

COUNTY BOARD FACTSHEET

TO : County Clerk: Attn: Kelly Lundgren
FROM : David R. Cary, Director of Planning 
RE : **County Text Amendment No. 16016**
(Lancaster County Zoning Resolution, Article 18)
DATE : April 25, 2017

1. On April 12, 2017, the Planning Commission held a joint public hearing on this application, Text Amendment No. 16015 requested by the Homebuilders Assn. of Lincoln, and Text Amendment No. 17004.
2. Attached are the Planning staff report (pp.1-7) and the minutes of the Planning Commission (pp.8-15) on **County Text Amendment No. 16016**, requested by the Director of Planning, to amend Article 18 of the Lancaster County Zoning Regulations relating to Special Height and Use Near Airports to modify requirements for height permits, by repealing and adding various sections within Article 18 of the Lancaster County Zoning Regulations as hitherto existing. The proposed revisions are found on (pp.3-4).
3. The staff recommendation of approval is based upon the Analysis as set forth on (pp.2-7), concluding that the proposed changes are in conformance with State airport zoning regulations and the 2040 Comprehensive Plan and should not have a negative impact on the operations of the Airport nor a significant negative impact on properties within the airport overlay districts. These changes will reduce the overall areas affected by airport height permitting requirements and streamline the height permit process for the development community while maintaining sufficient protection against airport hazards. The staff presentation is found on (pp.8-9).
4. The testimony of proponents and opponents is found on (pp.10-13). Staff discussion with the Planning Commission is found on (pp.13-14), and applicants' rebuttal is found on (p.14).
5. On April 12, 2107, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval (Weber absent). The Planning Commission also recommended approval as amended of both Text Amendment No. 16015 and Text Amendment No. 17004. The two latter applications are pending City Council action and will be scheduled once the amended language is agreed upon by both applicants. Please take the necessary steps to schedule this item on the County Board agenda and inform us of the public hearing date. The Planning staff is scheduled to brief the County Board on this item at their regular staff meeting on Thursday, April 27, 2017, at 9:00 a.m. in Room 113 of the County-City Building, 555 South 10th Street, Lincoln, Nebraska.

If you need any further information, please let me know (402-441-6365).

cc: County Board
David Behrens, County Attorney
Pam Dingman, County Engineer
Kerry Eagan, County Commissioners

Ann Taylor, County Commissioners
Tom Cajka, Planning
Bill Austin/Lincoln Airport Authority

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for April 12, 2017 PLANNING COMMISSION MEETING

PROJECT #: Text Amendment No. 16016

PROPOSAL: Request by the Planning Department to amend Article 18 of the County Zoning Ordinance relating to airport zoning to revise the height permit regulations and the Airport Zoning Map.

CONCLUSION: The proposed changes are in conformance with State airport zoning regulations and the 2040 Comprehensive Plan and should not have a negative impact on the operations of the Airport nor a significant negative impact on properties within the airport overlay districts. These changes will reduce the overall areas affected by airport height permitting requirements and streamline the height permit process for the development community while maintaining sufficient protection against airport hazards.

<u>RECOMMENDATION:</u>	Approval
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ASSOCIATED APPLICATIONS: Text Amendment No. 16015 (City Version)

HISTORY:

May 2013 State bill LB140 to amend provisions of the Airport Zoning Act was passed by the Nebraska Legislature.

Mar 2016 Text Amendments No. 16001 and 16002 were approved by the City Council to revise the City Airport Zoning Chapter and Article 18 of the County Zoning Ordinance to be in conformance with LB140.

COMPREHENSIVE PLAN SPECIFICATIONS:

P. 10.19 - Existing Airports and Airfields

The Lincoln Airport is the major air facility servicing Lincoln, Lancaster County and the region. It provides an important transportation link to national and international markets. It is located in the northwestern part of Lincoln, with access provided by Interstate and State highways. The City of Lincoln's Airport Environs Noise District and Airport Zoning Regulations have been established to ensure a balance between airport operations and the surrounding land uses. These regulations govern uses and structural characteristics compatible to the airport operations and minimize negative impacts on surrounding residents.

P. 10.39 - Airport and Airfields - 2040 Needs

The Lincoln Airport will continue to be the principal airport facility serving the Lincoln Metropolitan Area, Lancaster County, and a significant portion of the region in the southeast area of the State.

P. 10.71 - Airports and Airfields

Lincoln Municipal Airport is governed by the Lincoln Airport Authority (LAA). The LAA is part of the MPO and participates in its activities; however, planning for airport facilities is done in a separate process.

Strategies:

- Maintain compatible land uses and zoning within the 60 DNL and 75 DNL noise contour lines.
- Continue to enforce zoning restrictions for building and structure height in the approach and turning zones.

ANALYSIS:

1. This text amendment will change Article 18 of the County Zoning Ordinance, Special Height and Use Near Airports. The Lincoln Airport Zoning Map will also be amended to reflect these changes and will be adopted by reference as part of this text amendment. The related Text Amendment #16015 is proceeding concurrently to similarly amend Chapter 27.59 of the City Zoning Ordinance.
2. The proposed amendment was created through a collaborative process between the Homebuilders Association of Lincoln (HBAL), the Lincoln Airport Authority (LAA), the Planning Department, the Building & Safety Department, and the City and County Attorneys' Offices. The drafting process involved many meetings over the course of about a year.

All of the parties involved made compromises towards reaching an agreed-upon version that would not only continue necessary protection for aircraft approaches, but also help improve the complex approval process from the perspective of homebuilders and developers. An almost complete agreement on the text amendment was reached, with the exception of one point related to referencing FAA regulations that the LAA has requested, which is not supported by the City departments and homebuilders. The LAA does not recommend that the section relating to FAA regulations be added in the County Zoning Ordinance, so there is only one County Zoning amendment, which accompanies the HBAL-sponsored text amendment.

The version proposed with this amendment and its City Zoning counterpart (TX16016 and TX16015) represent those changes that were agreed upon by all of those participating in the discussion.

