting painting business to the west was allowed to rebuild and enlarge its nonconforming use in 2002, a year after the subarea plan; the mini-warehouse use will not become a burden on the Cheney sewer or water system; the house will be removed; there might be a small office which would probably have a restroom but it would be less water and sewer use than a single family house; it will not cause a burden on traffic; and it will improve the property tremendously. The applicant agreed with the proposed conditions set forth in the staff report for a conditional zoning agreement if the change of zone is approved.

4. Testimony in opposition by a nearby property owner and the clerk/secretary/treasurer for the SID serving Cheney is found on p.12-13. The Board of the Cheney SID is not in support of this change of zone because they are now at sewer capacity and no further hookups will be allowed beyond the existing residence on the property. It would require a SID Board decision to allow the transfer of the residential hookup to a commercial use. Highway 2 is the gateway into Lincoln and there is no commercial in the Cheney area now. There is also concern about the gravel roads.

5. The applicant's response to the opposition is found on p.13, indicating that the applicant can manage and resolve the issue with the SID.

6. On April 18, 2012, the majority of the Planning Commission disagreed with the staff recommendation and voted 6-3 to recommend approval, subject to a conditional zoning agreement with the terms and provisions as set forth in the staff report (Esseks, Gaylor Baird and Cornelius dissented, based upon setting a precedent and making a decision that is contrary to a central principle of the Comprehensive Plan, i.e. to direct commercial and industrial development to more urban areas and not allow proliferation in less urban areas) .

7. After the Planning Commission meeting, the applicant and staff worked together to draft some minor revisions to the screening and use provisions and eliminate the requirement for a traffic analysis in the proposed zoning agreement, based on discussion at the hearing. The City Attorney has incorporated these revisions into the zoning agreement that is associated with this rezoning request (Bill #12R-95).

FACTSHEET PREPARED BY: Jean L. Preister
REVIEWED BY: _____
REFERENCE NUMBER: FS\CC\2011\CZ12005+

DATE: May 7, 2012
DATE: May 7, 2012

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for April 18, 2012 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 12005

PROPOSAL: From AG and R-2 to H-3

LOCATION: Highway 2 and First Street (Cheney)

LAND AREA: Approximately 2.54 acres

EXISTING ZONING: AG Agriculture and R-2 Residential

CONCLUSION: If approved, this request will serve to further establish a pattern of commercial zoning and land uses in an area designated for future residential land uses in the Comprehensive Plan. Given the predominance of residential land uses combined with inadequate infrastructure, additional commercial zoning is not appropriate. The Planning Department and Planning Commission reviewed the prospects for Cheney as part of a Southeast Lincoln/Highway 2 Subarea Plan which was adopted in 2001. The plan, which was done with the active participation of area residents and owners, determined that residential use was appropriate for this area. Although changes have occurred in the larger area over the past 10 years, the conditions and prospects for Cheney appear to be the same now as then. The proposed request is not consistent with surrounding land uses, and it is not consistent with the Comprehensive Plan.

RECOMMENDATION:	Denial
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 65 SE, located in the southeast 1/4 of Section 23, T9N, R7E, Lancaster County, Nebraska.

EXISTING LAND USE: Single-family residential.

SURROUNDING LAND USE AND ZONING:

North:	Highway 2 right-of-way	
South:	Residential	R-2
East:	First Street/Highway 2 right-of-way	
West:	Commercial	AG, R-2

COMPREHENSIVE PLAN SPECIFICATIONS:

Pg 1.9 - The Comprehensive Plan designates this area and surrounding area for Residential - Urban Density.

Pg 5.5 - Commercial and Industrial Development Strategies - It is the policy that Commercial and Industrial Centers in Lancaster County 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 existing underdeveloped or redeveloping commercial and industrial areas in order to remove blighted conditions and to more efficiently utilize existing infrastructure.
- In areas accessible by various modes of transportation (i.e. automobile, bicycle, transit, and pedestrian).
- So that they enhance entryways or public way corridors, when developing adjacent to these corridors.

Strategies for Lancaster County, Outside of Lincoln

- Locate all new commercial and industrial development within Lincoln or the incorporated communities.
- Continue the County's support for road improvements that accommodate commercial and other development within the towns.
- Continue to encourage and permit accessory home businesses, and locate businesses within the commercial areas of incorporated towns as they expand beyond the definition of home occupation.
- Continue efforts to preserve the viability of the county's ag industry through zoning and other means.

