

FACTSHEET

TITLE: MISCELLANEOUS NO. 12002, requested by the Director of Planning, to amend Chapter 3.50, Sections 7.7 and 7.11, of the City of Lincoln Design Standards.

STAFF RECOMMENDATION: Approval

ASSOCIATED REQUEST: Change of Zone No. 12008 (12-65)

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/30/12
Administrative Action: 05/30/12

RECOMMENDATION: Approval (8-0: Butcher, Gaylor Baird, Sunderman, Hove, Francis, Lust, Esseks and Cornelius voting 'yes'; Weber absent).

FINDINGS OF FACT:

1. This proposed text amendment to the City of Lincoln Design Standards was heard by the Planning Commission in conjunction with Change of Zone No. 12008 (Use Groups), an associated text amendment to Title 27, the Zoning Ordinance (12-65).
2. This is a proposal to amend Sections 7.7 and 7.11 of Chapter 3.50, Design Standards for Screening and Landscaping, to modify the requirements in Section 7.7 regarding the screening of outdoor storage areas of salvage yards and to delete reference to the screening of scrap processing operations and vehicle body repair shops; and to expand the list of areas in Section 7.11 outside a building which must be screened.
3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.4-11, concluding that the proposed changes to the Design Standards will facilitate the consolidation of redundant language and provide consistency on screening outdoor storage related to commercial development. The portion of the combined staff report pertinent to the Design Standards is found in Analysis #9 on p.10-11. Exhibit D represents the minor corrections and changes that have occurred since the original amendments were distributed on April 9, 2012. The excerpt from Exhibit D relative to the Design Standards is found on p.14. A complete copy of the proposed amendments to the City of Lincoln Design Standards, as proposed, may be found at <http://lincoln.ne.gov/city/plan/usegroups/index.htm>
4. There was no testimony in opposition.
5. On May 30, 2012, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval of the proposed text amendments to the City of Lincoln Design Standards, as revised (Weber absent).
6. On May 30, 2012, the Planning Commission also voted 8-0 to recommend approval of the associated Change of Zone No. 12008 (Use Groups), as revised (Bill #12-65) (Weber absent).

FACTSHEET PREPARED BY: Jean L. Preister

DATE: June 4, 2012

REVIEWED BY: Marvin Krout, Director of Planning

DATE: June 4, 2012

REFERENCE NUMBER: FS\CC\2012\MISC12002 Text+

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 30, 2012 PLANNING COMMISSION MEETING

PROJECT #: *Change of Zone No. 12008*
Miscellaneous No. 12002

Note: This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there is a separate ordinance and resolution provided for each application.

PROPOSAL:

To amend Title 27 of the Lincoln Municipal Code to reformat and streamline the Zoning Code to reduce the list of over 270 different land uses down to 14 Use Groups, eliminating the possibility that a use type is not listed by making the use groups all-encompassing, thereby increasing the emphasis on treating like uses in a similar manner, and other multiple amendments to various chapters and sections of the Zoning Code related thereto

To amend Sections 7.7 and 7.11 of Chapter 3.50, Design Standards for Screening and Landscaping, to modify the requirements in Section 7.7 regarding the screening of outdoor storage areas of salvage yards and to delete reference to the screening of scrap processing operations and vehicle body repair shops; and to expand the list of areas in Section 7.11 outside a building which must be screened.

CONCLUSION: The current zoning ordinance is a document that is confusing, inconsistent and at times difficult to interpret in regards to land uses. This confusion and inconsistency requires significant staff time to constantly interpret and review the ordinance. In the past uses have been added without the consistent evaluation and comparison to other similar uses. Due to these changes there are parts of the ordinance that are both duplicative and contradictory.

The current ordinance lists individual uses allowed in each zoning district. In most cases when a use is not listed in a district, it is interpreted to mean that that particular use is not allowed. In some districts, all uses are allowed unless specifically excluded. This system leads to numerous text amendments every year where businesses are delayed months on their projects because their use was not specifically listed in the ordinance even though the impact is similar or less than other permitted uses in that particular district.