3. Land uses in a large area around the Lincoln Airport are regulated in many ways. There are various levels of review in which the City works with the Airport Authority to protect the Airport from potential hazards posed by nearby development and the effects of aircraft noise including the following:

1.	Lincoln/ Lancaster County Comprehensive Plan	In coordination with the Airport Authority, appropriate land use designations are made in large areas surrounding the Airport and under flight paths. The goals of the Comprehensive Plan discusses the importance of the Airport for the regional transportation system. The Plan also stresses that the Airport Environs Noise District and Airport Zoning Regulations have been established to ensure a balance between airport operations and the surrounding land uses. Taken together, these two major forms of regulation ensure compatibility with airport operations and minimize negative impacts on surrounding residents.
2.	Zoning designation of property	In coordination with the Airport Authority, proposed zoning changes for land in areas surrounding the Airport are reviewed for appropriateness and compatibility with airport operations and flight paths, along with consideration of the goals of the Comprehensive Plan.
3.	Review and restrictions as part of a Preliminary Plat, CUP, PUD, Use Permit or other zoning application	In coordination with the Airport Authority, specific site plans and land uses are reviewed for proposed uses, site elevations, and building heights relative to the underlying and overlay zoning and airport regulations. The Airport Authority has opportunity to comment on these larger-scale developments as they are proposed and amended.
4.	Height restrictions of each zoning district	Each zoning district has a height limit for all structures. In the AG district and most residential districts the limit is 35 feet. Commercial districts vary from 30 to 55 feet, with I-1 having a 75 foot limit and the Downtown the tallest overall height allowed (up to 275 feet in the downtown core).
5.	Chapter 27.58 - Airport Environs Noise District regulations on allowed land uses surrounding the Airport	Additional regulations restrict land uses based on the adopted airport noise contours. These regulations are in addition to the underlying zoning, and prohibit sensitive land uses or require sound insulation based on the established noise levels.
6.	Chapter 27.59 - Airport Zoning Regulations restricting height of buildings in relation to runways (Article 18 in County Zoning)	Additional regulations restrict height based on the proximity to the Airport runways. These regulations supersede the height allowed in the underlying zoning, with the goal of preventing structures that would pose a hazard to aircraft flight paths. A Height Permit is required and reviewed by Building & Safety and the Airport Authority at the time of building permit for certain areas and structures within the airport hazard area.

7.	Special permits for specific uses such as broadcast towers or cellular towers	In coordination with the Airport Authority, a special permit can be granted for taller structures, such as broadcast or cellular towers, if the height will not interfere with the airport operations.
8.	Avigation Easements are required as part of final plat process or zoning actions identified above	The Airport Authority prepares Avigation Easements where needed for the land owner to sign, acknowledging the potential for aircraft noise and overflight, and are required by the City as part of a final plat approval or other types of applications.
9.	Building permit review for conformance with approved plans and zoning regulations listed above	The Building & Safety Department reviews building permits based on the zoning and adopted plans to ensure compliance of individual building plans.

This comprehensive list of review processes and regulations is intended to demonstrate that extensive and thorough protections for the Airport relative to surrounding land use and height of structures exist today and would continue to remain intact into the future with the proposed text amendments. The Airport is a valuable asset to the community that has been well-protected and integrated for decades into Lincoln’s comprehensive planning and review processes.

4. The primary text changes to Chapter 27.59 include the following, as shown on the attached draft Ordinance:

A. Reducing the “Shaded Area”, which reflects elevations where height permits are mandatory for all structures.

The Shaded Area on the Airport Zoning Map represents areas of higher elevation where new structures might pose a concern for the Airport. Currently, the Shaded Area is defined as any area of elevation 1248’ above mean sea level. Any structure constructed in the Shaded Area is required to have an approved height permit regardless of the proposed structure height. The height permit process takes place at the time of building permit review.

With this text amendment, the Shaded Area would be defined based on the closest runway end elevation, rather than 1248’ across the board. This change customizes the Shaded Area based on varying runway end elevations. Specifically, the Shaded Area would now be defined as those areas within 4 miles of any runway end with elevations that are 75 feet or more above the closest runway end elevation. The result of the change is a smaller Shaded Area overall and hence a reduction in the areas where a height permit is required.

The main reduction in the Shaded Area would take place in areas northeast of the airport, but there would also be reductions in several other areas. A new definition for “Shaded Area” would also be added reflecting this change.

(See attached Exhibit 1 illustrating the areas to be removed from the Shaded Area in the orange box).

B. Allow areas to be removed from the “Shaded Area” based on certified grading plans.

The current Shaded Area is intended to reflect areas of 1248' elevation or greater. However, as areas are graded for development, the topography changes and the Shaded Area is no longer accurate in many instances. A new provision is proposed that would allow the Shaded Area to be revised administratively for accuracy based on certified grading plans associated with a final plat, Community Unit Plan, Planned Unit Development, Use Permit, or other approved plan. Certification of the grading plan would be done by a surveyor after grading is completed. Developers may then demonstrate that some or all areas of their development have been graded down such that they are outside the Shaded Area and do not require a height permit.

C. Allow a single blanket height permit to cover all proposed structures within a residentially-zoned plat or addition.

Currently, each individual structure including individual homes within a subdivision must apply for separate height permits based on the addresses. This is a burdensome and unnecessary requirement for large residential subdivisions including many lots and homes. In an effort to streamline the height permit process for developers and homebuilders, the proposed amendment would allow a single blanket height permit to be approved for all proposed structures within a residentially-zoned plat. A notation would be added on the approved plan denoting the area covered under the blanket height permit. Homebuilders only need to pay one height permit fee (currently \$412.00) rather than a fee for each house.