Pg 12.6 - Priority Growth Areas - The subject property is located in Tier II (2060).

Pg 12.4 - Annexation Policy - The provision of municipal services must coincide with the jurisdictional boundaries of the City – in short, it is not the intent of the City of Lincoln to extend utility services (most notably, but not necessarily limited to, water and sanitary sewer services) beyond the corporate limits of the City. The extension of water and sanitary sewer services should be predicated upon annexation of the area by the City. City annexation must occur before any property is provided with water, sanitary sewer, or other potential City services.

UTILITIES: This tract is beyond Lincoln's city limit and therefore does not receive municipal utility service. Sewer service is provided by Cheney S.I.D. #5, and water is provided by Rural Water District #1.

Regarding Cheney S.I.D. #5, staff understands that the sewer system, which uses large lagoons located approximately one-half mile northeast of Cheney, has been at capacity for a number of years. As a result, the S.I.D. does not allow additional connections to the system. The review of a permit to expand the system is currently on hold at the State of Nebraska, and there are no immediate plans to expand the system.

TRAFFIC ANALYSIS: First Street is designated as a local street on the Existing Functional Classification Map, and is an unimproved gravel road. It is not designated for improvement on the Future County Road Improvements Map.

PUBLIC SERVICE: This site is outside the city corporate limits and therefore does not receive City of Lincoln services. Services that are provided include Lancaster County Engineering, Rural Fire services, and the Lancaster County Sheriff.

REGIONAL ISSUES: Cheney is residential in character and is located near Highway 2, a major entryway into the City of Lincoln. The approval of this change of zone will further establish a pattern

of commercial uses and likely serve to discourage residential development on the surrounding lands.

ENVIRONMENTAL CONCERNS: The Lancaster County Health Department responded with the following comments:

-While the proposed use should not create a land-use conflict relative to noise pollution, the Lincoln-Lancaster County Health Department advises that noise pollution can be an issue when certain commercial uses are located adjacent to residential zoning.

AESTHETIC CONSIDERATIONS: Highway 2 is identified as an entryway corridor to the city, and so the scale and appearance of development adjacent to the highway is a concern.

ALTERNATIVE USES: Alternative uses for this site include those allowed in the AG and R-2 zoning districts.

ANALYSIS:

1. This is a request to re-zone a 2.54 acre tract land located at the north edge of Cheney adjacent to Highway 2. The tract has split zoning where the approximate north one-half is zoned AG, and the south one-half is zoned R-2. The owner is seeking to change the zoning over the entire tract to H-3.
2. The owner is seeking a change of zoning to allow mini-warehousing, a use allowed in the H-3 but not the AG and R-2.
3. The Future Land Use Map of the Comprehensive Plan designates Urban Density Residential land uses for this tract.
4. Cheney is unincorporated and outside Lincoln's city limit. Cheney S.I.D. #5 serves the area with sewer service which relies on two lagoons located approximately one-half mile to the northeast across Highway 2. Staff understands that the lagoon system has been at capacity for some time, and as a result no additional connections have been allowed. A permit to authorize an expansion of the system currently under review by the State of Nebraska is on hold until further notice, and so there are no immediate plans to expand the system. Water service is provided by Rural Water District #1; however, this service does not provide the kind of pressure to utilize for firefighting, which makes areas such as this less suitable for commercial and industrial uses.
5. As reflected in the 2040 Growth Tiers Map, this area cannot be served by gravity sewer connected to the Lincoln's wastewater treatment system. Problematic for Cheney is the fact that it is located at the top of hill which flows into three different watersheds. A portion flows into Stevens Creek, but it is at the extreme uppermost extent and is not anticipated to be served until 2060, or after all Tier 1 needs have been met. The timing for service to the other two watersheds is so far out, no date can reasonably be assigned. Given the area cannot be served by municipal utilities, it is inconsistent with the City's annexation policy to annex the area and continued residential land uses are appropriate.
6. The streets within Cheney, with the exceptions of South 91st Street and Breagan Road, are gravel and considered unimproved. This includes First Street, which is adjacent and

provides access to the subject tract. First Street is not shown on the County Road Improvement Program map, and there are no plans to improve it. Without a paved surface, increased maintenance caused by additional traffic associated with a more intensive land use is a concern. The County Engineer noted in his review that a traffic analysis is necessary so the potential impact can be evaluated. That office may require improvements in First Street depending upon that review.