The proposed changes to the format and content of the Zoning Ordinance will allow for inclusiveness of uses. They will make the document more user friendly, benefitting both the public and City staff. All of the proposed changes listed in the analysis section will promote consistency, efficiency and reduce duplication producing an overall more productive and clear regulatory document. These changes are in conformance with the Comprehensive Plan.

RECOMMENDATION:

Approval

GENERAL INFORMATION:

HISTORY: It has been over 30 years since the last major update of the City of Lincoln Zoning Ordinance. Today's zoning ordinance still reflects many of the attributes from when the ordinance was first adopted in the 1950's and the last major update in 1979. Since 1979 the zoning ordinance has been amended approximately 530 times. After 30+ years it was time to inventory existing uses and find a more effective way to communicate zoning regulations. The first step in an effort to reform the format of the zoning ordinance was to research other community's ordinances. Other cities such as New York, Portland, Tulsa and even Omaha have used a form of use groups effectively in their code, and it seemed that a use group system of organization would work well for Lincoln. After many months of research followed by and drafting our existing code in to a use groups format, staff met with other City departments and community stakeholders to get feedback.

- 2009 - City Staff worked with other City departments to vet issues with the proposed Use Groups format.
- 2010 - Working Use Group committee made up of outside community representatives was formed to discuss potential issues.
- Planning Commission briefings were held on October 5, 2011; October 19, 2011; November 2, 2011 and April 18, 2012.
- Briefings were held for the Mayor's Neighborhood Roundtable on November 14, 2011; December 12, 2011 and April 18, 2012
- A briefing was held for the development community on January 23, 2011 and a draft copy of use groups was sent to the Planning Department's Developer list and Neighborhood Organization lists on April 9, 2012. (*See Exhibit D for a list of changes made to the draft since April 9th, 2012*)
- Planning Staff met with representatives from the Chamber, Realtor's Association and Home Builders Association on May 3, 2012.

COMPREHENSIVE PLAN SPECIFICATIONS:

A key to securing community interest in the planning process is early involvement. An emphasis should be placed on providing ample, "up front" participation. This includes having the community identify planning issues of concern to them and having them aid in setting up the process for so doing. It is important to have dialogues with many people and organizations of differing opinions with the aim of reaching community consensus.(page 12.9)

Examine ways of simplifying the development regulations to encourage a broader understanding of planning concepts and their relevance to neighborhoods' and businesses' continuity and viability. (Page 12.10)

Zoning is a legal means cities and counties use for deciding how land can be used, the intensity of those land uses, and the relationships between various land uses. Nebraska State law, as with most states, requires zoning to be developed in accordance with the community's adopted Comprehensive Plan.

This is one of the primary reasons cities and counties have Comprehensive Plans. As a legal document, zoning is reflected both as a map showing the geographic boundaries of each district and a written ordinance detailing the uses and conditions of each district. For the City of Lincoln, the zoning ordinance is presented in Title 27 of the Lincoln Municipal Code (Page 12.10)

ANALYSIS:

1. Use Groups is a mechanism for categorizing land uses and activities based on common, functional, and physical characteristics. The categorization of types of uses into use groups provides a systematic basis for assignment of present and future use types to zoning districts. The categorization of uses is derived from the goals and policies of the Lincoln/Lancaster County Comprehensive Plan. Use Groups is a way to organize and format a zoning ordinance. It is not a new type or method of zoning.
2. The Use Group system was chosen because it could be integrated with the existing code without making significant, substantive changes to uses that are already allowed in the individual zoning districts. All existing 26 zoning districts remain and the height, area and other regulations remain the same. How these districts are organized and how the chapters are formatted changes to make the information easier to relay. The purpose of these changes is to promote efficiency, usability and inclusiveness and to reduce inconsistencies, redundancies, and code amendments.
3. All uses ever imagined will be categorized somewhere in our zoning code. Use Groups allows for “unlisted” uses to be classified as permitted uses in certain zoning districts.
4. The current zoning ordinance is both inclusive and exclusive in regards to how uses are treated. All but three zoning districts (B4, I-1 and I-2) require specific uses to be listed as a permitted, conditional or special permitted use in a district other wise the use is considered prohibited. This proposal is an exclusive type of zoning format. The three inclusively formatted zoning districts say every use is permitted except those listed in the zoning district chapter.
5. **New Chapters.** The new format includes three new chapters: Use Groups, Conditional Uses and Use Permits.
 - The Use Groups Chapter defines 14 different Use Groups. (*See Exhibit A for a list of the 14 different Use Groups*). It describes the characteristics of each Use Group and provides examples of the types of uses found in the group. Each Use Group has a table that lists permitted, conditional and special permitted uses by zoning district. All boxes that are empty in the table represent a use that is prohibited in the district. The last line of the table represents how all uses within the Use Group shall be regulated if they are not separately listed in the table as a permitted, conditional or special permitted use (*This is the green line in the table*).
**Note: Although an administrative permit is not the same as a special permit, Administrative Permits for Broadcast Towers and Temporary Concrete Paving Plants are represented by an “S” in the Use Groups Table for ease of presentation.*