D. Exempt certain single and two-family structures from the post-construction elevation certification requirement.

Currently, a survey must be conducted on any structure requiring a height permit after the structure is constructed to verify that it was built as approved and does not violate the airport zoning maximum height. Each individual structure, such as multiple new houses in a subdivision, must be surveyed individually. The cost for the individual surveys can be substantial and burdensome on homebuilders and homeowners. It was determined that individual surveys are unnecessary given most houses in a subdivision are constructed at approximately the same height and don't constitute a hazard to the Airport. In addition, a review was conducted of state and federal regulation and guidance as well as several other local zoning ordinances in the region, and none recommended or required a post-construction elevation survey.

It is proposed to exempt single family and two-family dwellings requiring a height permit from the elevation certification requirement under the following circumstances:

- 1) The dwellings are located in a zoning district, Community Unit Plan, or Planned Unit Development where the maximum permitted zoning height is 35 feet or less; and
- 2) The ground elevation of the proposed structures will be no more than 100 feet above the nearest runway end elevation.

Under the above circumstances, the dwellings should pose no threat to airport or aircraft operations because a sufficient buffer distance between the top of the structure and the maximum airport zoning height will be present to account for any appurtenances or unapproved roofline changes on most homes. A typical two-story home has a zoning height of 28-32 (to the mid-point of the ridge line) and 36-38 feet to the top of the roof. Vents and other appurtenances typically add another 2-5 feet.

Under this scenario, there would be an approximate 12-15 foot buffer at a minimum between the top of the roof and the maximum airport zoning height in the majority of the airport hazard area, even if the house was constructed at the full 100 feet in elevation above the runway end.

(See attached Exhibit 1 illustrating the elevation certification exemption in the green box).

E. Adopting the revised Lincoln Airport Zoning Map.

The Airport Zoning Map has been revised to reflect the reduced Shaded Area and to add maximum structure elevations permitted in the various airport hazard zones and Shaded Areas for easier reference.

5. These changes should primarily have a positive impact for the development and homebuilding interests as well as home buyers, as the process and cost of height permitting will be significantly reduced, and additional permitting fees are often passed on to home buyers in the cost of the home.
6. The proposed text amendment is in conformance with the 2040 Comprehensive Plan and the City and County Zoning Ordinances.
7. The proposed changes will reduce the areas of the City affected by airport height permitting, and streamline the process for applicants, while continuing to protect the airport from structures that posing a hazard to airport operations. The substantial and continuing regulatory and review process for potential airport hazards as part of the revised Airport Zoning Chapter as well as land use regulations based on noise levels in the Airport Environs Chapter provide more than sufficient protections to airport and aircraft operations and approach procedures on a local level.

Prepared by:
Rachel Jones, Planner
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DATE: April 4, 2017

APPLICANT/CONTACT: Lincoln-Lancaster County Planning Department
Rachel Jones
555 S. 10th Street
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OWNER:N/A

COUNTY TEXT AMENDMENT NO. 16016

TEXT AMENDMENT NO. 16015 - TO AMEND THE LINCOLN MUNICIPAL CODE RELATING TO AIRPORT ZONING REGULATIONS TO MODIFY REQUIREMENTS FOR HEIGHT PERMITS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer and Washington; Weber absent.

Staff recommendation: Approval

AND

COUNTY TEXT AMENDMENT NO. 16016 - TO AMEND ARTICLE 18 OF THE LANCASTER COUNTY ZONING REGULATIONS TO SPECIAL HEIGHT AND USE NEAR AIRPORTS TO MODIFY REQUIREMENTS FOR HEIGHT PERMITS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer and Washington; Weber absent.

Staff recommendation: Approval

AND

ANDTEXT AMENDMENT NO. 17004 - TO AMEND THE LINCOLN MUNICIPAL CODE RELATING TO AIRPORT ZONING REGULATIONS TO MODIFY REQUIREMENTS FOR HEIGHT PERMITS, AND ADDING A SECTION REGARDING FAA NOTICE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 12, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer and Washington; Weber absent.

Staff recommendation: Denial

There were no ex parte communications disclosed on any of these applications.

Staff Presentation: Rachel Jones of the Planning Department explained that these amendments were drafted over a number of months with the help of representatives from the Airport Authority, Home Builders Association of Lincoln (HBAL), Planning Department, Building and Safety, and both the County and City Attorneys. There were many meetings and many compromises made. The first application is from HBAL and the second is the accompanying County application. In these versions, all revisions were agreed upon by everyone involved. Text Amendment No. 17004 was brought forward by the Airport Authority. Their version is the same except for an additional section added on FAA Section 77 requirements. Their proposal is not supported by HBAL or the City. That amendment does not have an accompanying County application because the Airport Authority determined one would not be necessary.

The two major goals of the text amendments were to reduce areas affected by airport overlay and to streamline the process for attaining height permits. One exhibit shows shaded areas representing land at higher elevations. That area has been reduced and property could be removed administratively by providing a certified grading plan. Right now, every building must have a height permit. The amendments would allow a blanket height permit to cover multiple structures, such as in a subdivision, so that could be significant financial savings that could be passed onto builders and owners. The amendments would exclude certain single and 2-family residential homes.

The FAA section proposed by the Airport Authority relates to Part 77 requirements that construction notification must be given within the vicinity of the airport. Every builder would have to use an online tool to determine if notice is required. If it is, they would have to submit their plans and the FAA would issue a letter stating whether the proposal would be hazardous to air navigation. A builder could meet all other local regulations, but would still be required to meet with the Airport Authority if the FAA determines the structure would affect airport approaches and departures. That would constitute a new inclusion into our local codes and into the building code process. The City is not supportive of the changes proposed by the Airport Authority. It adds a new restriction in the building process and is burdensome to applicants. There are already many regulations and review processes to protect the airport. The airport is taken into consideration in the designation of future land use and the Airport Authority is routed on reviews for several types of applications. It is the opinion of the City that the Part 77 review should take place earlier in the process rather than at the time of applying for a building permit so the applicant has appropriate time to learn what the extra step is all about. A further objection of the City is that it will ultimately fall to City staff to answer questions about using the online tool and other steps. Building and Safety does not have the staff time to coordinate this effort and it would add to the already complex process. In looking at other City's in the central United States, no others had zoning regulations that went this far in terms of regulations that require an applicant to meet with an Airport Authority. It is not a requirement of the FAA to include the Part 77 notification in our local code.

