


# COUNTY BOARD FACTSHEET

TO : County Clerk: Attn: Kelly Lundgren  
FROM : David R. Cary, Director of Planning   
RE : **County Change of Zone No. 17025**  
(AG and I Districts to B District - Intersection of Highway 2 and Highway 43)  
DATE : September 13, 2017

1. Attached are the Planning staff report (pp.1-12) and the minutes of the Planning Commission (p.13) on **County Change of Zone No. 17025**, from AG Agricultural District and I Industrial District to B Business District, requested by Doug Derscheid and the Planning Department, on property legally described as Lot 16, I.T., located in the NE 1/4 of Section 34-9-8, Lancaster County, Nebraska, generally located at the intersection of Highway 2 and Highway 43.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2, concluding that the 2040 Lancaster County Future Land Use Plan shows this parcel as commercial. The 2040 Comprehensive Plan supports commercial uses at the interchange of Highway 2 and 43. The existing Industrial zoning is not appropriate for an area shown as commercial in the Comprehensive Plan. "B" zoning matches the existing use and the future land use plan for this interchange.
3. On September 13, 2017, this application appeared on the Consent Agenda of the Planning Commission.
4. On September 13, 2017, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval of this change of zone request, subject to the approval of the attached Development and Conditional Zoning Agreement (See pp.8-11).

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 following their regular Board Meeting on Tuesday, September 19, 2017, at 10:45 a.m.

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

cc: County Board  
David Derbin, Deputy County Attorney  
Kerry Eagan, County Commissioners  
Doug Derscheid

Ann Ames, County Commissioners  
Tom Cajka, Planning  
Mark Hunzeker



**LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT**

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER  
Change of Zone #17025

FINAL ACTION?  
No

DEVELOPER/OWNER  
Casey's Retail Company

PLANNING COMMISSION HEARING DATE  
September 13, 2017

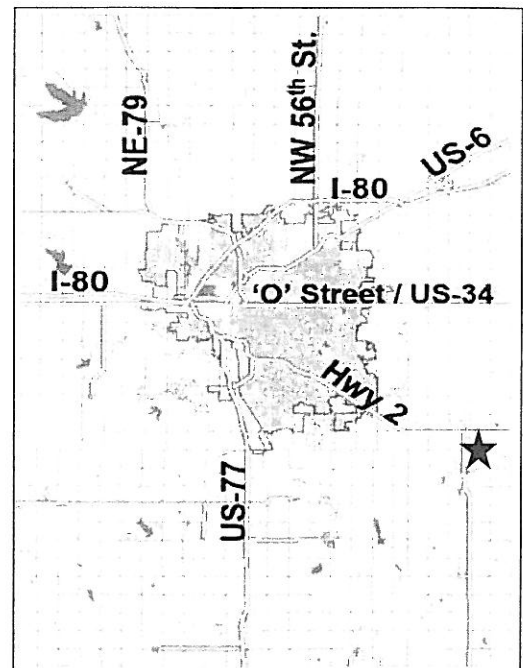
RELATED APPLICATIONS  
None

PROPERTY ADDRESS/LOCATION  
Highway 2 and Highway 43.

**RECOMMENDATION: APPROVAL**

**BRIEF SUMMARY OF REQUEST**

This is a request from the applicant for a change of zone from AG-Agricultural to B, Business and from the Planning Director from "I" Industrial to "B" Business over the existing convenience store. The area The total area is approximately 17.78 acres. The "AG" to "B" area is approximately 13.50 acres and the "I" to "B" is approximately 4.28 acres.



**JUSTIFICATION FOR RECOMMENDATION**

The 2040 Lancaster County Future Land Use Plan shows this parcel as commercial. The 2040 Comprehensive Plan supports commercial uses at the interchange of Highway 2 and 43. The existing Industrial zoning is not appropriate for an area shown as commercial in the Comprehensive Plan. "B" zoning matches the existing use and the future land use plan for this interchange.

