

City Council Introduction: Monday, September 8, 1997  
Public Hearing: Monday, September 15, 1997, 1:30 p.m.

Bill No. 97-142

## FACTSHEET

TITLE: CHANGE OF ZONE NO. 3076, from AG Agricultural to H-4 General Commercial, requested by Dustrol, Inc., on property generally located on the south side of Arbor Road, west of North 56th Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission  
Public Hearing: 08/27/97  
Administrative Action: 08/27/97

STAFF RECOMMENDATION: Denial.

RECOMMENDATION: Denial. (6-1: Bayer, Bleed, Heier, Hopkins, Duvall, and Steward voting 'yes'; Schwinn voting 'no'; Wilson and Magruder absent).

STAFF PRESENTATION REQUESTED: No.

### FINDINGS OF FACT:

1. The Planning staff recommendation of denial is based upon the "Analysis" as set forth on p.003-005.
2. This applicant's testimony is found on p.010-011; 012-013. The proposed use is trucking business, including the storage and servicing of vehicles, which use does not require a great deal of water and sewer.
3. Rob Otte testified in opposition on behalf of the property owners to the north of the proposed site. The opposition is concerned about the rural character of the area; truck traffic on Arbor Road; depreciation of property values; and dust and noise on Arbor Road. (See Minutes p.011).
4. The Planning Commission discussed the necessity for a subarea plan as opposed to spot zoning (See Minutes p.011-013), and voted 6-1 to agree with the staff recommendation to deny this change of zone (Commissioner Schwinn dissenting).
5. The Planning Commission also formally directed staff to include a subarea plan for North 56th Street in the next Annual Review of the Comprehensive Plan.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: September 2, 1997

REVIEWED BY: \_\_\_\_\_

DATE: September 2, 1997

REFERENCE NUMBER: FS\CC\FSCZ3076/jlw



SPECIFIC INFORMATION:

UTILITIES: None available. This area is outside of the future urban service area shown in the Comprehensive Plan.

TOPOGRAPHY: Sloping down to the south.

TRAFFIC ANALYSIS: Arbor Road is a gravel road. The Comprehensive Plan shows Arbor Road as Potential Paving. The Lancaster County Road and Bridge Construction Program Fiscal Year 1997 shows engineering improvements scheduled for Arbor Road west of 56th in the 1 year plan and grading in the 6 year plan.

PUBLIC SERVICE: This area is served by the Waverly School District, the Raymond Rural Fire District, and is in the LES service area.

REGIONAL ISSUES: Entrance to the city. This is in an identified Capitol view corridor.

ENVIRONMENTAL CONCERNS: There are no Historic or Ecological resources identified on or near this site. The soil rating is 4.5. A rating of 1 to 4 is prime. This is not prime agriculture soil. There is a small drainageway and wetlands to the east of this parcel.

AESTHETIC CONSIDERATIONS: This site is at the Interstate 80\Hwy 77 interchange and is along an entry-way corridor into the city.

ALTERNATIVE USES: Agricultural uses.

ANALYSIS:

1. This request is to rezone a 21.35 acre parcel from AG Agriculture to H-4 General Commercial.
2. This is not in compliance with the Land Use Map. Where an application is not consistent with the Plan maps, the review assessment includes a review of the statutory criteria of securingsafety from dangers and promoting the general health, safety, and general welfare with consideration to the character of the area zoned, their peculiar suitability for uses and types of development, conserving property values, and encouraging the most appropriate use of the land, in accordance with a comprehensive plan, and the following additional zoning criteria;
  - a. Infrastructure: the availability of the water, sewer, drainage and the transportation systems.

No urban or rural water, sewer or drainagesystem is available. Ground water in this area is generally of poor quality, with high salt, manganese and total dissolved solids. Some businesses in the area are using bottled water.

- b. Compatibility: harmony and suitability with the surrounding land uses and the natural environment.

The proposed district uses are not in harmony with or suitable to the surrounding ag and residential land uses to the south and west, they are for the H-1 and H-4 zoning to the east and northeast of this site and the Interstate further to the north.

- c. Health and safety: protection against natural and man-made hazards including noise; air, ground and water pollution; flooding; and hazards from industrial or agricultural processes or products.