- The Conditional Use Chapter takes the conditions associated with particular uses in particular districts and compiles them into one chapter. This chapter is organized by Use Group. By placing this information in one chapter, redundant language is reduced, and conditions for like uses are made to be consistent. Although there were no new conditions created for this chapter, some uses that did not have conditions in a district may now have conditions similar to those applied to similar uses in the same zoning district. For example, in the existing ordinance, tailor shops and shoe repair shops are shown as conditional use in the B-3 zoning district while other service uses such as key shops, shoe shine shops and barber shops are allowed without any conditions. In the B-3 tailor shops are also listed as both a permitted use and a permitted conditional use.
- The Use Permit Chapter removes language relating to procedures and requirements for Use Permits from the 5 Use Permit districts (R-T, O-3, B-2, B-5 and I-3) and puts them all in one chapter. The repetitiveness of this language makes the Zoning Ordinance onerously long and provides opportunities for inconsistencies when these sections are amended. *All Use Permit districts will remain and will be unaffected by this change of zone.* The new chapter also changes the elements of the site plan from mandatory to discretionary. This means that the Planning Director can ask for additional information for review, but it is not necessarily required up front. It also makes the administrative approval procedures the same as those in Planned Unit Developments (PUD) and Community Unit Plans (CUP).

6. **The Height and Area Regulations.** Chapter (27.71) was renamed Height and Lot Regulations and was given a new chapter number (27.72). Format changes to this chapter include:

- Moving the height and area regulations from the various different zoning districts to this chapter.
- Putting all of the general height and area requirements into tables to make them easier to read and compare.
- The language regarding Additional Height and Area requirements in 27.71 has been moved to this chapter.
- Conditions already existing in today's code, associated with increasing the height of Wind Energy Conversion Systems (WECS), have been moved to this chapter from individual zoning districts.
- As part of the accessory use section of this chapter, clarification was provided that recreational uses, specifically outdoor play areas for early childhood care facilities and wandering paths for residential healthcare facilities, are permitted accessory uses in the required front yard setback.
- A note was added to the end of this chapter to provide direction to the Special

Permit Chapter to those uses that may have their height adjusted by special permit.

- It is not the intent of this text amendment to make any substantiative changes to the existing height and area requirements of the zoning districts.

7. **Uses.** Although the intent of this text change was to provide a better format for our existing code and to generally treat uses the same as they are treated today some changes had to be made to better facilitate the change in format. The following are changes to specific uses categorized by Use Group:

Agricultural Use Group

- a. Sale Barns, Stables and Riding Academies were removed from the B-4 district because they are not customary to the downtown area.
- b. Breeding and Sale of Fur Bearing Animals was added to the AGR district because Dog Kennels are already allowed.
- c. Greenhouses were added as a permitted use in the I-3 zoning district.
- d. Urban Gardens were added in all zoning districts with following conditions:
 - There is no commodity sold upon the premises;
 - Approval has been granted by the Lincoln Lancaster County Health Department;
 - Urban Gardens greater than 2 acres shall provide 3 off street parking stalls per every acre over two acres (*this condition is located in the parking chapter*).