It is also generally inappropriate to allow commercial development at the end of a local street fronted primarily by residences. The result is that dwellings are impacted by increased commercial traffic. Additionally, increased traffic on a gravel street creates more dust which can also impact surrounding residential properties.

7. In the future, access to Cheney is likely to become more restricted. Currently, First Street extends east to a crossing of Highway 2 and intersects with South 98th Street on the north side of Highway 2. Final plans for this intersection have not been approved by the appropriate governmental agencies and bodies, but at this point it is more likely than not that it will be closed.

Also, access to the west may become more restricted in the future as well. Right-in, right-out access to South 91st Street Cheney from Yankee Hill Road into Cheney could occur in conjunction with the improvement of Yankee Hill Road, resulting in restricted access at that intersection. Closely related is the uncertain future of the old Yankee Hill Road alignment which crosses the railroad tracks and intersects Breagan Road. The vacation of all or a portion of the right-of-way along the north side of the future Jensen Park has been suggested, and would eliminate a connection and railroad crossing on the west side of Cheney.

8. There are other commercial uses known to exist in the area, including a painting contractor adjacent to the west, an engine repair facility located to the northwest near the intersection of South 91st Street and First Street and which is zoned I-1, and a home-based trucking company located on the south side of First Street.

A special permit allowing the expansion of the nonconforming painting contractor to reconstruct a facility damaged by fire was approved in 2002. The Planning Department recommended denial for the same reasons noted in this report. However, in that case the finding in part was that the use was pre-existing, and without the special permit the facility would be required to relocate. That is in contrast to this application which requires a change of zone and has no pre-existing commercial use on the property.

9. The building line district (BLD) extends along Highway 2 in this area, and could affect the required setback on the subject property. The required setback along Highway 2 must take this fact into account, and will need to be correctly represented on a site plan at the time of building permits.
10. The Comprehensive Plan historically called for a green space corridor extending 200 feet either side from the center line of Highway 2 where adjacent to commercial developments. This green space begins at approximately South 33rd Street and extends to approximately South 96th Street. It has been a requirement of all commercial developments along Highway 2 since the provision was added to the 1994 Comprehensive Plan.

Given the size of this tract, it does not seem reasonable to apply that standard in this case if the request is approved. However, consistent with protecting and enhancing the Highway corridor, an adequate setback with screening would be appropriate. While the frontage along Highway is technically a front yard with a setback of 20 feet, staff suggests it will actually function as a rear yard since there will be no direct access to Highway 2. Given that, the 30 foot rear setback per the H-3 district is appropriate, which should include a minimum of a 20 foot-wide landscaped green space, with buildings setback no less than 30 feet.

11. The urban density residential land use designation recognizes the limitations of the area which are not conducive to more intensive commercial development. These limitations include the lack of municipal services, the fact the area lies outside the any city or village corporate limit, and an unimproved street network. The difficulties in this area, including the potential for future limited access, would require significant efforts to overcome and further highlight the importance of commercial and industrial development being directed to urban areas where the full range of services are available, consistent with the tenets of the Comprehensive Plan.

Staff concedes that the development of this small tract for mini-storage use by itself would have a limited impact on nearby residential uses, and would not significantly tax the substandard infrastructure of this area. However, it will set a precedent that will change the expectations of other property owners who control land in the area between First Street and Highway 2. Further commercial development in this area will have more significant impacts on the infrastructure and the residents in the area.

Staff recommends denial of this application for a change of zone from AG and R-2 to H-3. However, should the Planning Commission and City Council vote to approve it, staff recommends it be subject to the following conditions.

CONDITIONS

1. The owner will enter into a zoning agreement with the City of Lincoln to include the following provisions:
 - a. Permitted uses on the property are those as per the AG and R-2 zoning districts and mini-warehousing. The conditional and special uses of the AG and R-2 are also allowed, but per the applicable requirements of either the AG or R-2 zoning district as appropriate.
 - b. Owner will submit a traffic analysis for mini-warehousing, and construct any road improvements based upon that analysis as required by the County Engineer.
 - c. The front yard setback along Highway 2 shall be increased to 30 feet, and be entirely dedicated to green, open space. No buildings, parking or storage are allowed in this area.
 - d. Minimum screening shall be in accordance with Design Standards Chapter 3.50, Section 7.5, except street trees shall be planted in all front yards at intervals of approximately every 50 feet and including at least three shrubs between trees.
 - e. Security or perimeter fencing shall consist of wrought iron fence, or masonry wall (but not including concrete block) where at least 50% of the surface area is either architectural concrete or equivalent.

e. No storage bay doors shall face either Highway 2 or First Street.