There are some hazards at this site, including noise and pollution from I-80, Hwy 77\56th street and from farming operations.

- d. Physiographic features: the topography, suitability of proposed land uses with streams, lakes, soil types, natural vegetation of wildlife habitat.

There is an area of tree mass and drainage to the east of this site. There are no other identified unique natural features, topography, or habitat on this site.

- e. Accessibility: availability, or lack thereof, of public transportation, arterial connections and pedestrian linkages.

Accessibility is via I-80, Highway 77/ N. 56th. Arbor road is currently a gravel county road, shown for future paving in the Comprehensive Plan. The County One and Six Road Program shows this for engineering in the one year program and grading in the six year program. No public transit or pedestrian linkages are available.

- f. Open Space: availability of sufficient open space and recreational areas to accommodate a project's residents and employees.

Parks and open space are not available in the immediate vicinity. Boosalis Park and the Hazel Abel soccer fields are about one mile to the south.

- g. Fiscal Impacts: whether the proposed use does not create a burden to local tax revenues and /or available resources.

There are no apparent major fiscal impacts in this request.

- 3. This proposal abut existing commercial zoning and is in an area where commercial zoning was approved in 1994, 1996 and 1997 (with staff recommendations of denial). Zoning change has blossomed at this intersection. This commercial zoning request was anticipated with the last change of zone requests. Continued requests in the area could reasonably be expected if this is approved.

4. This proposal is in conflict with several adopted Goals of the community ,such as, "Discourage strip development and spot zoning" and "Protect and improve important vistas and entryways to the city".
5. This area is not planned for future city expansion or extension of utilities. Nor is it one of the "employmentcenters" reviewed by the City and the Chamber. Expansion of growth and services north of Salt Creek to the Interstate has been discussed during the development of the Plan and specifically denied. This is premature at this time.
6. Continued approval of commercial zoning outside the City creates a circumstance of business that does not contribute to the tax base or sales tax base of Lincoln and to the disadvantage of those businesses in Lincoln.
7. Approval of this request would encourage additional requests for a commercial zoning at this location. A study of the cost and responsibilities of extending city service to the area and annexing it has yet to be initiated.
8. The existing AG zoning is both reasonable and appropriate.
9. Considerable vacant zoned land now exists at this intersection.

STAFF RECOMMENDATION:

