

City Council Introduction: **Monday**, April 16, 2001
Public Hearing: **Monday**, April 23, 2001, at **1:30 p.m.**

Bill No. 01-66

FACTSHEET

TITLE: CHANGE OF ZONE NO. 3315, from R-4 Residential District to I-1 Industrial District, requested by Phil and Mary Durst, on property generally located at South 1st & "L" Streets.

STAFF RECOMMENDATION: Denial

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/04/01
Administrative Action: 04/04/01

RECOMMENDATION: Denial (7-0: Carlson, Krieser, Hunter, Steward, Taylor, Newman and Schwinn voting 'yes'; Bayer and Duvall absent).

FINDINGS OF FACT:

1. The Planning staff recommendation to **deny** this change of zone request is based upon the "Analysis" as set forth on p.3, concluding that on the surface, this change of zone application may be construed as a housekeeping action to clean up the inconsistency between the zoning boundaries and property lines. In substance, however, the significance of maintaining the current zoning should not be overlooked. This strip of land functions as a buffer which is much needed for the surrounding neighborhood. The proposed change of zone does not conform to the Land Use Plan and the Comprehensive Plan.
2. The applicant's testimony is found on p.5. Additional information and exhibits submitted and referred to by the applicant are found on p.015-023. The applicant contends that this is a change of zone pursuant to section 27.05.030(b) of the Lincoln Municipal Code (See p.022-023).
3. Testimony in opposition is found on p.6, and a petition in opposition containing 89 signatures is found on p.024-028. The opposition also submitted photographs and complaints filed with the Governor's office and the Building & Safety Department on September 28 and September 30, 1999, respectively (p.029-034).
4. The record also consists of a letter in opposition from the South Salt Creek Community Organization submitting that the proposed change of zone is in conflict with the Neighborhood Action Plan (p.035).
5. On April 4, 2001, the Planning Commission agreed with the staff analysis and recommendation, and voted 7-0 to recommend **denial** of this change of zone request (See Minutes, p.7-8).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: April 9, 2001

REVIEWED BY: _____

DATE: April 9, 2001

REFERENCE NUMBER: FS\CC\FSCZ3315

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone # 3315

DATE: March 23, 2001

PROPOSAL: Dennis Bennet, on behalf of Phil Durst, is requesting a change of zone from R-4 to I-1 on the property generally located at S. 1st and L Streets.

GENERAL INFORMATION:

APPLICANT: Phil B. and Mary I. Durst
201 South 1st Street
Lincoln, NE 68508
(402) 475-5500

CONTACT: Dennis Bennett
201 South 1st Street
Lincoln, NE 68508
(402) 475-5500

LOCATION: S. 1st and L Streets

LEGAL DESCRIPTION: A portion of Lot 9, Union Land Company Subdivision, Section 27, Township 10, Range 6 in the City of Lincoln, Lancaster County, Nebraska.

SIZE: Approximately 0.18 acres

EXISTING ZONING: R-4, residential

EXISTING LAND USE: Part of an auto auction.

SURROUNDING LAND USE AND ZONING: To the north and west with an auto auction business zoned I-1, to the south with Schwortzkopt Park and single family dwellings zoned R-4, and to the east with single family dwellings zoned R-4.

COMPREHENSIVE PLAN SPECIFICATIONS: Shown as Urban Residential in the 1994 Lincoln-Lancaster County Comprehensive Plan.

HISTORY:

Changed from B, Two-Family to I-1, Industrial during the **1979** Zoning Update.

Change of Zone No. 1708, delineating the existing zoning boundaries in the proposed site was approved by the Planning Commission on **July 25, 1979**.

ANALYSIS:

1. This is a request for a change of zone from R-4, Residential to I-1, Industrial.
2. This change of zone application involves a strip of land on the southeast portion of an auto auction business. Three single family lots are located immediately to the east of the proposed area.
3. The 1979 Zoning Update changed the zoning in this area from residential to industrial.
4. Change of Zone No. 1708 proposed by the Planning Commission later in the same year reinstated the previous industrial and residential boundaries. The proposed area was returned to residential zoning as a transitional area buffering the incompatible uses to the east and west.
5. The residential area to the east of this site is within the South Bottoms National Register District.
6. The proposed site is shown as Urban Residential in the Comprehensive Plan.
7. Page 189 of the Comprehensive Plan - Land Use Regulations states the following as part of the zoning criteria:
 - ***Compatibility:** harmony and suitability with the surrounding land uses and the natural environment and impact/mitigation on adjacent land uses such as buffering. (Amendment 9416)
8. The application is inconsistent with both the land use plan and zoning criteria.
9. The proposed site is part of a lot used as an auto auction business, which is zoned I-1 in majority. However, this site is zoned R-4 as a transitional area between the industrial and the residential uses.
10. Urban Development Department opposes this application. A goal of the South Salt Creek Target Area Plan (prepared in cooperation between the South Salt Creek Target Organization and the City of Lincoln, Urban Development Department) is to provide a buffer between conflicting land uses. The extension of the industrial zone will eliminate the buffer area between the conflicting land uses, and conflicts the neighborhood and Urban Development Department's goal of protecting residential areas from conflicting land uses.