Prepared by:

Brian Will, 441-6362, bwill@lincoln.ne.gov

April 3, 2012

**APPLICANT/
CONTACT:**

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CHANGE OF ZONE NO. 12005

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 18, 2012

Members present: Esseks, Lust, Sunderman, Francis, Hove, Gaylor Baird, Butcher, Weber and Cornelius.

There were no ex parte communications.

Staff recommendation: Denial.

Staff presentation: **Brian Will of Planning staff** explained that this is a request for change of zone from AG and R-2 to H-3, on property southeast of 91st Street and Highway 2. The Planning Department is recommending denial of this application.

The future land use map designates a portion of the subject property as urban density residential and the rest of it is designated AG low density. First and foremost, based upon the future land use map, the Comprehensive Plan does not support commercial zoning at this location.

In addition, while Cheney is unincorporated, the dwellings and the businesses located there are served by SID#5; that is, sewage from Cheney is treated by ponds on the north side of Highway 2. In staff's conversation with the SID, staff was advised that those facilities are at capacity and they will not allow any more connections. It is served by rural water, which flows would be adequate for residential or light commercial uses but certainly do not provide adequate fire protection for more intense development. Almost all of the roads in Cheney are gravel. The Comprehensive Plan provides guidance whereby commercial development which is more intense should be in locations where it would be supported by adequate infrastructure, i.e. paved streets, sewer and water, etc. This property meets none of those requirements.

Will also pointed out that there is a painting business right next door which has been in existence for some time. It was destroyed by fire and allowed to be rebuilt by special permit. At that time, the Planning Department was recommending denial of that special permit for the same reasons. If commercial zoning is allowed on this property, perhaps it sends the message that commercial zoning is appropriate for other property in the area, and staff is not finding this appropriate.

Will also noted that several years ago as part of the Comprehensive Plan, a subarea plan was done for this area. The constraints and limitations raised in this proposal were also noted as part of that subarea plan review. That subarea plan process did involve stakeholders of property in the area and concluded that until such time there is more study and some conditions change, additional commercial development not be allowed in this area and that the residential zoning in place be maintained.

Lust asked for clarification of the sewage issue. Right now, this is zoned residential but does she understand correctly that even residential development is not really a possibility for that because of the sewage issue? Will agreed. He believes there is an allowed connection for the one dwelling existing on the property, but additional connections would not be allowed.

Lust then wondered whether it is necessary for the proposed mini-storage unit to hook up to any sewer system. Will believes the applicant will suggest that they could develop this facility without permanent staff. However, staff is not suggesting that the limitation on septic is the reason to deny the mini-storage. It is just part of the larger package. And, changing the zone does not mean it would always be a mini-storage facility.

Esseks expressed concern about setting a precedent that may be detrimental to the community and could undermine the newly approved Comprehensive Plan. Looking at the 2010 aerial in the staff report, there is a lot of open space between Lincoln Street and 91st Street. What is the indication in the Plan for the preferred use south of Highway 2 going from the subject property up to 91st Street? Will stated that the land use plan shows “urban density” designation and AG. Esseks observed that there is a fair amount of space between the subject area and where other commercial exists. Will agreed that there is considerable distance, probably over 1/4 or 1/3 mile.

Proponents

1. Mark Hunzeker appeared on behalf of the owners of the subject property. He showed a picture of the house that exists on the property, which was built in 1920, consisting of 925 sq. ft., valued by the County Assessor at \$39,900 for the land and \$32,400 for the structure.

Hunzeker suggested that the staff’s recommendation of denial rests in large part on decisions that were made over 10 years ago. The 2001 subarea plan was done in the context of a major amendment to the Comprehensive Plan to support the shopping center on the north side of Highway 2 and the commercial development on the south side of Highway 2 between 84th Street and 91st Street. At that time, it was very well known that the sewer capacity for Cheney was maxed out. The sewer being extended to serve the shopping center and other commercial development could have been constructed at a depth which would have enabled Lincoln to serve Cheney. But, for a variety of reasons – more political – the decision was made not to do that and Cheney was carefully drawn out of Lincoln’s future area.