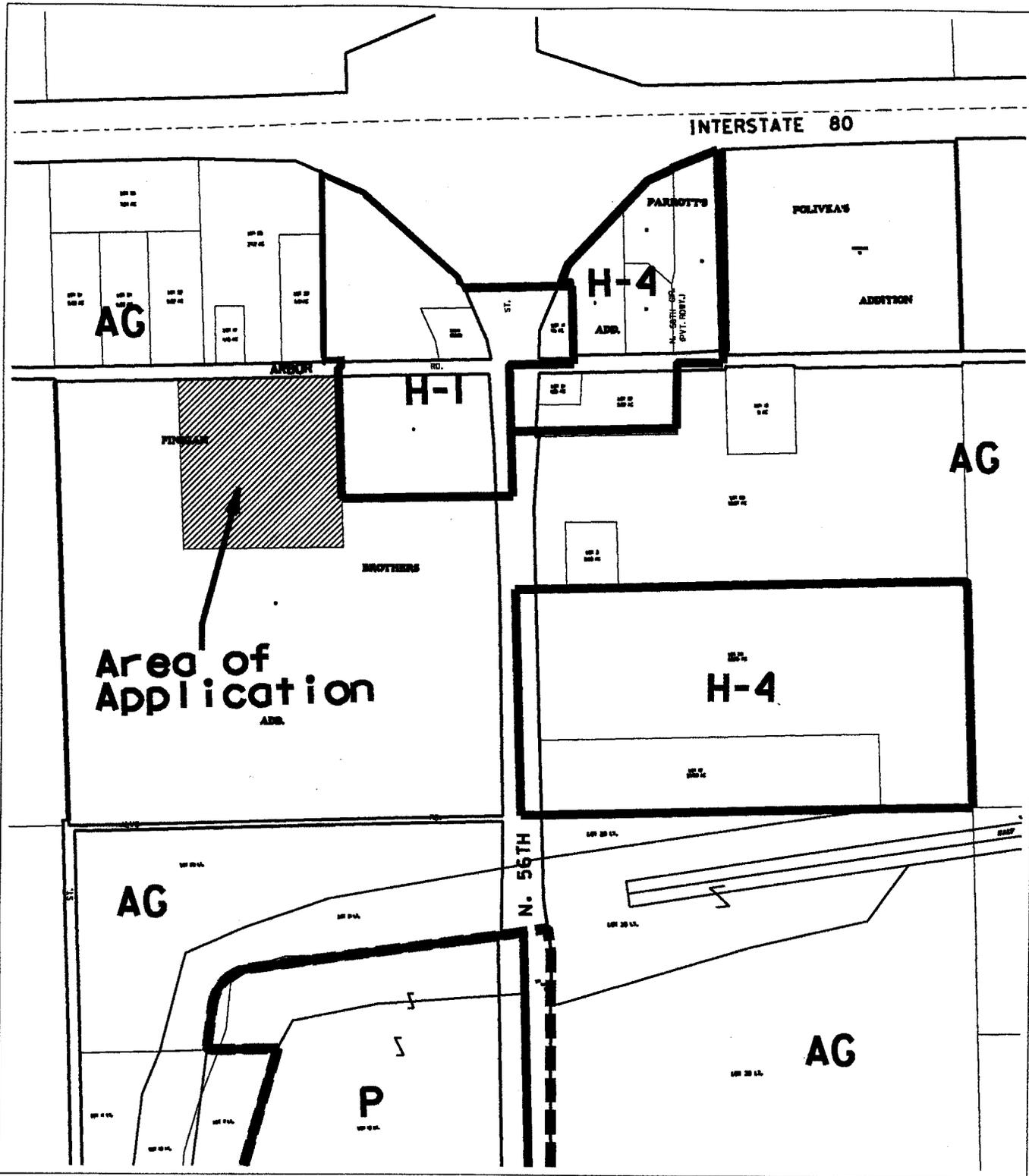
Denial

Prepared by:

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Michael V. DeKalb AICP  
Planner

pc\cz\cz3076.md



**Change of Zone # 3076**

**Zoning:**

- R-1 to R-8 Residential District
- AC Agricultural District
- AGR Agricultural Reservation 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-4 Planned Industrial Reserve District
- P Public Use District