Household Living Use Group

- a. First floor dwellings would be permitted above or below the first story of a building in a commercial district where dwellings are allowed. In most commercial zoning districts dwellings are only allowed above the first floor. This change provides the flexibility to accommodate basement apartments, but does not eliminate the requirement that the first floor of a commercial building should be a commercial use.
- b. The first story in a commercial district could be converted back to dwellings in buildings that were originally constructed for a residential use prior to November 1, 1997. (*This is an existing condition in B3 and was added as a condition to the other districts that allow dwellings as a conditional use*)

Group Living Use Group

- a. Residential Health Care Facility was added to the O and B zoning districts. Healthcare facilities today include some residential type uses. Residential Healthcare Facilities have been separated from Non-Residential Health Care Facilities and will no longer be allowed in H or I zoning districts. Nonresidential Health Care Facilities are classified under the Civic Services Use Group. (See *Exhibit B for definition of Residential Health Care Facility and Nonresidential Healthcare facility.*)
- b. There were no other changes made to this Use Group. Groups homes, alternative to imprisonment facilities and domestic shelters will be regulated as they are regulated today.

Utilities Use Group

There were no changes made to uses in this Use Group.

Civic Services Use Group

- a. The term Nonprofit Religious, Educational, and Philanthropic Institutions is eliminate and is superseded by Neighborhood Support Services and no longer includes residential uses.
- b. Neighborhood Support Services, which now are only allowed in the R-1, R-2, R-3, R-4 and R-5 districts would also be allowed in the R6, R7 and R8 districts by special permit and in all commercial zoning districts by right.
- c. Clubs and Lodges would be allowed in the O-2 and B-5 zoning districts to be consistent with other similar zoning districts.
- d. Nonresidential Health Care Facilities were added as a use to the H-2 and H-4 zoning districts by special permit. They were already allowed in the H-3 zoning district by special permit. They were also added to the O-2, R-T and B-5 as a special permitted use to be consistent with other similar zoning districts.(See *Exhibit B for definition of Nonresidential Health Care Facilities*)

Education and Instruction

- a. The following redundant conditions were removed from Early Childhood Care facilities:
 - The parking and loading/unloading area for such facilities shall comply with the provisions of Chapter 27.67 of the Lincoln Municipal Code and the design standards for early childhood care facilities;
 - Such facilities shall comply with all applicable state and local early

- childhood care requirements;
 - Such facilities shall comply with all applicable building and life safety code requirements;
 - Such facilities shall be fenced and have play areas that comply with the design standards for early childhood care facilities;
 - Such facilities must receive a conditional use permit from the Department of Building and Safety
- b. Academies were separated and defined differently from Private Schools. (See *new definition of Academy in Exhibit B*)

Office Use Group

There were no changes made to uses in this Use Group.

Retail Sales and Services Use Group

- a. Similar Use types are grouped together and regulated as a single use. (See Exhibit C “Grouping of Use types)
- b. Added Ambulance Services to the B-5 zoning district because it is already allowed in all the other B zoning districts. Undertaking Services was added to both the B-5 and H-4 zoning district because these uses were already allowed in all the other B and H districts.
- c. Outdoor Retail Sales were added to the H-4, and Mobile Home Sales were added to the B-5 to be consistent with the way other Outdoor Retail sales are already treated (See Exhibit C for “Grouping of Use Types” for a list of examples of Outdoor Retail Sales.) Outdoor Retail Sales are generally on large pieces of land and the majority of the merchandise is displayed outdoors, year round with little or no indoor retail sales.
- d. Removed the following redundant conditions for Outdoor Retail Sales :
- Parking shall be provided in accordance with Section 27.67.066.
 - Truck and heavy equipment sales shall not be converted to a permitted use unless all the parking requirements of Section 27.67.020 for such use are met.
- e. Removed the following conditions for Hotels and Motels which were deemed unnecessary:
- A distance of at least twenty feet shall be maintained between buildings on the lot;
 - Each hotel or motel unit shall have a minimum enclosed floor area of 200 square feet;

- f. Vehicle Body Repair Shop is now considered a Motorized Vehicle Service Facility was added as a conditional use to the B-1. (See *Exhibit B for definition of Motorized Vehicle Facility*)
- g. Conditions that mirror the B3 district were added to the B1 for Motorized Vehicle Service Facilities. The condition required Motorized Vehicle Service Facilities to be located more than 100 feet from a residential zoning district or use and for existing facilities that are less than 100 feet to screen between the residential use, using an opaque fence six feet height.
- h. Removed the existing separate conditions for vehicle body repair because they are already covered in other parts of the code and in Design Standards.