The City has offered compromises but the Airport Authority has expressed that the compromises would not go far enough. We would be supportive of notifying applicants of the Part 77 requirements because certainly many people are not aware of them, but not in support of tying it into the local review process. Jones offered several options available throughout the review process where notification could occur earlier.

Harris asked if Planning Commission would have power over the notification process, other than to recommend the language change. Jones said Planning Commission would not act on steps occurring during the review process. Harris asked if any particular notification option was preferred. Jones said Staff would most likely accept any or all of the suggestions.

Washington asked if Planning would be willing to recommend all of the compromises as a package. Jones said that is a good question. In terms of voting, Planning Commission does not have say over particular text but, yes, all of the compromises would be acceptable.

Proponents/Opponents for All Proposed Text Amendments:

1. DaNay Kalkowski, Seacrest & Kalkowski, 1128 Lincoln Mall, Suite 105, came forward as spokesperson on behalf of HBAL and two developers within the vicinity of the airport. The HBAL group came together with builders, developers and engineers with the goal of working with the City and Airport Authority to amend the regulations to streamline the process and eliminate unnecessary costs, particularly for residential home construction. The amendments submitted by HBAL were agreed upon by all of the parties and no one got 100% of what they wanted, so there was a good deal of compromise. Part 77 is a federal regulation, so whether or not it is included in local code, builders have to comply with it. The regulation suggested by the Airport Authority goes too far in what it is asking people to do by making anyone within 20,000 feet fill out the online assessment at the point of getting a building permit. There are several options for the necessity of that step to be determined earlier in the process. Another issue is that the FAA notice is just that, simply a notice. It provides no authority to come back and say a structure cannot be built. Basically, a developer or builder will have gone through the time and expense of the entire review process only to reach the Part 77 step when it is too late. We are supportive of the compromises proposed by Staff today.

Washington asked if HBAL would accept the Part 77 regulations at an earlier phase in the planning process. Kalkowski said that the developer will have to be looking at that as part of the planning phase and when considering marketability. Areas that require the FAA notices should be identifiable earlier in the process, maybe at the platting stage, and not one lot at a time.

Washington asked when in the process a building permit is granted. She noted that if a family buys a house from a developer, they may not know about these regulations. She wondered how a buyer would become educated. Kalkowski said that is a good question because homeowners are not always diligent about filing the proper records for projects. Even if it were part of a subdivision agreement, owners may not pay that much attention. It should be part of the due diligence of a buyer to get the restrictions for anything that could break the regulated height.

Harris asked whether they would still be opposed to tying the notification to the permit, even if it were earlier in the process, since the ordinance would require people to go through this process even if it were unnecessary. Kalkowski said this involves bringing a federal regulation into local zoning and they should be required to support that, not Building and Safety Department. Kalkowski indicated she is unsure whether there is a "blanket" notice available.

2. Bill Austin, Baylor and Evnen, 1248 O Street, appeared as legal representation for the Airport Authority. He noted that airport zoning has been in place since 1979 and with subsequent changes in state and federal regulations, the City of Lincoln has complied and passed ordinances that have proven quite effective in protecting the airport. In the current zoning code, height permits are required in areas within 7,700 feet of the runways, or in areas over 1,248 feet above sea level, within a certain proximity of the airport. These areas have required a permit regardless of whether the building is proposed at the 75-foot height or not. The purpose of this is to avoid breaking the 150-foot imaginary approach zone and to keep planes and passengers safe. Planning has suggested that a provision

be added that if a structure is not over 50 feet, it should be allowed to waive the requirement for a height permit. The problem is that there are some areas where even a 50-foot structure would break the height limit due to elevation.

Compromises made by the Airport Authority include using the nearest runway elevation to determine what was included in the "shaded" area. That reduced the amount of land included by 45%. It was also agreed that sites could grade out of the area. Blanket permitting was also agreed to, as long as they are on file and can be closed with post-construction certification. That became a sticking point. Throughout our meetings, we expressed concerns that people are unaware of Part 77. It is important knowledge because if the FAA identifies a hazard, it could change approach and departure to this airport, thus reducing its utility. We are sympathetic that the cost of permitting keeps rising; however, if a developer proposes to build in these zones, that is the extra cost, similar to choosing to build within a floodplain.

We were still in the process of reviewing the amendments when the HBAL application was filed. Our application was an attempt to continue the process. It was mentioned that it is inappropriate to include in a city ordinance since it is a federal regulation, but that is also how floodplains are managed. Building and Safety would not bear the costs of this process, which is a simple procedure. We are just asking for notification that the applicant has complied with a law that they should be complying with. We were not approached earlier with alternatives but would be happy to do this earlier in the review process. We would just like to know that at the time of building permit, it has been done. Mr. Austin concluded by giving examples of other communities with similar regulations, some even stricter than what the Airport Authority has proposed.

Beckius asked what action the Airport Authority would take if it were discovered during the review process that proposed structure would impede the approach zone. Austin said they would contact the builder and collaborate in the hopes of eliminating effects on the airport. We initially requested to be able to stop a project with too much impact. In the worst case, we could seek laws of eminent domain, but that would be extreme.

Hove said people could still build, but it could affect landing procedures, which affects the airport as a whole. Austin said that is correct. Including Part 77 at least ensures that people are complying, and it opens the potential for discussion.

3. Jon Large, Deputy Director - Engineering, Airport Board, stated one major area of concern is what future construction could do to airport approaches. Despite the City's substantial efforts to protect us, without review from an airspace perspective, we really cannot know the potential impact of a ground structure. The Part 77 evaluation done by the FAA is a complicated review that considers many technical aspects and contingencies. This kind of expertise is not available locally. The other concern is pilot and passenger safety. Without the notice and review, there is potential for an obstruction that the FAA is unaware of. Pilots rely on the safe procedures for approach issued by the FAA.