Scale: 1" = 800'  
 Sheet: 1 of 3  
 Date: 8/5/97

006



North

Scale: \_\_\_\_\_

Sheet: 2 of 3

Date: \_\_\_\_\_

Drawn by: \_\_\_\_\_

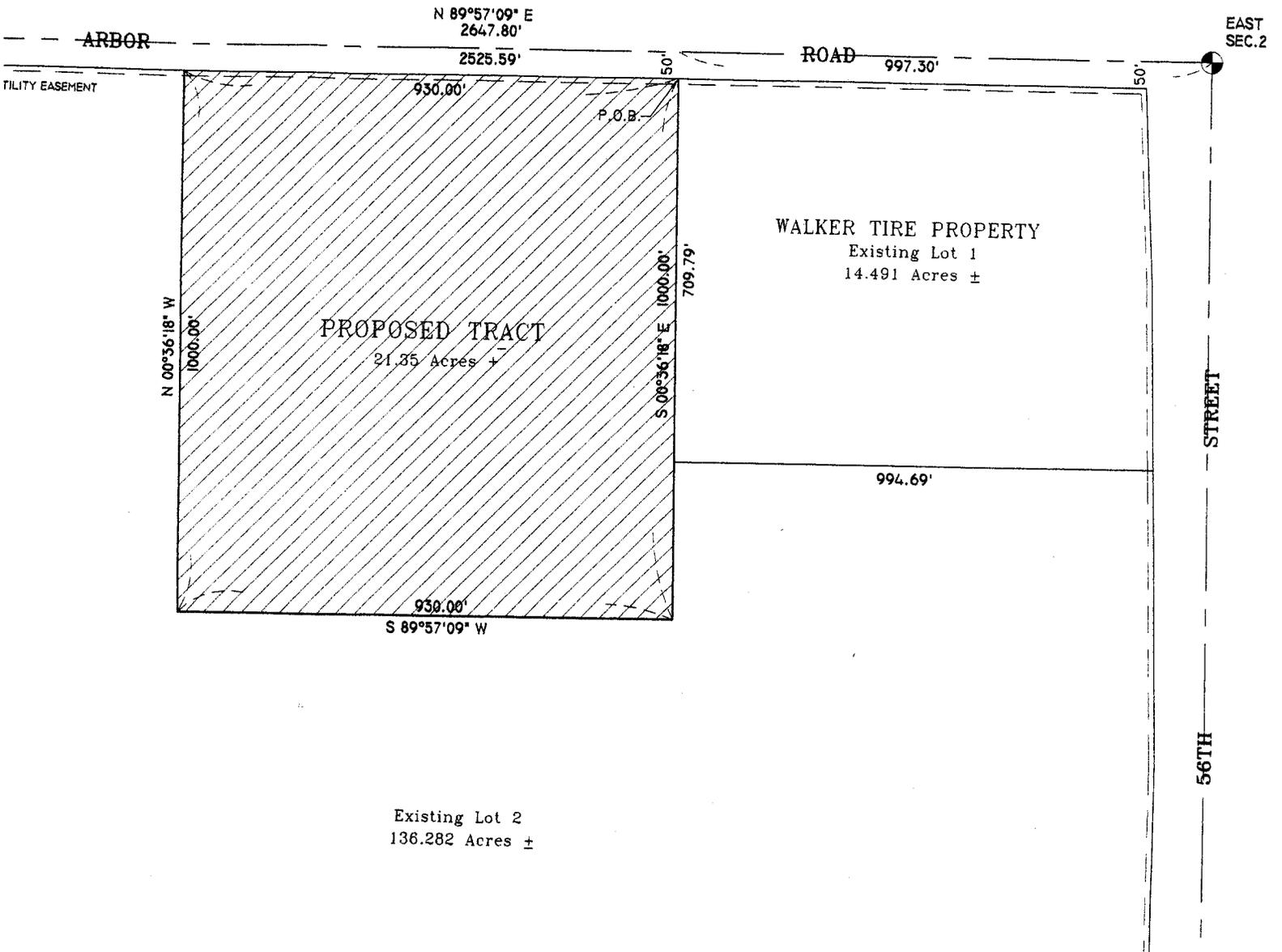
ARBOR RD.

Area of Application

Change of Zone 3076  
SW corner of N. 56th & Arbor  
AG to H-4

0007

PROPOSED TRACT IN  
**FINIGAN BROTHERS ADDITION**  
 LANCASTER COUNTY, NEBRASKA



**Change of Zone 3076**  
 SW corner of N. 56th & Arbor  
 AG to H-4

Scale: \_\_\_\_\_  
 Sheet: 3 of 3  
 Date: \_\_\_\_\_  
 Drawn by: \_\_\_\_\_

  
 North  
 008



SCALE 1" = 200'  
JULY 10, 1997

### PROPOSED TRACT DESCRIPTION

A TRACT OF LAND WHICH IS A PART OF LOT 2 FINIGAN BROTHERS ADDITION IN THE SE 1/4 SECTION 29, TOWNSHIP II NORTH, RANGE 7 EAST, 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, FURTHER DESCRIBED AS:

COMMENCING AT THE NORTHEAST CORNER SAID SOUTHEAST 1/4 THENCE WESTERLY, ALONG NORTH LINE SAID SE 1/4 ON AN ASSUMED BEARING OF S 89°57'09" W, A DISTANCE OF 997.30 FEET; THENCE S 00°36'18" E, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING. SAID POINT OF BEGINNING BEING ALSO THE NORTHWEST CORNER LOT 1, FINIGAN BROTHERS ADDITION; THENCE CONTINUING S 00°36'18" E, A DISTANCE OF 1000.00 FEET ALONG WEST LINE SAID LOT 1 EXTENDED SOUTHERLY; THENCE S 89°57'09" W, A DISTANCE OF 930.00 FEET; THENCE N 00°36'18" W, A DISTANCE OF 1000.00 FEET TO A POINT ON NORTH LINE SAID LOT 2; THENCE EASTERLY, ALONG SAID NORTH LOT LINE, N 89°57'09" E, A DISTANCE OF 930.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 21.35 ACRES, MORE OR LESS, BY COMPUTATION, SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