STAFF CONCLUSION:

On the surface, this change of zone application may be construed as a housekeeping action to clean up the inconsistency between the zoning boundaries and property lines. In substance, however, the significance of maintaining the current zoning should not be overlooked. This strip of land functions as a buffer which is much needed for the surrounding neighborhood. The proposed change of zone does not conform to the Land Use Plan and the Comprehensive Plan.

STAFF RECOMMENDATION:

Denial

Prepared by:

Ching-Yun Liang
Planner

CHANGE OF ZONE NO. 3315

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 4, 2001

Members present: Carlson, Krieser, Hunter, Steward, Taylor, Newman and Schwinn; Bayer and Duvall absent.

Planning staff recommendation: Denial.

Proponents

1. J.D. Burt of Design Associates, 1609 N Street, testified on behalf of the applicant, Dennis Bennett, and Phil Durst, the owner of Lincoln Auto Auction. Lincoln Auto Auction is located on 1st Street south of "O" on the west side. Construction was completed in 1999 and Mr. Durst operates an auto auction on Wednesdays. When he purchased the property, he found out that a portion of his industrial zoned property located at the southeast corner of the site was zoned residential. He moved forward with the project and Design Associates prepared a building plan similar to the handout which displayed the R-4 area and the existing fence around the property. When Durst made application for a building permit on this site, he was worried about security for his merchandise and the property of others. The building permit was submitted to the city and Durst was advised that an 8' fence would not be allowed where the existing 6' fence was located because of the residential zoning. When Durst discovered that he could not have an 8' fence along the residential zoning he sought this change of zone.

Burt testified that another issue is loss of use. There is residential property that is 25' wide at the north and 29' at the south that is zoned inappropriately for the adjacent use. There is a 20' side yard requirement for the I-1 zoning when abutting residential to provide an adequate buffer between nonconforming land uses. The handout shows the area that is not usable because of the residential zoning.

Burt has discovered recently that through the years there have been conflicts between the neighbors for whatever reason, right or wrong. He submitted photographs showing the 8' poles and 6' fence that exist on the Durst property and showing the existing fence on the residential property. This owner is not using the residentially zoned area at this time.

Burt noted that Durst owns one of the three residential zoned lots along 1st Street and has created a drainageway to help eliminate some of the drainage problems through this area.

Figure 3 of the handout shows the proposed side yard with 20' buffer. This does not require any deviations from the I-1 zoning. This application is an attempt to get the zoning line to coincide with the existing lot line. Burt also submitted an excerpt from the zoning ordinance which allows the zoning line to align with existing property lines.

Opposition

1. **Teri Pope-Gonzalez** testified in opposition. She spoke for her friends, her family and her neighborhood. She submitted a petition containing 89 signatures in opposition and submitted photographs showing a demolition derby that was conducted on the subject property, after which she filed a complaint with the Governor's office. The demolition derby occurred right behind her home. If she agrees to the industrial zoning, what will occur on the property? The Fire Department even came out because there was so much dirt they thought there was a fire.

The Auto Auction use is supposed to be 25' from the fence. She has complained to Building & Safety many times. This is an older, lower income community; it is a working class and minority community. Her family has been in the neighborhood since 1931, and they have been homeowners at 349 So. 1st since 1954. This is her husband's childhood home and they will retire there. There were no problems until Lincoln Auto Auction came there. She has been to the Planning Dept. and talked with the staff who are also recommending denial. The Salt Creek Community Organization will also be opposed to this change. She is willing to compromise, but does not want to change the zoning. The applicant has not met with her. If he can't live without the 25' she would agree to at least a 15' buffer. She has a notebook of complaints. This is not just a housekeeping issue. The complaints include water drainage caused by all the concrete; mosquitoes; parking on the street; etc. They have finally discontinued parking in front of her driveway. People come to the auction Tuesday night, all day Wednesday and Thursday, taking up all of the street parking. In addition, Gonzalez does not believe she should have to put up with their garbage.

Approximately 15 people stood in the audience in opposition. The petition contains 89 signatures in opposition.