Hunzeker went on to state that within a short time thereafter, the paint business immediately to the west burned down and a special permit to rebuild and enlarge that nonconforming use was approved in 2002, a year after the subarea plan. Within the last year, Lincoln’s Comprehensive Plan reaffirmed that prior decision by putting Cheney into Tier 2, which means they may be served by Lincoln by 2060.

Hunzeker stated that his client’s property has a 92-year old house; the property is divided ½ and ½ between AG and R-2; and is bordered by the Athey painting business along the entire west boundary, with Highway 2 on the north and east boundary and gravel county road on the south. Even if zoned R-2, this property is not developable without sewer.

Hunzeker submitted that the recommendation to leave this property zoned residential is not a zoning decision so much as it is that this property has no reasonable use for the foreseeable future, possibly as much as 48 years into the future.

Hunzeker then suggested that the staff report could be characterized as ambivalent. The choices are three: 1) leave the property in its present condition for the foreseeable future – underutilized, dilapidated, and not contributing to county tax base; 2) rezone to commercial without conditions – well water would be required to store water for sprinkler systems; it would have to have septic system; there would be more traffic and heavier vehicle traffic and possibly some road maintenance issues; or 3) accept the change of zone, with the conditions for a zoning agreement proposed by staff, to allow mini-warehouse use, which is a very attractive kind of use. Hunzeker showed a rendering of the plan intended to be developed – they would have an attractive solid masonry type fence all the way around the facility, and, as required, a landscaped area along Highway 2 to conform with the entryway standards. Given the past decisions that have affected this property and the currently foreseeable options available, Hunzeker believes this is a very good option. It is a very low traffic generator – two cars during an hour – which is way below what you would generate with a residential density of any kind.

Hunzeker concurred that this might generate some difficult decisions in the future, but he argued that the stage was set for that in 2001-2002 and not caused by this application. Decisions should be based upon whether the proposed use is reasonable and it should be in conformance with the statutory admonitions of the zoning ordinance, i.e. that:

. . .Such zoning regulations shall be designed to secure safety from fire, flood, and other dangers and to promote the public health, safety, and general welfare and shall be made with consideration having been given to the character of the various parts of the area zoned and their **peculiar suitability for particular uses and types of development** and with a view to conserving property values and encouraging the most appropriate use of land throughout the area zoned . . . [emphasis added]

Hunzeker submitted that this is a peculiar situation – this property is peculiarly suited for this kind of use. It will not become a burden on the sewer or water system; it will not cause a burden on traffic; and it will improve this property tremendously. Hunzeker requested that the Commission approve this change of zone with the conditional zoning agreement provisions set forth in the staff report.

Francis inquired whether Hunzeker's client intends to live on the property. Hunzeker stated that the owner will not live on the property. The house would go away with the construction of the storage facility. There might be a small office which would probably have a restroom but it would be less water and sewer use than a single family house.

Esseks then wondered about the argument that this sets a precedent so that all these places along Highway 2 could make the argument that the precedent has been set justifying commercial development. We are talking about a sizable amount of space that is not in the Comprehensive Plan for commercial development and our community is dedicated to keeping the city compact. Hunzeker acknowledged that he was not directly involved in the development of the shopping center on the north side of the road, but he was aware of the discussion about the possibility of burying that sewer deeper. He thought that the city should have buried that sewer deep enough to take Cheney in at some point in the future. One of the big arguments against annexation was that Cheney wanted to keep their school and not be in the LPS district. In 12 years, things have changed and

he does not believe the Cheney school exists today. You still have the problem with the sewer, and you have this land which is isolated that cannot be used for residential, is probably not large enough for agricultural uses effectively, and it really is just a barren piece of ground that should have some use.

In terms of precedent, Hunzeker agreed that the Commission should take that into account, but he could not think of any commercial use other than what is being proposed that generates as little traffic and requires as little in the way of public services as a mini-warehouse. The chances of all that ground being developed as mini-warehouses is pretty slim. There would be very reasonable objections to uses like a Cracker Barrel or something when there isn't very good access, streets are not improved and no sewer capacity. There are other considerations, but for this piece, for this use, restricted to this use until such time as the city agrees otherwise, he thinks it is reasonable and this owner deserves to have some reasonable use of the property.