**APPLICATION CONTACT**

Doug Derscheid 402-340-0680  
[dderscheid@windstream.net](mailto:dderscheid@windstream.net)

**STAFF CONTACT**

Tom Cajka (402) 441-5662 or  
[tcajka@lincoln.ne.gov](mailto:tcajka@lincoln.ne.gov)

**COMPATIBILITY WITH THE COMPREHENSIVE PLAN**

The requested change of zone is in conformance with the 2040 Comprehensive Plan and the 2040 Lancaster County Future Land Use Plan.

**KEY QUOTES FROM THE 2040 COMPREHENSIVE PLAN**

P. 12.3 - the entire 17.78 acre site is shown as future commercial on the 2040 Lincoln Area Future Land Use Plan.

P. 12.4 - commercial includes areas of retail, office, service and residential mixed uses. Commercial uses may vary widely in their intensity of use and impact.

P. 5.4- uses near the interchange of Highway 2 and Highway 43 (the Bennet exit) should be limited to commercial immediately surrounding the interchange that generally supports the agricultural community and those traveling through the area. The remainder of the designated area should be reserved for a potential large industrial employer which may desire to locate in a rural area with limited services and would be compatible with the surrounding rural residential area.

**ANALYSIS**

1. The applicant has requested a change of zone from "AG" Agricultural to "B" Business on that portion of Lot 16 zoned AG. A small portion of Lot 16 is zoned "I" Industrial.
2. The Planning Director is requesting a change of zone from I to B. Currently a convenience store is located on the "I" portion of Lot 16.
3. The 2040 Lancaster County Land Use Plan identifies this area as commercial. The Land Use Plan also identifies approximately 210 acres of industrial on the north side of Highway 2 and west of S. 158<sup>th</sup> Street. With this large area of industrial on the north side of Highway 2, there is no need for industrial zoning at this location. The current use located in the "I" District is permitted in the "B" District.
4. The Comprehensive Plan supports commercial uses at the interchange of Highway 2 and Highway 43.
5. A zoning agreement is being requested with this application. The zoning agreement would prohibit any new access to Highway 43 and require a preliminary plat before any building permit or final plat. A preliminary plat will help to assure the orderly development of the area. The preliminary plat also provides for planning of proper access from adjacent streets and to abutting property and planning of utility corridors. It is also advantageous to property to the east which in the long term would benefit from access to Highway 43 and internal access.

**CONDITIONS OF APPROVAL:** See attached.

**EXISTING LAND USE & ZONING:** Ag, Agricultural                      Farm ground

**SURROUNDING LAND USE & ZONING**

North:	AG Agricultural	Farm ground
South:	AG Agricultural	Farm ground and one dwelling
East:	AG Agricultural	Farm ground
West:	AG Agricultural	Farm ground

**APPROXIMATE LAND AREA:** 17.78 acres, more or less.

**LEGAL DESCRIPTION:**

Lot 16, Irregular Tract in Section 34, Township 9 North, Range 8 East, Lancaster County, NE

Prepared by

\_\_\_\_\_  
Tom Cajka, Planner

Date: August 30, 2017

Applicant: Doug Derscheid  
9529 Thornwood Circle  
Lincoln, NE 68512

Contact: Mark Hunzeker  
600 Wells Fargo Center, 1248 "O" Street  
Lincoln, NE 68508  
402-458-2131  
mhunzeker@baylorevnen.com

Owner: Casey's Retail Company  
Accounting Department  
P.O. Box 3001  
Ankeny, Iowa 50021