2. **Steve Larrick**, 920 So. 8th, President of **South Salt Creek Community Organization**, testified in opposition and submitted his testimony in writing. The Neighborhood Action Plan developed in 1992 in cooperation with the Urban Development Department specifically sought to "provide buffer between conflicting land uses (residential and commercial/industrial.)" This proposed change of zone is counter to these ongoing efforts. What is needed is a 15' green buffer between the west lot line of the residential properties along 1st Street and the tall barbed wire fence for industrial uses to the west. This would allow for planting of trees and bushes. This would diminish the negative visual impact and the considerable impact of stormwater runoff from the massive parking lot to the west. He referred to a like situation in the Clinton neighborhood. The Gonzalez family has been a pillar in our community for more than 50 years. They seek to protect and enhance the quality of life for all of us.

3. **Joe Gonzalez**, who lives adjacent to the parking lot, testified in opposition. He does not understand how they got a permit to put their cars there in the first place. He is fearful how the property will be used with industrial zoning. He is fearful it will provide another access and a roadway.

Response by the Applicant

Burt suggested that the change of zone is an issue separate from the demolition derby. This is a land use issue. The I-1 zoning has a 20' buffer requirement. If this is approved, Durst will need to comply with the 20' buffer requirement. The neighbor is only asking for a 15' buffer. He has discussed relocating the fence with the owner, but he already has the posts in the ground and he is not prepared to spend the money to move that fence at this point in time. The issue with the fencing is vandalism problems that have been experienced. Burt requested that the Commission recommend approval of this change of zone request in order to align the zoning line with the lot line.

Steward inquired whether the owner was aware of this discrepancy between the property line and zoning line when the property was purchased. Burt believes that he was but does not state that as fact. Steward believes, then, that the owner should have been aware that a 6' fence would have been required—not an 8' fence. Burt does not believe he probably knew that. The property is in the floodplain and will not be developed as residential. He probably was not aware of the fencing requirements. Steward believes it is obvious that there was residential zoning next to it.

Carlson believes the neighbors are concerned about whether some mechanism exists to honor the buffer space. Moving the fence would be a start. What about something that would act as a sound buffer as well as green buffer? Burt stated that the owner has purchased privacy slats that will be put on the entire fence. Carlson suggested that the neighbors would like to have something environmental. Burt pointed out that there is space between the fences and he will discuss the landscaping with the owner. This is a change of zone, however, not a special permit. He has not yet discussed landscaping with the applicant.

Staff questions

Steward clarified with staff that if the zoning line stays where it is, then the owner is required to have an additional 20' buffer. That would then mean about a 45' buffer between the actual use and the property line. Kay Liang of Planning staff concurred. Steward asked whether there is any mechanism to require landscaping in that 20' buffer. Liang responded that the existing use on the property is allowed by right. It is not a special permitted use. The only mechanism is through the building permit process. Unless the developer and the residents can work something out, there is not a mechanism through the regulations to require a landscape screen.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 4, 2001

Newman moved to deny, seconded by Hunter.