The information required for the evaluation--the latitude, longitude, elevation, and height of the structure and all of that information is readily available online. This information can be entered into the Airspace Analysis and there is a quick response as to whether a notice would be required because a structure penetrates various FAA surface levels. With the proper paperwork in place, we have no problem telling the Board of Zoning Appeals that

there is no objection to a waiver in allowable height of a structure. The language proposed by the Airport Authority leaves the door open as to timing and a blanket review process. Large concluded by noting that these text changes are meant to have a positive impact for the development community. The airport authority seeks to protect any degradation of their airspace and that cannot happen without a fair review.

Harris asked why their proposal does not include the blanket review. Large said he believes the FAA will still review structures individually, but there is a process where multiple structures can be submitted at one time. Austin added that their proposed language does not exclude that possibility. This is a competing application so they are willing to make amendments.

Harris asked about the language discrepancy between FAA Part 77 and the applicant's version. She wondered if that was intended to provide some buffer. Austin replied that their proposal would apply to Lincoln. If anyone, anywhere builds above 200 feet, they must file the 7460 Form. There are particular situations that would not apply in Lincoln, such as heliports and shorter runways. The rules are applied differently in various communities.

4. Bo Jones, Tru-Built Construction, came forward on behalf of HBAL to state that they appreciate efforts to reach compromise and to streamline processes. The addition of the FAA Part 77 would be very time consuming and would lead to additional cost to builders. When applying for a permit for Fallbrook, the need for the height permit was brought to our attention. The cost for that was \$800. The online assessment tool asks for information that is not readily available and must be obtained by a surveyor, which slows the process and adds cost. By the time a builder is applying for a building permit, every other aspect of the review has been done. It is not productive to suddenly get a red flag when you are ready to build. There are already codes in place to forbid buildings taller than 35 feet so it seems reasonable to figure out a way to do a blanket process for an entire residential area. Lots can be on the market for years which means builders may have to learn the rules all over again.

5. Mike Eckert, Civil Design Group, appeared on behalf of one of his clients, Starostka-Lewis, who have another development west of Fallbrook. He agrees that notification should not be tied to the building permit, but should be done earlier, such as during the preliminary plat phase. Look at the grading, find the highest point, and submit that information, which is easy for a single lot. To go through the entire process of platting, grading and selling the lot, only to have a builder discover the need to meet this requirement does not make sense. It is for these reasons that he supports the HBAL version of the proposed text amendments.

6. David Haring, Executive Director for the Lincoln Airport Authority, explained that the notice from the FAA can have four to five levels of results. The first two are "no impact" or "minor impact," which would mean that a structure just has to be lit. The next two results are more significant because they can reduce utility of the airport. The 5th level is when the airport has jurisdiction on airport property where structures can be removed. The core result is that any action cannot have a negative impact on approaches. As an example, at another airport, a wind turbine pierced the air zone by 3 feet; this would have created a 200-foot adjustment in flight patterns, which would have made that airport non-weather worthy in the winter. If we catch obstacles early in the review process, we

can find a solution. The airport is a community asset valued at \$122 million and we continue to invest in that resource. The proposed text changes offered by HBAL have no foundation in protection of the airport, only in convenience for developers. We are happy to work with everyone, but impacts to approaches must be discussed first and the airspace must be the primary consideration. That is what this ordinance is about.

Washington asked if the Airport Authority is interested in working with applicants much earlier in the planning review process. Haring said the important thing is challenge of getting the teeth into the ordinance requiring the notification. That is one reason local governments are relied upon to carry out federal regulations. There should be a way to evaluate any worst-case scenarios and work on dealing with those situations. He is amenable to just about any solution that protects approaches. From his perspective, if there is a way to determine things on the front end of the process, then we have the opportunity to react to protect those approaches.

Washington asked at what point issues with a cell tower project came up. Large said it came up in 2015. Washington wondered if it came up during a permit to build or later. Large said the tower was submitted for FAA review in 2015 and he believes it went to Building and Safety in the last couple of months.

Staff Questions:

Washington asked why language from 2002 is now being taken out. Jones said the general idea is that the post-construction elevation certificate should not necessarily be required for every type of development. Washington asked if the change would impact commercial development. Jones said that every structure that requires the height permit would require the certificate after. One change is exempting single and 2-family homes from that requirement. That was agreed upon by everyone.

Hove said it seems like all parties are close to agreement on this. He wondered if it would make sense to defer the item so details can be further worked out.

Steve Henrichsen, Planning Department, said this has been a positive hearing. Staff was under the impression that the parties were farther apart than they are. He recommended that, since this is essentially one item, Planning Commission recommends approval to both versions, subject to the condition that the HBAL version add language that a developer would submit the Part 77 requirement very early in the process, and that the Airport Authority version make the same recommendation. The idea builds on the fact that the developer is in a better position during the application submission and review processes to work with staff and the Airport Authority to make it clear to the applicant whether a proposal violates airspace or not. Staff agrees there is merit to that idea. There is time between now and a City Council hearing to work on language that would satisfy both parties.

Hove asked for confirmation that it is suggested that both version be recommended for approval. Henrichsen said that is correct. It would be best for this to continue to move forward because it could have an impact on development currently underway.

Scheer noted that it is a very different situation to require the Part 77 notification at that very specific building permit process versus asking a developer to address the issue during the planning process.

Harris asked if this means the developer would bear the costs. Henrichsen said the developer would submit the Part 77 and if it is learned that a proposal could change an approach, that would be an immediate red flag, which would be pertinent information before we would want to recommend approval.

Beckius asked what areas, jurisdictionally, are covered by the Part 77 requirements. Henrichsen said the area within the 3-mile City limits are within that area of approach. That is why the Airport Authority's text amendment focuses on the city and does not offer the County counterpart.