F:\DevReview\CZ\17000\CZ17025 AG to B.tjc.docx

**Site Specific Conditions:**

1. The Developer signs the zoning agreement before the County Board of Commissioners approves the change of zone.

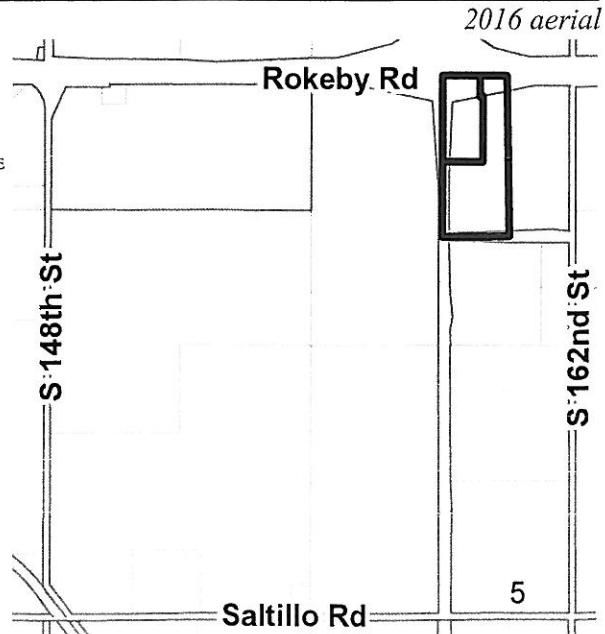
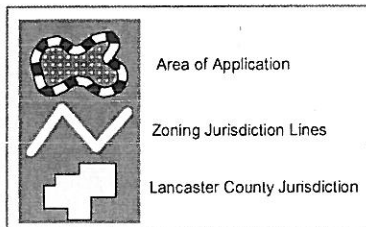
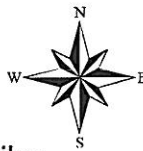