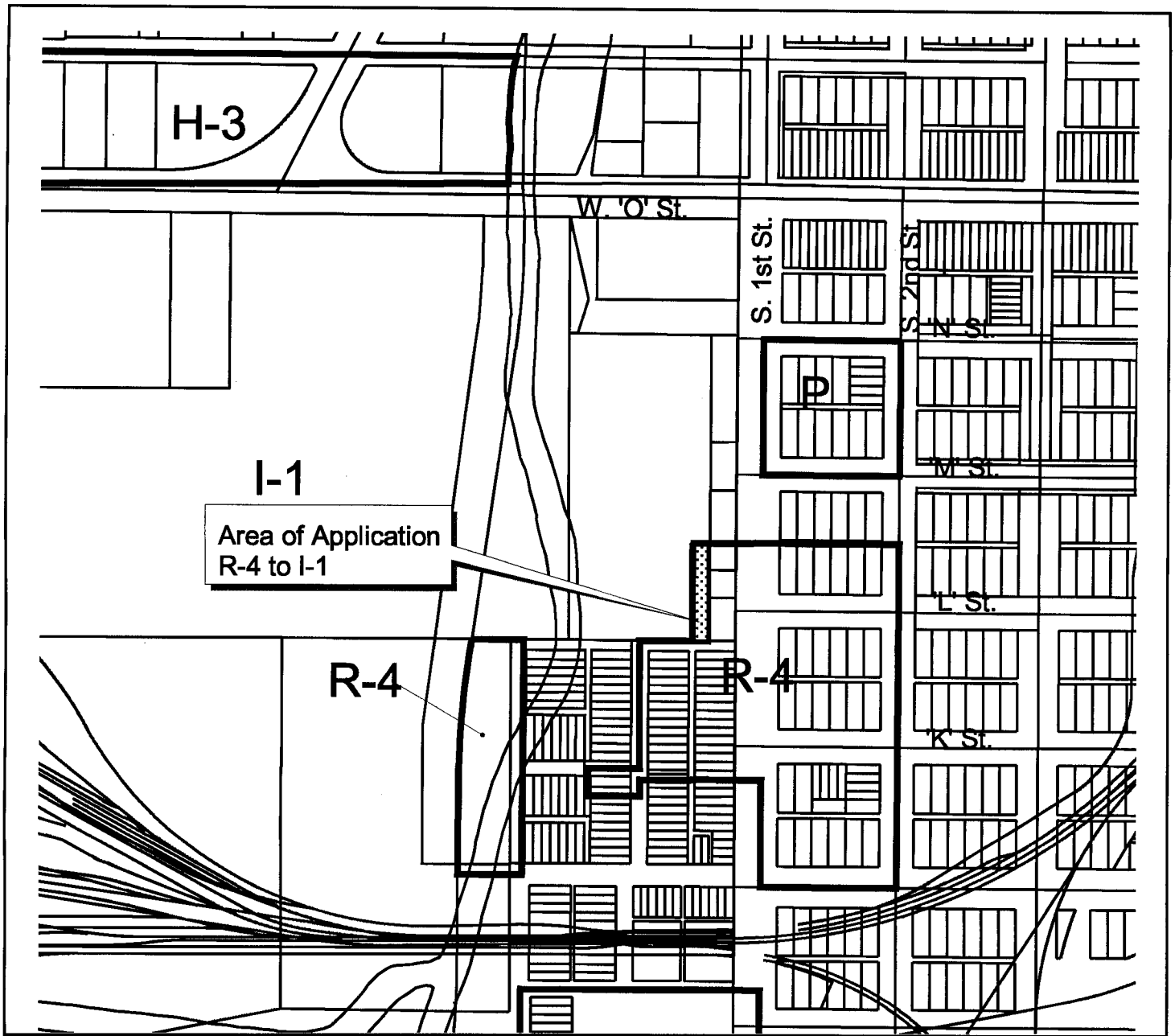
Newman would like to see the owner work with the neighborhood association to put in some sort of green buffer zone, but until that happens she does not think the zoning should change.

Hunter believes that this is a very clear example of a mistake in allowing this kind of development to back up to residential. The buffer between the two fences is almost a joke.

Carlson noted that this is the case where a property owner who is illegally making use of the property is seeking to make it a legal use, and the neighborhood is proposing a mechanism by a strong buffer, but that is not what is before us. He agrees with denial.

Steward believes the fence was going to be 8'. He appreciates the security issue, but the 8' fence has to be on the zoning line—not on the property line.

Motion to deny carried 7-0: Carlson, Krieser, Hunter, Steward, Taylor, Newman and Schwinn voting 'yes'; Bayer and Duvall absent.

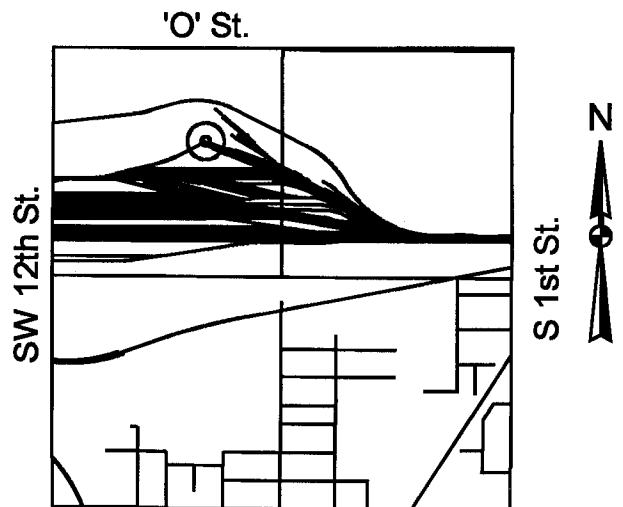
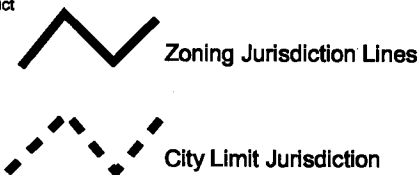


Change of Zone #3315 S. 1st St. & 'L' St.