Food and Drink Establishment Use Group

There were no changes made to uses in this Use Group.

Commercial Recreation and Entertainment Facilities Use Group

There were no changes made to uses in this Use Group.

Major Entertainment and Event Use Group

There were no changes made to uses in this Use Group.

Heavy Commercial Services Use Group

- a. Contractor Services will be one term which encompasses the many types of contractor services that exist.
- b. Many of the different types of Contractor Services listed in the existing code had redundant conditions that were removed such as:
 - Parking shall be provided in accordance with Section 27.67.066.
 - Said places of business shall not be converted to a permitted unless all the parking requirements of Section 27.67.020 for such use are met.

Manufacturing, Processing, Storage and Distribution Use Group

- a. The conditions for screening outdoor storage will be moved to the Design Standards Chapter to be consistent with other screening requirements.
- b. Enclosed Disassembly, Salvage, Recycling Processing Operations are currently only allowed in the I-1 and I-2 zoning districts by special permit. They were added to H-2, H-3 and H-4 and the special permit for the

I-1 and I-2 for this use was eliminated since all of the operation will be inside a building with no outside storage. If there is outside storage, then the use becomes a scrap yard and is required to obtain a special permit.

Waste Management and Extractive Services Use Group

- a. Removed Commercial composting from the B-4 because this use is not in character with the existing B-4 district.
 - b. Dumping or reduction of garbage, offal or dead animals was removed from I-2.
8. **Definitions.** The format of the Definitions chapter was changed significantly, requiring a new chapter be created. 27.03 Definitions would become 27.02. Definitions would be alphabetical and would not have their own section number. Each letter of the alphabet will be its own section. This will enable a definition to be added or removed, in the future, without having to renumber the entire chapter. In addition to the format change, several definitions that were revised, added and some were removed entirely. For a comprehensive list of those changes see attached Exhibit B.
9. **Design Standards.** *To facilitate consolidation of redundant language and to be consistent on screening outdoor storage related to commercial development, some minor changes were made to Chapter 3.5 of the Design Standards, which are adopted by City Council resolution to supplement the regulations in the Zoning and Subdivision Ordinances.(Covered by MISC#12002) Those changes include:*
- a. Several uses in today's Zoning Ordinance had conditions that required landscaping and screening. Those conditions were moved out of the Conditional Use chapter and into Design Standards. Most of those uses have to do with outdoor storage or display.
 - b. Section 7.7 "Salvage and Scrap Processing Operations Approved by Special Permit or Permitted as Conditional Use" was renamed Salvage Yard.
 - c. Screening for vehicle body repair shops was removed from Section 7.7 because screening of outdoor storage is already covered in Section 7.11.
 - d. Added Storage and/or Display of Merchandise for Service/Repair Facilities and/or Contractor Services to 7.11 Refuse Areas, Recycling Bins, Open Storage, Loading Areas, and Ground Level Mechanical Equipment.
 - e. Clarified that screening per Section 7.11 applies to the above uses as a single use as well as associated with other uses. The following are some examples of when 7.11 would apply:
 - an area used for open storage for vehicles waiting repair at a motorized vehicle repair facility would be required to be screened

- refuse areas associated with a restaurant would require screening
- recycling bins either as a stand alone use or associated with another use such as an apartment building would be required to meet the screening requirement of this section.

10. **Other Chapters.** Minor changes were made to other chapters of the code, such as but not limited to Parking, Signs, Special Permits and Additional Use Regulations, but those changes consisted of renumbering and renaming terms to match changes that were made in the chapters discussed above.
11. **Technology.** To facilitate the ability to find specific uses with the new format, the Planning Department will have a tool on the Planning Department Website that will allow users to search for specific uses or to search for uses by Use Group. The adopted Zoning Ordinance, when viewed online, will also have links throughout the chapters and within the tables enabling the user to quickly jump between chapters when looking for information.
12. A draft copy of Use Groups was originally distributed to the Planning Commission and the Public on April 9, 2012. Since the time of that distribution additional minor corrections and changes have been made to the text. For a list of the changes from the April 9th Use Group draft to the drafting of this staff report see attached Exhibit D.