Esseks believes the H-3 zoning sets a precedent for other properties. Hunzeker explained that H-3 is the only district that allows for mini-warehouses. We don't have anything else. He had to seek the zoning district that allowed the mini-warehouse use. Maybe between now and 2060, Cheney will get its sewer fixed and there will be improvements to the Rural Water District, but until that time, this is the kind of use that does make sense and is reasonable for this parcel.

Weber inquired whether the applicant has gotten any response from residential property owners to the south. Hunzeker believes that there are two letters in support. He is not aware of any opposition.

Gaylor Baird challenged Hunzeker's suggestion that this land is unusable for residential because there is currently a usable residential structure on the land. Hunzeker stated that he would not call it usable. It is vacant; it is 92 years old; the master bedroom would not enable even a queen or king size bed; it's 900 sq. ft. The sewer hookup does work for this house, but for the amount of money it would take to rehab this house to be reasonably rentable, it would be more economic to tear it down and replace it with a mobile home.

Cornelius then inquired why a mobile home is the only alternative in that case instead of a more suitable more modern house. Hunzeker's response was building a new home means investing a lot more money on a site which has a gravel road for access and which has a paint shop business on the west side of it, and Highway 2 to the north. It is not a particularly desirable residential lot. He would not suggest that the paint shop is a problem, but what's really ironic is to suggest that we have an issue with fire protection and we have approved a business which literally has a paint booth and does painting in the building all the time that was approved for reconstruction and expansion, knowing full well that we had this issue in Cheney at the time. That business has never created any objections in Cheney, but to suggest that we now have a problem with fire protection for a mini-warehouse development does not appear reasonable. The house has been vacant for four years.

Support

1. Lonnie Athey of Athey Painting, which borders this property on the west, testified in support. His business was hit by lightning and he was allowed to rebuild. It was a win-win situation because it has actually improved the site. He is in support of this proposal because it will be an upgrade to Cheney. There is already one sewer connection. This is the best thing that could happen to that corner. He has had no difficulty with anyone in Cheney.

2. Jeff Olson, the owner represented by Hunzeker, informed the Commission that the reason he and his wife and two young sons do not want to have their residence on this property is the highway on the north side. That is why he does not want to build a house. He does not believe other people would want to build there either.

Opposition

1. Eloise Hiatt, 8400 S. 98th Street, testified in opposition. She lives directly north of the subject property, about one block off of Hwy 2, and is the Clerk/Secretary/Treasurer for the SID system which serves Cheney. She did receive an e-mail from a resident in Cheney asking how the board stood on the issue and she said that she was not in favor of this proposal.

The board itself discussed this application on Monday and is not in support of changing the zoning on the property to commercial because the SID has a problem right now. They are working with NDEQ and have been told they cannot make any additions or have any other hookups to the sewer system; they are also not allowed any transfer of the use of the system to another situation; if another residence wanted to be built on the property, that is the only use that would fit in with the guidelines for allowing another hookup. There is a gravel road on the north, which is there for allowing access to the town of Cheney. Highway 2 is the gateway into Lincoln and there is no commercial in the Cheney area now and it is more appealing to have open grass rather than a commercial setting. She requested that this application be denied.

Weber asked for further clarification about additional hookups. Hiatt advised that the SID would not allow any other hookups to the sewer system. They would not allow a transfer from a house to another use. The house there now is hooked up. The SID has just recently changed the way they are needing to bill customers because they are being required to build a new lagoon system. Hiatt reiterated that the SID would not allow a commercial entity to hook up to the sewer. This is based on the history and discussions at the board. Any change to this procedure would be something the board would have to vote upon.

Francis suggested that use of the residence by a family of four would be quite an impact on the sewer system. Hiatt confirmed that the owner could tear down the existing structure and build another residence and still be hooked up to the sewer. As long as it is a residence, it can continue to be hooked up to the sewer system. A hookup for a commercial warehouse would have to be a SID board decision.

Gaylor Baird cautioned that just because it is a small house does not mean it is uninhabitable. The Commission cannot base its decision on the suggestion that no one could live here.