Zoning:

- | | |
|------------|--|
| R-1 to R-8 | Residential District |
| AG | Agricultural District |
| AGR | Agricultural Residential District |
| R-C | Residential Conservation District |
| O-1 | Office District |
| O-2 | Suburban Office District |
| O-3 | Office Park District |
| R-T | Residential Transition District |
| B-1 | Local Business District |
| B-2 | Planned Neighborhood Business District |
| B-3 | Commercial District |
| B-4 | Lincoln Center Business District |
| B-5 | Planned Regional Business District |
| H-1 | Interstate Commercial District |
| H-2 | Highway Business District |
| H-3 | Highway Commercial District |
| H-4 | General Commercial District |
| I-1 | Industrial District |
| I-2 | Industrial Park District |
| I-3 | Employment Center District |
| P | Public Use District |

One Square Mile
Sec. 27 T10N R6E



Sheet 1 of 2
Date: March 23, 2001

009

Lincoln City - Lancaster County Planning Dept.



**Change of Zone #3315
S. 1st St. & 'L' St.**



Sheet 2 of 2

Date: March 23, 2001

Photograph Date: 1997 **010**

Lincoln City - Lancaster County Planning Dept.

March 8, 2001

Kathleen Sellman
Lincoln/Lancaster County
Planning Department
555 South 10th Street
Lincoln, Nebraska 68508

RE: Change of Zone
Lot 9, Union Land Company Subdivision
1st and "L" Street

Ms. Sellman,

On behalf of the property owner, Phil Durst, the following items are attached for your review:

Application for Change of Zone
Site plan and Legal Description

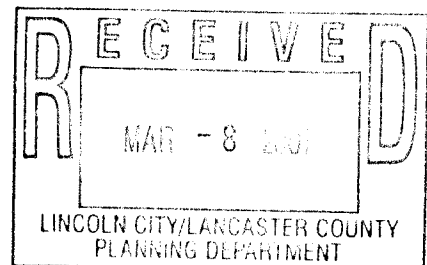
This Application for Change of Zone is limited to approximately 0.18 acre located in the southeast corner of Lot 9, as shown on the attached plan. The purpose of this application is to relocate the existing zoning line, that extends north in line with the existing alley located south of West "L" Street, easterly to the common lot line of Lot 9 and Lots 6, 7 and 8, Union Land Company Subdivision. Approval of this zoning request will adjust the zoning line between the R-4 and I-1 districts to correspond with existing property lines.

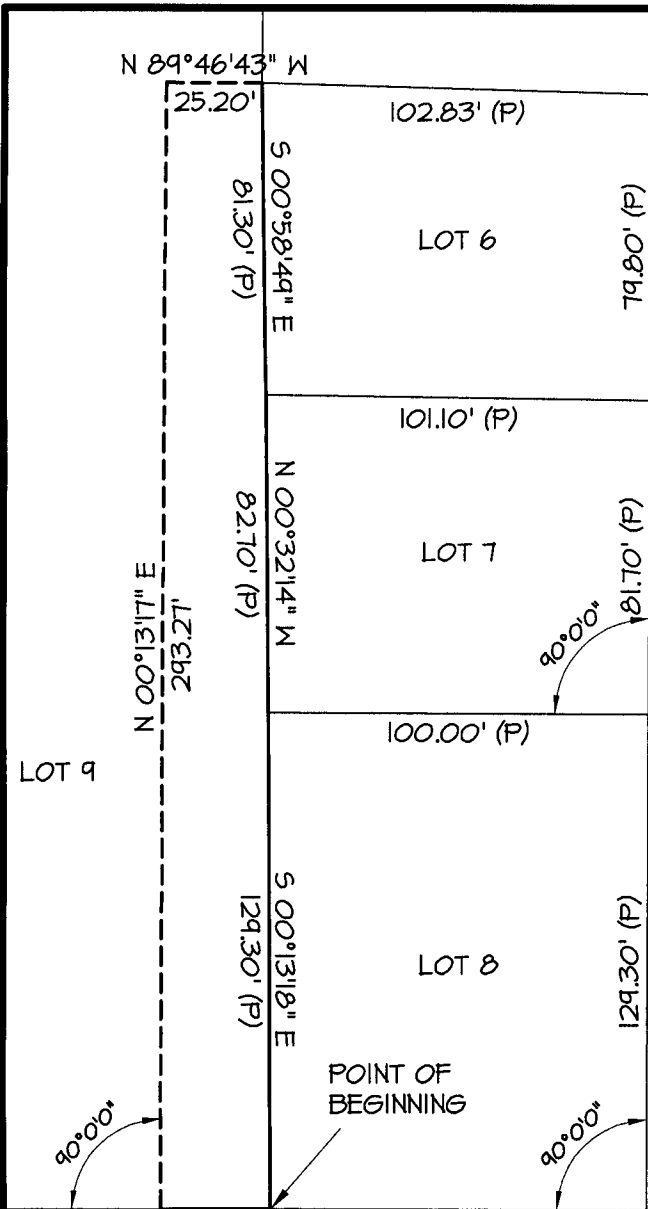
Please advise if additional information is needed.