**Change of Zone #: CZ17025**  
**Bennet Corner**  
**Hwy 43 & Hwy 2**

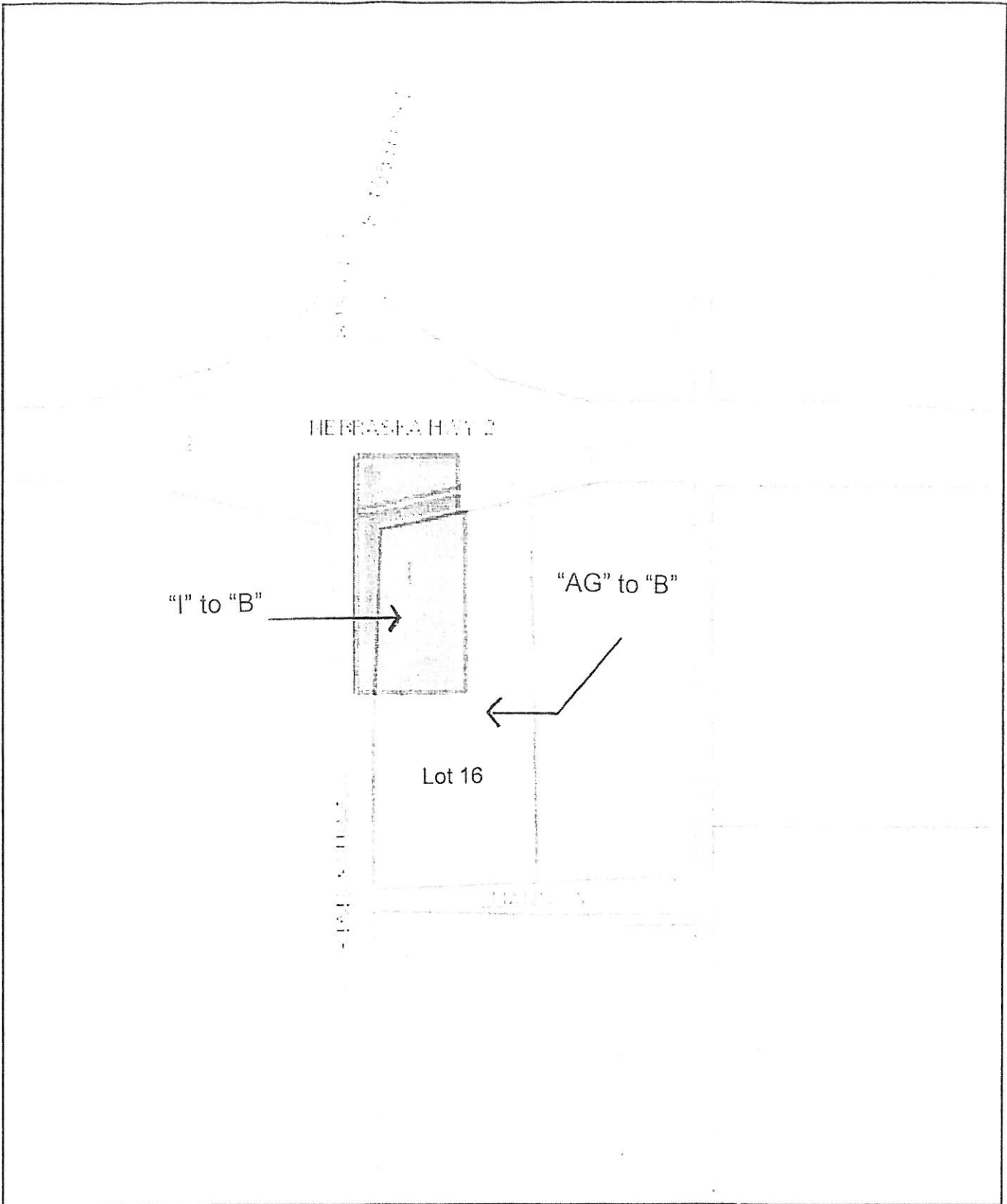
**Zoning:**

- 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

One Square Mile:  
 Sec. 34 T09N R08E



2016 aerial



**Lancaster County/City of Lincoln GIS Map**

CHANGE OF ZONE #17025



Printed: Sep 05, 2017

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email [ags@lincoln.ne.gov](mailto:ags@lincoln.ne.gov) and you will be directed to the appropriate department.



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 DALLAS D. JONES  
 JILL GRADWOHL SCHROEDER  
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 BRENDA S. SPILKER  
 MARK A. HUNZEKER  
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 WILLIAM F. AUSTIN

JARROD S. BOITNOTT  
 \*TIMOTHY E. CLARKE (IA)  
 ANDREW M. LOUDON  
 \*CHRISTINA L. BALL (KS)  
 JENNY L. PANKO  
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 JARROD P. CROUSE  
 ANDREA D. SNOWDEN  
 \*PAUL T. BARTA (IA)  
 \*COLIN A. MUES (IA)

\*TORREY J. GERDES (IA)  
 \*ROBERT S. LANNIN (IA, MO)  
 JENNIFER S. CASWELL  
 BRETT E. EBERT  
 \*THOMAS B. SHIRES (IA)  
 \*EMILY R. MOTTO (IA)  
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OF COUNSEL  
 PETER W. KATT  
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 WALTER E. ZINK II  
 DONALD R. WITT  
 ROBERT T. GRIMIT

(\* ADMITTED IN OTHER STATES)

August 17, 2017

David Cary, Director  
 Lincoln/Lancaster County Planning Department  
 555 S. 10<sup>th</sup> Street  
 Lincoln, NE 68508

RE: Change of Zone request at Bennet Corner

Dear David:

Attached is an application for Change of Zone from AG to B for all the portion of the 17.98+/- acre tract at the intersection of Highway 2 and Highway 43 which is not currently zoned I. The applicant, Doug Derscheid, has an agreement with Casey's to purchase the property, which is contingent upon rezoning. There will ultimately be a need to subdivide the parcel; however, the details of how the subdivided parcel will be configured have not been worked out between the parties. There is a sewer lagoon on the AG zoned portion of the property which now serves Casey's which may need to be moved, or which may be shared. When that is decided, we will proceed with the subdivision of the parcel.

The property is shown in the Comprehensive Plan to be commercial, so we believe the zoning request is appropriate at this time.

Please let me know if there is any additional information needed.

Sincerely,

Mark A. Hunzeker  
 For the Firm  
 mhunzeker@baylorevnen.com

Enclosure

1758146



DEVELOPMENT AND CONDITIONAL ZONING  
AGREEMENT

This Development and Conditional Zoning Agreement (“Agreement”) is hereby made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between Doug Derscheid, hereinafter referred to as “Developer”, Casey’s Retail Company, hereinafter referred to as “Record Owner,” and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as “County.” Collectively the Developer, the Record Owner, and the County may be referred to as “the Parties”.