Applicant Rebuttal:

Kalkowski said that this may get to the heart of what we were trying to express, with regard to Part 77, in that it is not a zoning ordinance because by the time you get to the point of seeking a building permit, all the zoning has been done. This is a protection for the airport, but the developer needs to know much earlier in the process so that there is authority to do something. In general, the direction this is heading seems appropriate and we could look into it, along with checking on the blanket permitting. The developer would have more resources to do these things.

Austin stated they agree to work with HBAL and Planning to come up with language that is satisfactory to all. We ask for the language to be more general to cover various possible changes and there may be some details to address, such as lots that would no longer need a CUP or splitting a lot.

TEXT AMENDMENT NO. 16015
ACTION BY PLANNING COMMISSION:

April 12, 2017

Beckius moved approval, as amended by Staff, seconded by Washington. Beckius said it is commendable that HBAL and the Airport Authority worked with the City to bring these amendments to the point that they are. He thanked everyone for working together. He hopes the can is not being kicked down the road and that the spirit of cooperation continues.

Harris said today the focus was on differences, but it is clear there is a lot of agreement here. The result makes good, common sense and cuts through "red tape". This was a good team effort and today it culminated in even more cooperation.

Hove supports these changes and is encouraged by the movement made today. Everyone has the same goal to streamline things, while making sure the public and passengers are safe.

Motion for approval carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Hove voting 'yes'; Weber absent. This is a recommendation to the City Council.

COUNTY TEXT AMENDMENT NO. 16016
ACTION BY PLANNING COMMISSION:

April 12, 2017

Edgerton moved approval, seconded by Beckius and carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Hove voting 'yes'; Weber absent. This is a recommendation to the County Board.

TEXT AMENDMENT NO. 17004
ACTION BY PLANNING COMMISSION:

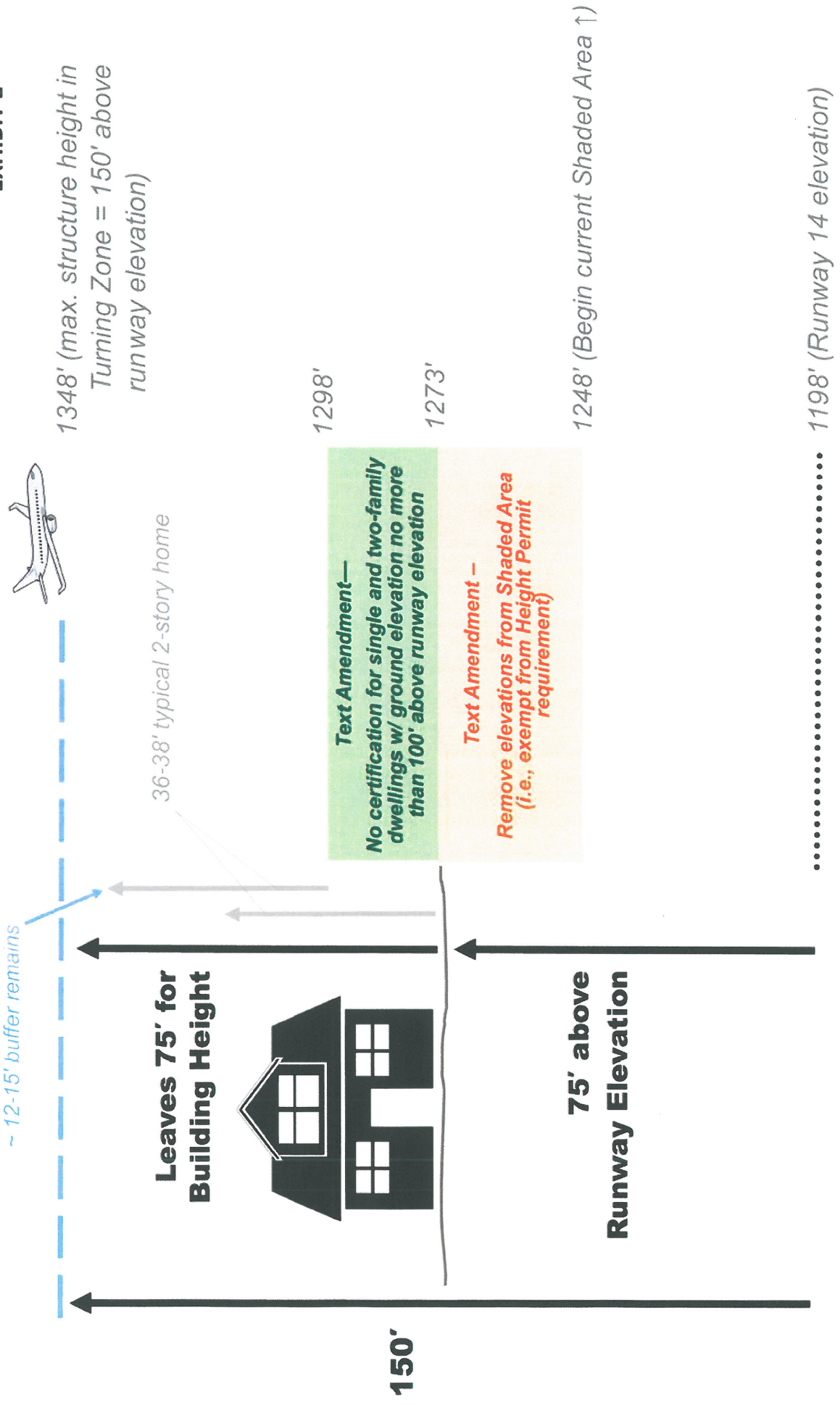
April 12, 2017

Washington moved approval, as amended by Staff, seconded by Finnegan and carried 8-0: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Hove voting 'yes'; Weber absent. This is a recommendation to the City Council.

There being no further business to come before the Commission, the meeting was adjourned at 3:25 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, April 26, 2017.