Sincerely,



Dennis Bennett
Lincoln Auto Auction

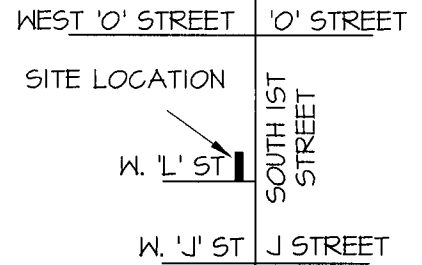




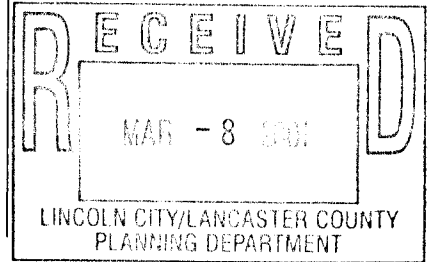
N 00°13'17" E
293.27'

100' ROW

SOUTH 1ST STREET



VICINITY MAP



LEGAL DESCRIPTION

BEGINNING AT THE SOUTHEAST CORNER OF LOT 9 OF UNION LAND COMPANY SUBDIVISION, LINCOLN, LANCASTER COUNTY, SECTION 27 TION, R6E OF THE 6th P.M.;

THENCE ON AS ASSUMED BEARING OF N 89 46'43" W A DISTANCE OF 29.00 FEET;

THENCE ON AS ASSUMED BEARING OF N 00 13'17" W A DISTANCE OF 293.27 FEET;

THENCE ON AS ASSUMED BEARING OF S 49 46'43" E A DISTANCE OF 25.20 FEET, TO THE NORTHEAST CORNER OF LOT 6;

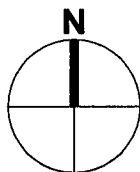
THENCE ON AS ASSUMED BEARING OF S 00 58'49" E A DISTANCE OF 81.30 FEET, TO THE NORTHEAST CORNER OF LOT 7;

THENCE ON AS ASSUMED BEARING OF S 00 32'14" W A DISTANCE OF 82.70 FEET, TO THE NORTHEAST CORNER OF LOT 8;

THENCE ON AS ASSUMED BEARING OF S 00 13'18" E A DISTANCE OF 129.30 FEET TO THE POINT OF BEGINNING.

SAID AREA CONTAINS 0.18 ACRES.

WEST 'L' STREET



SCALE: 1" = 50'

sheet no.

1 OF 1

DESIGN ASSOCIATES OF LINCOLN, INC.



1609 "N" STREET
LINCOLN, NEBRASKA 68508
PHONE:(402) 474-3000
FAX:(402) 474-4045
desassoc@inebraska.com

project no.

Blank project number and name fields.

SOUTH 1ST ST. AND WEST 'L' ST.

**CHANGE OF ZONE
LINCOLN, NEBRASKA**

date

08 MAR 01

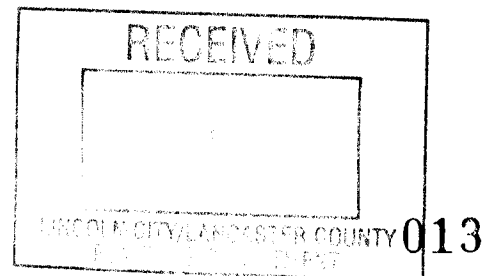
issued:



Memorandum

To: Ray Hill, Planning Department → *KAY*
From: Charles W. Baker, Public Works and Utilities *sub*
Subject: Change of Zone # 3315
Date: March 13, 2001
cc: Roger Figard, Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the request for the Change of Zone from R-4 to I-1 on the parcel of property described as Lot 9, Union Land Company Subdivision located at 1st and "L" Streets. Public Works has no objections.



Lincoln



Nebraska's Capital City

March 22, 2001

Kathleen Sellman, AICP, Director
Lincoln Lancaster County Planning Department
555 S. 10th St.
Rm 213
Lincoln, NE 68508

Dear Kathleen:

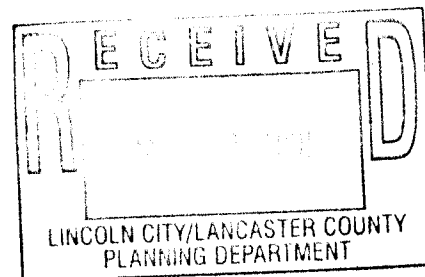
I am writing on behalf of the Urban Development Department regarding the petition to amend the zoning ordinance from R-4 to I-1 at South 1st and West "L" Street (Change of Zone No. C2 3315). Staff visited the site and reviewed the South Salt Creek Target Area Plan (prepared in cooperation between the South Salt Creek Community Organization and the City of Lincoln, Urban Development Department). A goal of that plan is to provide a buffer between conflicting land uses. The area requested for rezoning is adjacent to a row of single family homes, providing a buffer to the industrial use to the west. Extending the I-1 zone as requested would eliminate the buffer between the existing residential homes and industrial uses. If approved, industrial zoning would abut the existing homes in the area with no buffer at all - industrially zoned lots would be adjacent to residential lots with nothing in-between. Since this is in direct conflict with the neighborhood and Urban Development's goal of protecting residential areas from conflicting land uses, the Urban Development Department is opposed to the rezoning and recommends the request be denied.

Please feel free to contact me at 441-8211 or by e-mail at whjernstad@ci.lincoln.ne.us if you have questions. Thank you for the opportunity to comment on this request for rezoning.

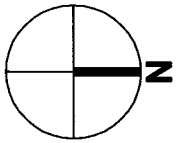
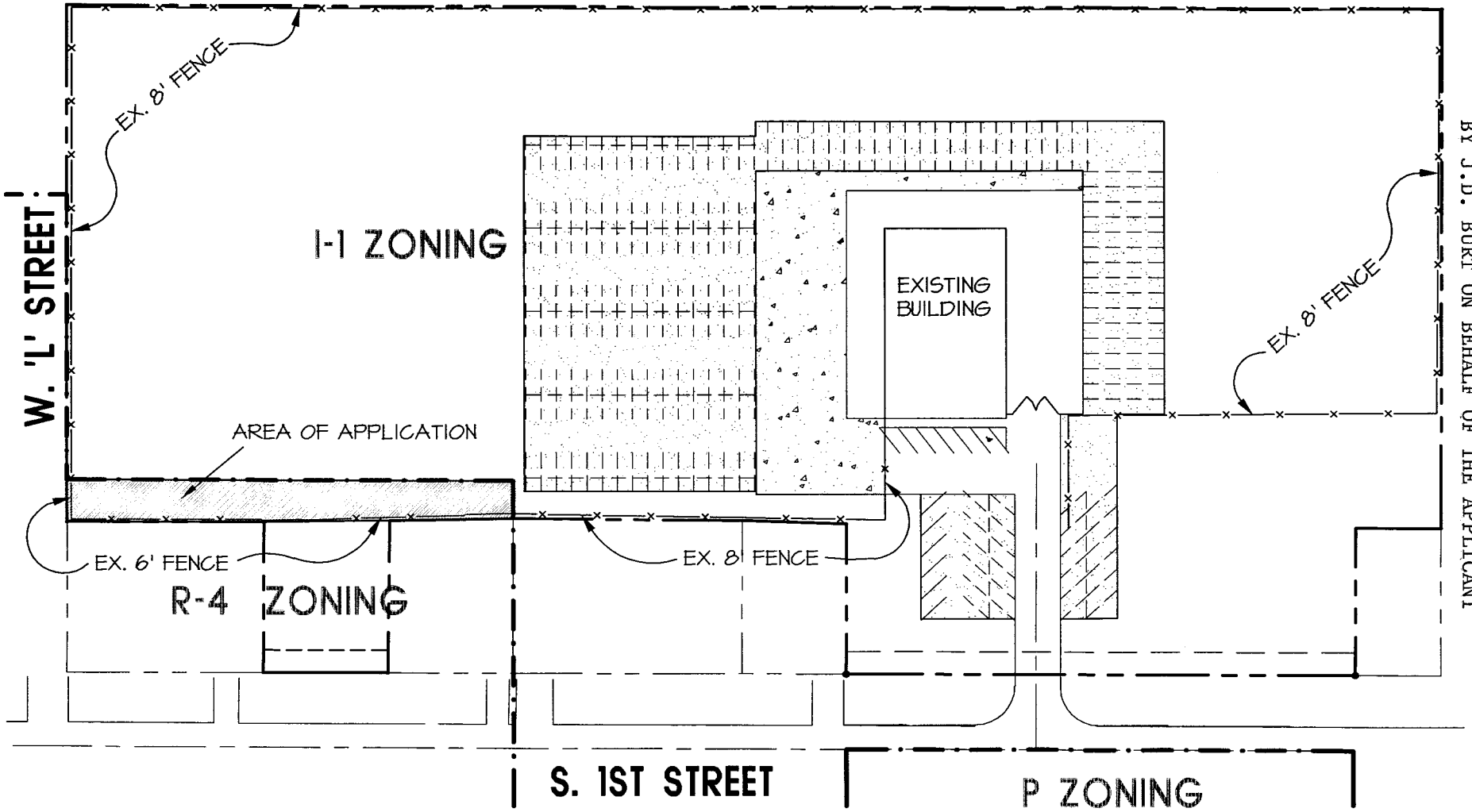
Sincerely,

Wynn S. Hjernstad, AICP
Community Development Manager

cc: Steve Larrick, President, SSCO
Marc Wullschlegler, Director, Urban Development Dept.