RECITALS

I.

Developer, as equitable owner of the Property by virtue of a contract for sale to purchase the Property from Record Owner contingent on approval of a Change of Zone, has petitioned the County for a Change of Zone (“CZ17025”) from AG Agricultural District (“AG”) to B Business District (“B”) upon property generally located at 10200 South 158th Street, Lancaster County, Nebraska, and legally described as:

All of that portion of Lot 16, Irregular Tracts in Section 34, Township 9 North, Range 8 east of the 6th PM, Lancaster County, NE, which is not presently zoned Industrial (the “Property”).

II.

Approval of CZ17025 would allow the Developer to develop the Property for a range of commercial and retail uses, and the Change of Zone should be subject to certain conditions to ensure the orderly development of the surrounding area.

III.

The Developer and the Record Owner have represented to the County that, in consideration of the County’s re-zoning the Property to B, the Developer and the Record Owner will enter into an agreement with the County to restrict use on the Property and the Casey’s Property as set forth in Section IV below.

IV.

The County desires an Agreement to be assured that the Property will be developed as represented should the Property be rezoned to B pursuant to CZ17025.

NOW THEREFORE, in consideration of the above recitals and the following terms and conditions, the Parties agree as follows:

1. The County hereby agrees to grant Developer’s petition to change the zoning

map from AG to B on the Property.

2. In consideration for the County's rezoning the Property to B, the Developer and Record Owner agree that the development of the Property shall be subject to the following conditions:

a. The County shall change the zoning map from Industrial ("I") to "B" on the following property, owned by Record Owner:

All of that portion of Lot 16, Irregular Tracts in Section 34, Township 9 North, Range 8 east of the 6th PM, Lancaster County, NE, which is presently zoned Industrial ("the Casey's Property")

b. No new access to/from the Property shall be allowed to/from Highway 43

c. For purposes of accessing the Property and the Casey's Property to/from Highway 43, Record Owner and Developer shall share the existing access to/from Highway 43 located on the Casey's Property, as depicted in Exhibit A to this Agreement, which Exhibit is attached hereto and incorporated herein by this reference; and

d. No building permit or final plat for the Property shall be approved until a preliminary plat for the Property has been approved pursuant to the Lancaster County Land Subdivision Resolution.

2. This Agreement shall run with the land and shall be binding upon the Parties hereto and their respective successors and assigns.

3. This Agreement, when executed by the Parties hereto, shall be recorded by the County in the office of the Register of Deeds of Lancaster County, Nebraska, filling fees to be paid by Developer.

IN WITNESS WHEREOF, the Parties herein have executed this Agreement on the day and year set forth above.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 2017, by the County.

BY THE BOARD OF COUNTY COMMISSIONERS OF LANCASTER COUNTY, NEBRASKA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM  
this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_

Deputy County Attorney  
For JOE KELLY  
Lancaster County Attorney

\_\_\_\_\_

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, County  
Commissioners of the Board of County Commissioners of the County of Lancaster, Nebraska.

\_\_\_\_\_  
Notary Public

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 2017, by the Developer.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by

\_\_\_\_\_

\_\_\_\_\_

Notary Public

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 2017, by the Record Owner.