EXHIBIT 1



ARTICLE 18
SPECIAL HEIGHT AND USE REGULATIONS NEAR AIRPORTS

18.002 Definitions

As used in this Article unless the context otherwise requires:

Airport means the Lincoln Airport located in Sections 4, 5, 6, 7, 8, 9, 17 and 18, Township 10 North and Sections 31 and 32, Township 11 North, Range 6 East of the Sixth Principal Meridian, Lancaster County, Nebraska.

Airport hazard means any structure or tree or use of land that penetrates any approach, operation, transition, or turning zone.

Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Article, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones.

Building Official means the Director of the Department of Building and Safety of the City of Lincoln, Nebraska, or his or her authorized representative.

Existing runway means a runway that has been constructed or is under construction.

Instrument runway means an existing runway with precision or nonprecision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or nonprecision instrument approaches reflected on the airport layout plan.

Lessee means any person, other than the owner, in possession of land.

Nonconforming use means any structure or use of land which does not conform to a requirement of this Article or an amendment thereto, as of the effective date of this Article.

Person means any individual, firm, association, corporation, or body politic and includes any receiver, assignee, or similar representative thereof.

Proposed runway means a runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration.

Runway means a defined area at the Airport that is prepared for the landing and takeoff of aircraft along its length. For purposes of this Article 18, only paved Instrument Runways as defined herein shall be included within the term "runway."

Shaded Area shall mean those hatched mark areas on the Lincoln Airport Zoning Map representing areas within 4 miles from the end of a runway having elevations that are 75 feet or more above the elevation on the nearest runway end.

Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines.

Tree means any object of natural growth.

18.006 Permit Required; Procedure; Certification; Exception

(a) Except as provided in ~~subparagraph (b)~~ Section 18.006a, it shall be unlawful to erect, construct, reconstruct, repair, or establish any structure or appurtenances thereto of any kind or character within the boundary of the Airport Hazard Area of the Airport without first obtaining a height permit from the Building Official. A height permit shall not be issued for any structure or appurtenances thereto that exceeds the height restrictions set forth in Section 18.005.

~~(b) No height permit shall be required within the turning zones, or that part of the approach zones located more than 7700 feet from the end of the runway, for construction of any proposed~~

~~structure that will be no higher than 75 feet above the elevation of the natural ground at the location of the proposed construction except for construction in those specifically "shaded" areas (elevation 1,248 feet A.M.S.L. or higher) indicated on the Lincoln Airport Zoning Map that are within four miles from the end of a runway. Structures or building proposed to be construction within such "shaded" areas on said map shall require certification as to elevation. No certification as to elevation or a height permit shall be required for proposed accessory structures or accessory buildings to dwelling units when said proposed accessory structures or accessory buildings or any attachment thereto do not exceed the elevation of said dwelling unit.~~

~~(e)~~ Application for a height permit as required under the provisions of this Article shall be made upon a form which is available in the office of the Building Official. The application shall indicate the location, ground elevation with reference to the elevation at the closest point on a runway, and the height of the proposed structure. Said elevation shall be certified by a land surveyor, registered by the State of Nebraska, which certificate must accompany said application.

~~(c) An application for a height permit may include all of the area and proposed structures within a plat or addition that is residentially zoned, and, if the requirements of this Article as to height restrictions are met, a blanket height permit may be issued for all of such area and structures. A notation shall be included upon the plat, community unit plan, or other appropriate document of approval, reflecting the fact that the area is the subject of a blanket height permit.~~

~~(d) Upon completion of, and prior to operating or occupying, any structure or building requiring a height permit, including each structure covered by a blanket height permit, the applicant, owner of the structure, or agent thereof, shall submit to the Building Official shall require a registered professional a surveyor, certified by a registered professional surveyor verifying the to verify the actual height and location of anythe structure or building. The certification shall be submitted to the Building Official at the point of final construction of the structure or building, but prior to operation and occupying the structure or building. Such information shall be recorded and maintained by the Building Official.~~

~~(e) A permit fee shall be required in accordance with Article 23 of these regulationsis Resolution, and all fees received shall be paid to the County Treasurer for deposit in the County general fund. No fee shall be charged for a permit for any construction or repair whose estimated cost is less than \$100.00.~~

~~(f) No post-construction certification shall be required for a single family or two family dwelling meeting all of the following criteria:~~

~~(i) it is located within the Shaded Area;~~

~~(ii) it is located within a zoning district, community unit plan, or planned unit development where the maximum permitted height is 35 feet or less; and~~

~~(iii) the area in which the structure is located has an elevation, as shown on the height permit, of not more than 100 feet above the elevation on the nearest existing or proposed runway end.~~

~~As required by Article 20 of this Resolution, the Building Official will confirm that each such single family or two family dwelling complies with the applicable height restrictions of the underlying zoning district before issuing a Certificate of Occupancy or a Certificate of Completion.~~

~~18.006a Permit Required; Exceptions; Removal of Portions of Shaded Area; Accessory Structure~~

~~(a) No height permit shall be required for construction of any proposed structure that will be no higher than seventy-five feet above the elevation of the ground at the location of the proposed construction:~~

(i) Within the turning zoning, or that part of the approach zones located more than seven thousand seven hundred feet from the end of the runway, except for construction in the Shaded Area; or