Hove believes the question is the usage of the sewer. He believes that the usage of the sewer in a house would be more than a warehouse or storage facility.

Cornelius confirmed with Hiatt that the SID board has historically differentiated between residential use and commercial use for purposes of allowing hookups. Hiatt responded, stating that the sewer was built in 1976, so it is at capacity and that is why they are working with NDEQ to build a new lagoon, etc. At this point, the NDEQ is saying no new hookups, so the board was saying no new hookups.

Assuming similar or exactly the same usage patterns, Cornelius wondered what basis there is to say a house four times the size could be built and hooked up versus a mini-warehouse with a small restroom. Why would that differentiation be made? Hiatt stated that the property is now hooked up as a residential user and that is how it is designated.

Response by the Applicant

Hunzeker believes that the issue of residential vs. commercial can be resolved with the SID. For example, it is permissible to have on-site live-in managers. The applicant could facilitate either the construction of a small new residential structure for the manager to live in, or possibly incorporate it into the existing building. He believes that the applicant can manage the issue on the sewer hookup. Frankly, if the applicant were denied the hookup, he could probably manage with a septic field that could be built as part of the project. He does not believe the SID position makes sense in this circumstance. If the usage and projected usage were explained to the board, he thinks there might be some flexibility. But, even if not, he believes they can work with it.

Lust suggested that perhaps the sewer hookup issue with the SID is a question for another day. The Planning Commission decision has to be based on the appropriate zoning. Hunzeker agreed. The fact that there is a limitation on the sewer capacity is relevant, but whether or not this particular use is going to get a hookup is not for the Commission to worry about.

ACTION BY PLANNING COMMISSION:

April 18, 2012

Gaylor Baird moved denial, seconded by Esseks.

Gaylor Baird observed that there has been a lot of discussion about the sewer and agrees that it should not be the focus. The big question is the appropriate zoning for this area, and our Comprehensive Plan tells us that it is residential. So the issue here is where we, as a Planning Commission, want to direct commercial and industrial development, and she does not believe this is the place. Regardless how small this particular proposal seems, we are setting a precedent. There will be others asking us to make exceptions. She does not see how we can be fair to all of these different requests that may come in the future if we make an exception today, contrary to the Comprehensive Plan, which we just spent a huge amount of time studying and mapping suitable land uses. The Comprehensive Plan designates this property as residential and we need to deny this application.

Francis commented that the Comprehensive Plan is a plan and a guideline. She does not believe anyone is going to want to live that close to Highway 2. Just because it is zoned for residential does not mean it has to remain residential. Anything that abuts Highway 2 is more likely to be commercial as opposed to residential.

Weber respectfully disagreed with Gaylor Baird. There is highway/roadway to the north and east and there is no opposition from property owners to the south. He really does not think he would want to live there. The sewer issue is up to the applicant to work out with the SID. He respects the work put into the Comprehensive Plan, but we have to look at each individual property. He does not know that this sets a precedent, but some properties are more inclined to be changed than others.

Esseks stated that if this were just an incremental expansion of a commercial area as designated by the Plan, that would be one thing. But here we are talking about many parcels with 1/3 or more of a mile between this land and the area designated for commercial development by the Comprehensive Plan. He is concerned by the size/distance between the two and the precedent that would be set having more landowners wanting to develop commercially along Highway 2 to the west. He is impressed by the testimony from the SID. He believes that the Commission needs to respect the wishes of local government bodies like that. We are not imposing a new burden on the landowner. True, we are not enabling the owner to have a more productive use of the property, but we are also not imposing a new burden. This change of zone would ignore the Comprehensive Plan, and he does not think that should be done by the Planning Commission.

Lust reiterated that the Comprehensive Plan is a guide and not a rule. That is why the Planning Commission exists – so that, of course, we can take into consideration the Comprehensive Plan when we make decisions, but it is still our role as a body to look at individuals that come before us and make decisions that make sense for the property at issue, while considering the Comprehensive Plan and the additional commercial development. She is not concerned about setting a precedent – we get to say no to other people that apply if there is a good reason for saying no. She does not think residential zoning makes sense for this property. This use would be an improvement to the property and to Cheney, and the people that live nearest to this property are in favor.