Prepared by:
Christy Eichorn, Planner

DATE: May 17, 2012

APPLICANT: Marvin Krout, Planning Director

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**CHANGE OF ZONE NO. 12008
and
MISCELLANEOUS NO. 12002**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 30, 2012

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

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Christy Eichorn of Planning staff** explained that this is a proposed format change to the existing zoning ordinance with the ultimate goal to provide consistency and clarity throughout all of the chapters of Title 27. Tables were added to provide consistency and clarity; redundancies are reduced by taking out language in multiple chapters and consolidating it into single chapters; and then reformatted that reorganization so that it is easier to read by those that read it every day and by the average citizen who may be read it less frequently.

Eichorn advised that the Planning Department has done public outreach on this legislation. This effort has been ongoing for at least two years – the staff met with the Planning Commission four times; met with the Mayor’s Neighborhood Roundtable three times; met with representatives of the Realtors Association, Chamber of Commerce and Home Builders Association; and had a working use group to go through some of the ideas on how best to reformat to make it more user friendly.

Eichorn pointed out that Appendix D of the staff report addresses changes that have been made since this proposal was released on April 9, 2012, when copies were provided to the public and the Planning Commission. There have been some changes since that time to continue to clarify and be consistent.

In addition, Eichorn announced that a new tool has been developed on the City’s Web page where you can type in a use and find out what zoning districts and conditions would be allowed. It should make searching the ordinance much easier than today.

Eichorn clarified that this does not make any changes to the zoning districts or zoning height and area regulations, although that information has been taken out of individual chapters and moved it into one chapter and put into a table. Although no specific changes were made to height and area requirements, there were a few uses to which changes were made which are addressed in the staff report.

Gaylor Baird asked Eichorn to clarify whether or not any changes are being made in the public's ability to offer input or ask questions about any applications. Eichorn stated that nothing has changed in that regard. No changes were made to the special permit chapter. There was no testimony in opposition.

CHANGE OF ZONE NO. 12008

ACTION BY PLANNING COMMISSION:

May 30, 2012

Lust moved approval, seconded by Francis.

Lust congratulated staff on all of the comprehensive work that went into this change. It is going to be a great development for the ease of use of our zoning ordinance. This took a lot of work and a lot of time and is going to be a great improvement.

Francis added that the staff has always gone above and beyond to make things a little more clear for people using the information and the consistency is a great thing for our city and the staff. She expressed appreciation to staff for the hard work.

Gaylor Baird also expressed appreciation to Christy Eichorn for her leadership. This has been a long process.

Motion for approval carried 8-0: Butcher, Gaylor Baird, Sunderman, Hove, Francis, Lust, Esseks and Cornelius voting 'yes'; Weber absent. This is a recommendation to the City Council.

MISCELLANEOUS NO. 12002

ACTION BY PLANNING COMMISSION:

May 30, 2012

Lust moved approval, seconded by Lust and carried 8-0: Butcher, Gaylor Baird, Sunderman, Hove, Francis, Lust, Esseks and Cornelius voting 'yes'; Weber absent. This is a recommendation to the City Council..

- C. Language regarding Wind Energy Conversion Systems (WECS) was taken out of the individual zoning district chapters and consolidated into the Height and Lot Regulations Chapter.
- D. Added to the end of the Height and Lot Regulations Chapter are notes that direct the user on how to find special permit information regarding adjustments to height that require a public hearing process.
- E. Information addressing “necessary mechanical appurtenances” and “Chimneys” was moved to the Special Height and Lot Requirements section to facilitate a better layout of the chapter.
- F. Conditions associated with Utilities were moved from the existing Additional Height and Area Chapter to the Conditional Use Chapter.

Chapter 3.5 Design Standards:

Removed Motorized Vehicle Service and Repair facility from 7.7 because screening for the “outdoor storage area” for this use is covered by “Open Storage” in 7.11.

Zoning Districts

All of the zoning districts were updated to reference the new Height and Lot Regulations chapter 27.72 instead of 27.71.