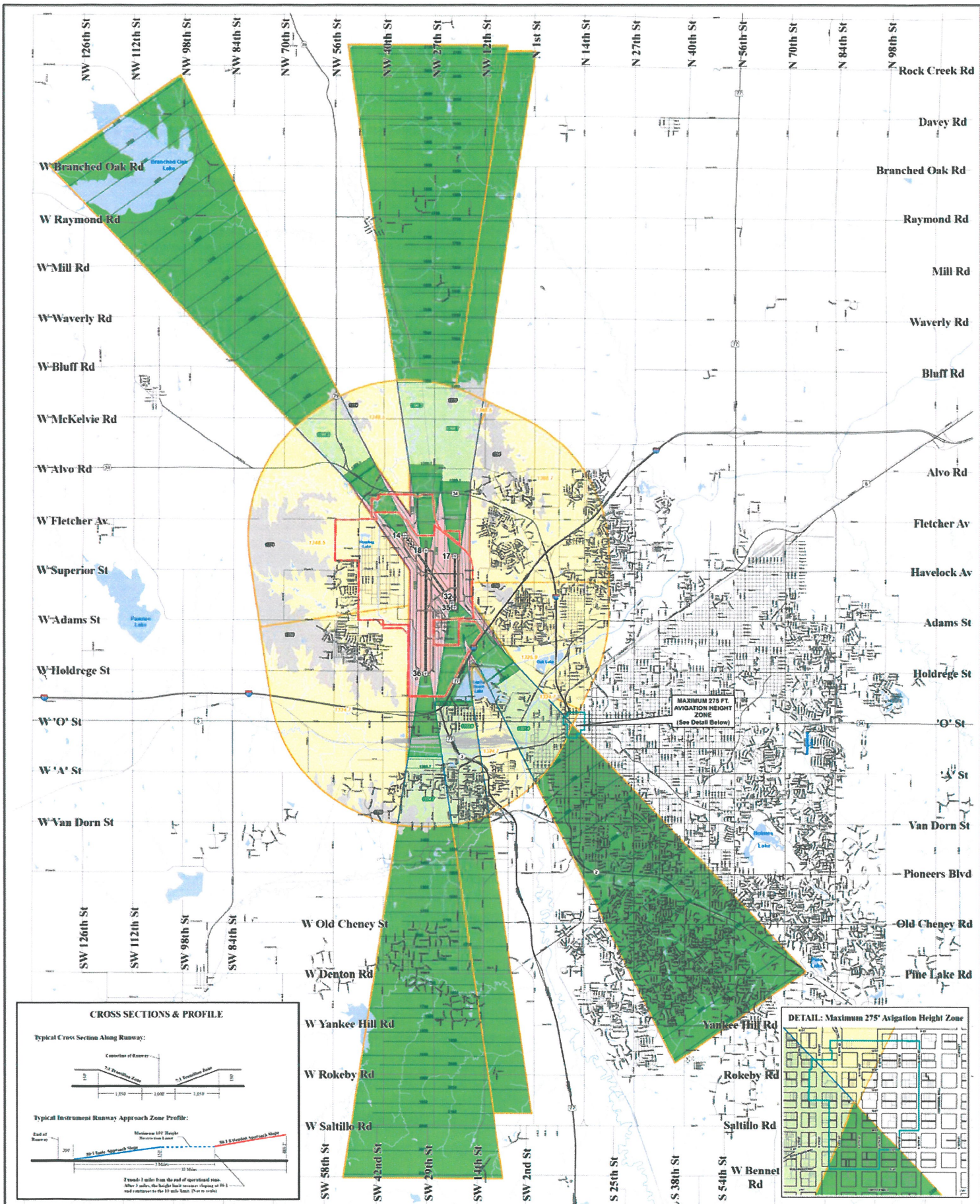
(ii) Within any portion of the Shaded Area for which:

(1) a grading plan has been filed with the Building Official or Planning Department, and a copy sent to the Airport Engineer, certified as to elevation by a registered professional surveyor, establishing that all of such area presently has or will have, upon completion of the grading, an elevation that is lower than 75 feet above the nearest existing or proposed runway end; and

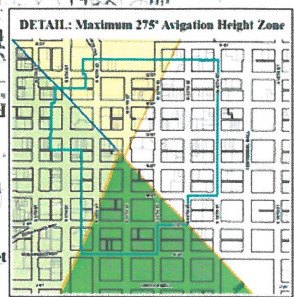
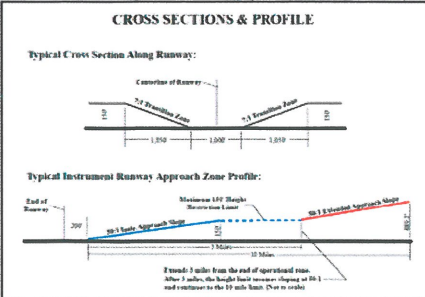
(2) a certification from a registered professional surveyor has been received, certifying that the grading has been completed and that the area has an elevation that is lower than 75 feet above the nearest existing or proposed runway end. Upon receipt of said certification, following completion of the grading, a notation shall be included by the Planning Director upon the plat, community unit plan, or other appropriate document of approval, reflecting the fact that the subject area meets the requirements of this subsection.

(b) The Planning Director shall amend the Lincoln Airport Zoning Map to remove from the Shaded Area any portion thereof that has met all the requirements of subsection (a)(ii) above. Notice of the Planning Director's administrative amendment to the Lincoln Airport Zoning Map shall be posted on the Planning Department's webpage and included in a written report to the County Clerk.

(c) No height permit shall be required for any proposed accessory structure when the proposed accessory structure or any attachment thereto does not exceed the elevation of the main structure.



MAXIMUM 275 FT AVIGATION HEIGHT ZONE
(See Detail Below)



LINCOLN AIRPORT ZONING MAP

- OPERATION ZONE
- TURNING ZONE
- AIRPORT BOUNDARY
- SHADED AREA (Less than 75 ft Clearance)
- RUNWAY CENTERLINE
- APPROACH ZONE (50:1 Slope)
- OUTER HAZARD AREA BOUNDARY
- AVIGATION ZONE BOUNDARY (275' Max Ht.)
- APPROACH ZONE (150' Max Ht.)

NOTE: ALL ELEVATIONS ARE IN NAVD (North American Vertical Datum) 1988. Runway elevations are surveyed and provided by the Lincoln Airport Authority. As of March 1, 2006, all project submittals are required to utilize NAVD 1988 vertical datum. Approach Zone extends 10 miles from the Operation Zone.

PLANNING DEPARTMENT

 February 15, 2017