By: \_\_\_\_\_

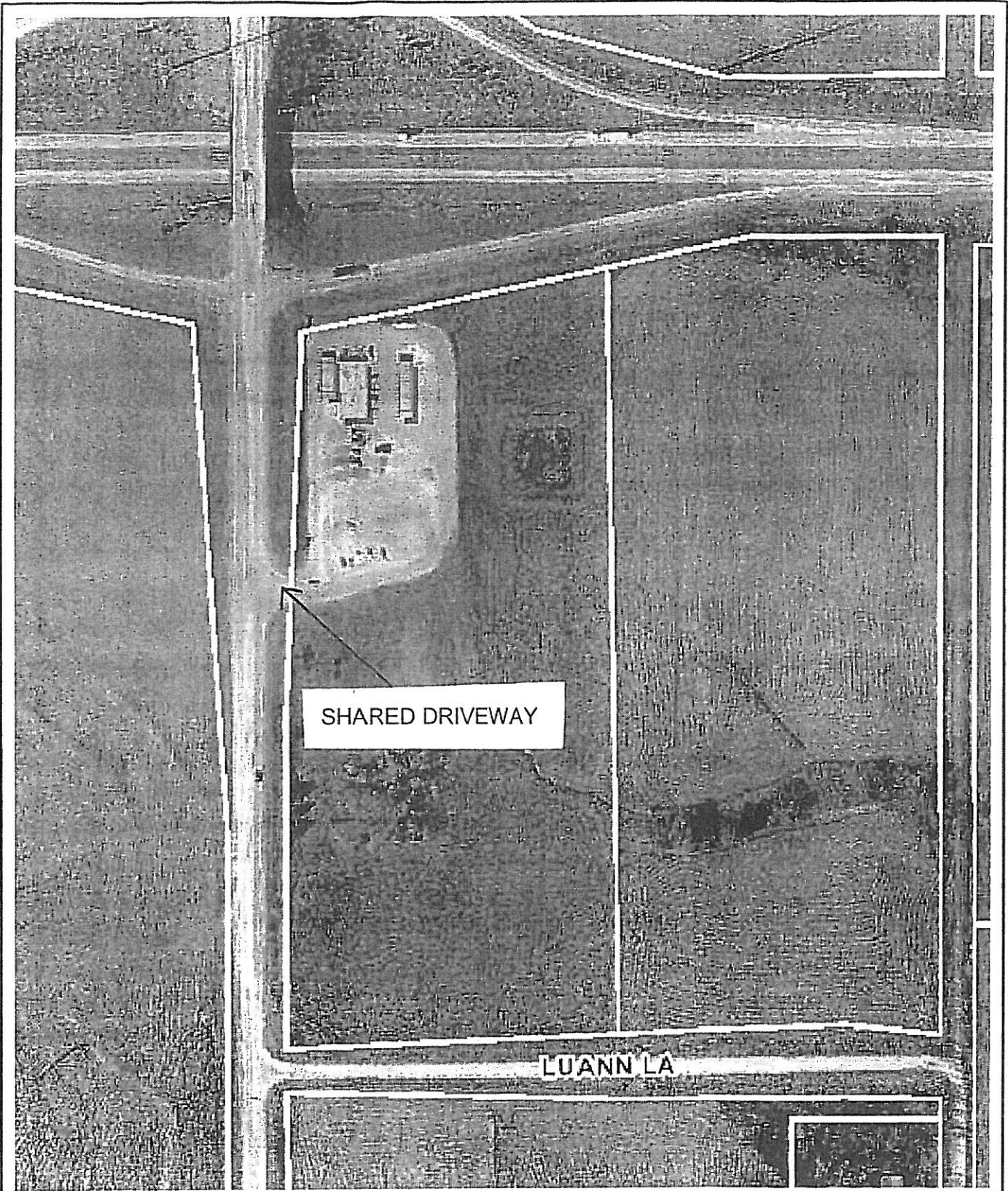
Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public



## Lancaster County/City of Lincoln GIS Map

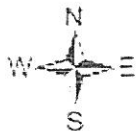


EXHIBIT "A"

Printed: Sep 05, 2017

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**\*\*PLANNING COMMISSION OF SEPTEMBER 13, 2017\*\***

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

September 13, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Scheer.

The Consent Agenda consisted only of **COUNTY CHANGE OF ZONE NO. 17025**.

There were no ex parte communications disclosed.

Hove moved approval of the Consent Agenda, seconded by Beckius and carried 9-0: Beckius, Edgerton, Finnegan, Harris, Hove, Joy, Washington, Corr and Scheer voting 'yes'.

**This is a recommendation to the County Board.**