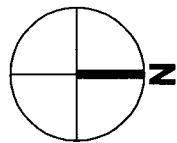
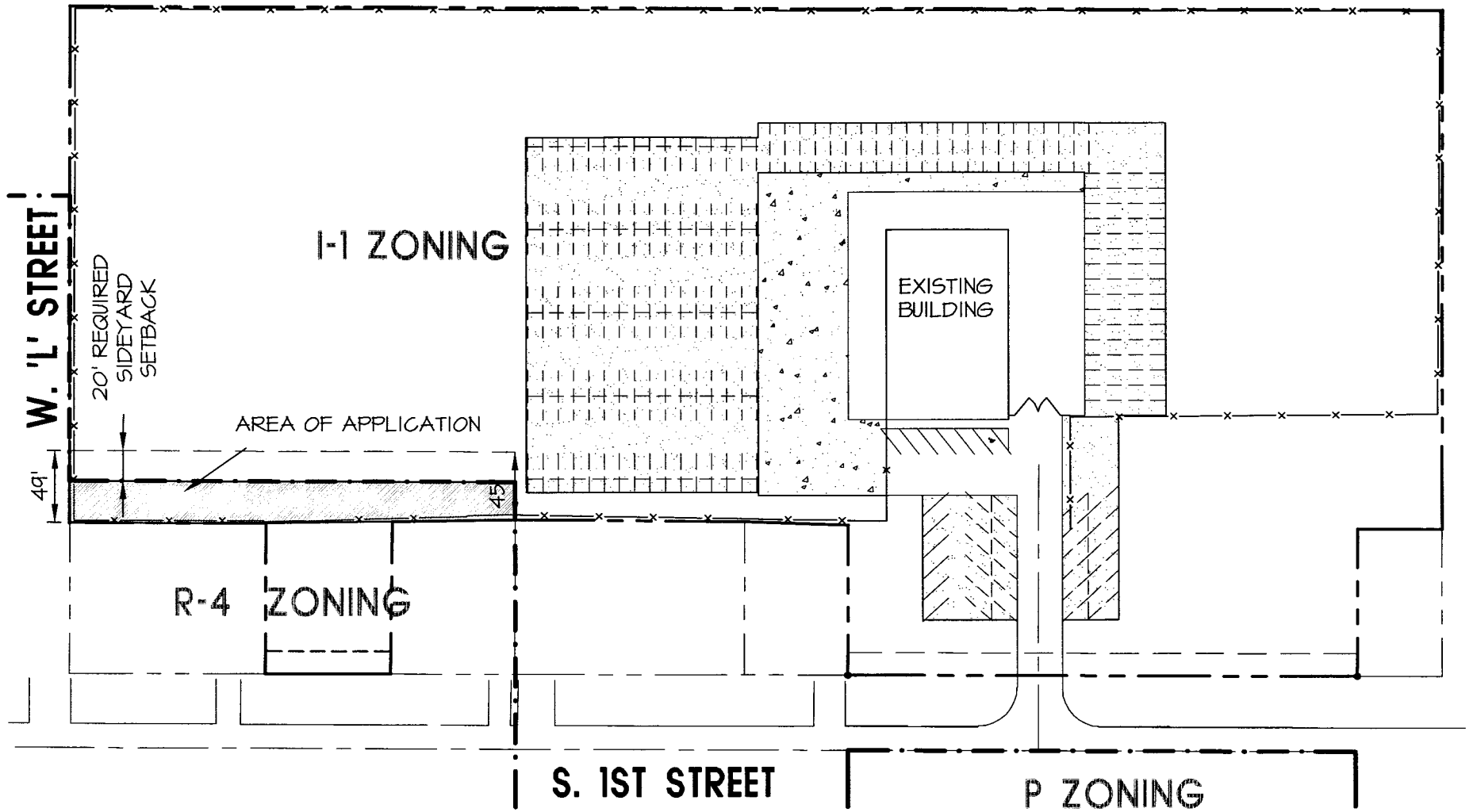
014



**LINCOLN AUTO AUCTION
CHANGE OF ZONE #3315**

SCALE: 1" = 100'

EXISTING CONDITIONS



**LINCOLN AUTO AUCTION
CHANGE OF ZONE #3315**

SCALE: 1" = 100'

EXISTING SETBACK