Gaylor Baird reiterated that while yes, the Comprehensive Plan has flexibility and is adaptable, we're not looking at just a map of what's where, we're actually voting against a central principle of the Comprehensive Plan that we should direct commercial and industrial development to more urban areas and not allow proliferation in less urban areas. This is actually a bigger deal than we realize. The precedence actually has profound implications and is a profound rejection of the central principle of the Comprehensive Plan. Therefore she cannot support this application.

Butcher stated that he recognizes the concern for setting a precedent, but he also believes that a precedent was already set with the special permit just to the west. The finger-pointing has already begun. The continual precedent that you will see in this area will be before us in a short time. So he is inclined not to deny this application because the precedent was begun years ago.

Gaylor Baird urged that the Commission not continue the precedent. If the mistake was made or a poor decision was made by others who preceded, why keep moving in that direction? We need to say no today.

Sunderman observed that the area is more urban than residential. Looking at the map, the dividing line should be 1st Street between commercial and residential areas, at least on the east side of Cheney. As far as 91st Street, he anticipates that the Commission will see other applications come forward. He agreed that the Comprehensive Plan is a guide and it is the role of the Planning Commission to deal with exceptions. He thinks the best use of this property is what is being proposed.

Cornelius stated that he looks for unique sets of circumstances in these situations. Are we looking at an opportunity for improvement? Is there capacity of the area to support the current zoning or is it necessary to change the zone? He is torn, but he is guided by the principles of the Comprehensive Plan. He also sees opportunity here for a residential development that fits Cheney as much as perhaps a mini-warehouse. There is opportunity for landscaping Highway 2. On the other hand, as far as viability for commercial development, although it is adjacent to Highway 2, the property has no connection to Highway 2. It is served by gravel roads. While there is the possibility for a zoning agreement limiting the use, we are then looking forward to a time when everything becomes an exception.

Motion to deny failed 3-6: Esseks, Gaylor Baird and Cornelius voting 'yes'; Lust, Sunderman, Francis, Hove, Butcher and Weber voting 'no'.

Lust moved approval, subject to conditional zoning agreement in accordance with the suggested terms set forth in the staff report, seconded by Francis.

Gaylor Baird expressed disappointment because the Planning Department very, very rarely comes before the Commission with a recommendation of complete denial, and the Commission tends to support the staff's recommendation.

Motion for approval, subject to conditional zoning agreement, carried 6-3: Lust, Sunderman, Francis, Hove, Butcher and Weber voting 'yes'; Esseks, Gaylor Baird and Cornelius voting 'no'. This is a recommendation to the City Council.



**Change of Zone #12005
Highway 2 & First St**

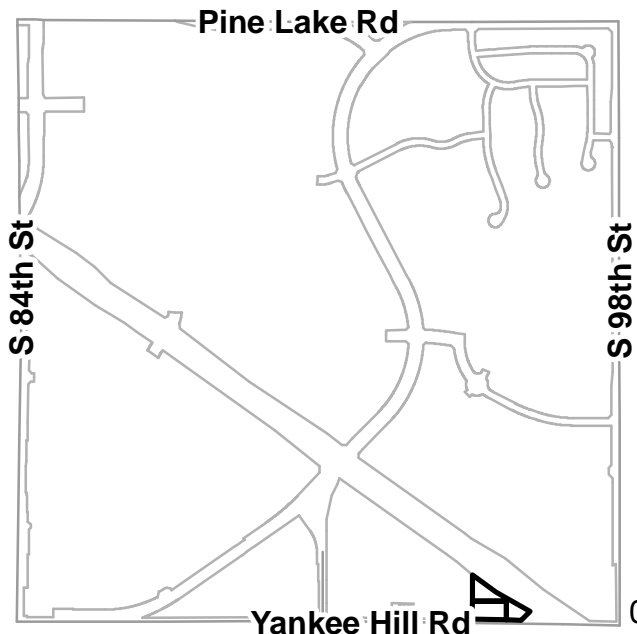
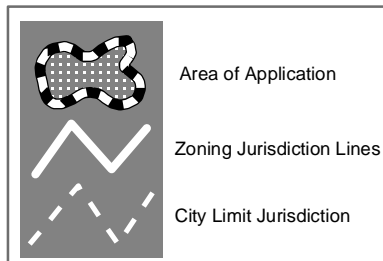
2010 aerial

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential 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

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**One Square Mile
Sec. 23 T09N R07E**





**Change of Zone #12005
Highway 2 & First St**

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