N 00°47'01" W  
2635.69'  
2585.68'

## CHANGE OF ZONE NO. 3076

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 27, 1997

Members present: Bayer, Bleed, Heier, Hopkins, Duvall, Schwinn and Steward;  
Wilson and Magruder absent.

Planning staff recommendation: Denial.

### Proponents

1. Mark Hunzeker appeared on behalf of Dustrol, Inc., regarding this request to rezone property just west of the intersection of 56th & Arbor Road. Arbor Road is scheduled to be paved in this fiscal year, and the proposed use for the property is a couple of different businesses involved in trucking, both of which would be storing vehicles and servicing vehicles at this location. They are fairly land intensive type uses which do not need a lot of building area. Unlike the previous application on the north side, they will not require a great deal of sewer or water usage. This area is ideally suited for this use with great access to the highway and it is a use that will ultimately be one which is very compatible with other uses we anticipate will develop around it. Staff will consider a subarea plan for this area in the next Comprehensive Plan update, but this area south of Arbor Road and west of No. 56th seems obvious to be commercial and not residential.

Mr. Hunzeker agreed that the subject property is not designated in the Comprehensive Plan; however, the uses are compatible with what is there and the likelihood of this area being AG or residential is not there.

Bleed inquired whether the proposed uses could be done by special permit. Mr. Hunzeker does not believe so. It is not a special permitted use in the AG district. It just takes so much land for that kind of use that the existing location for both businesses is currently overcrowded and they need room to expand their operation to service and store their vehicles.

Bayer asked whether the owners on the two sides of the road are related parties? Mr. Hunzeker believes they are under the same ownership for the most part and most of the property on the north side is owned by the same property owner on the south. The previous application was H-1, which only allowed hotels, motels, service stations and restaurants. Those uses require quite a bit of water and potential sewer treatment; that was a concern raised with respect to that zoning district to the north side and legitimately so. This use does not need the water and sewer.

Bayer inquired about a subarea plan. Mr. Hunzeker responded that when the previous application was on the agenda he recalls there was a direction to consider

this area in the Comprehensive Plan update for commercial use, with the idea that in doing so there would be some thought given to getting sewer and water extended.

Bayer is not opposed, but he believes this is an ideal area for a subarea plan. It would be really neat to have a whole package as opposed to piecemeal like this. Mr. Hunzeker stated that they attempted to do some things on the east side and because of the lack of a plan in place for sewer and water, there were some real concerns about zoning these areas without infrastructure. Most of these uses don't need it and that's why these applications are coming forward. The availability of this type of property for these uses is not real plentiful. They need a lot of land for low intensity use.

### Opposition

1. **Rob Otte**, attorney for **Lori and Dennis Knaub**, testified in opposition. The property owned by his clients is immediately to the north of the proposed site and is residential on slightly more than 5 acres. The Commission must consider 1) the personal affect this will have on his clients and the other residents on the north side of the road; and 2) whether or not this makes good planning sense. This has been their home for a long period of time; it has been rural in character; this kind of truck traffic is not designed to go on Arbor Road. In addition, Mr. Otte is not of the understanding that Arbor Road will be paved very soon. If the zoning is changed, it depreciates his client's property values. The dust and noise on the road needs to be considered in making the decision on this change of zone.

Mr. Otte's clients support the planning staff recommendation of denial. This is not included in the Comprehensive Plan. There are over 100 acres of H-4 zoned property in this area, next to this intersection. It does not make sense to go ahead and spot zone this location for an H-4 use when four or six blocks away there are 60 to 80 acres of zoning that they desire that is available.

In addition, Mr. Otte suggested that if this zone is changed, it encourages additional and more aggressive change of zone applications, resulting in zoning as it happened as opposed to zoning through planning.

Mr. Otte pointed out, also, that there is no infrastructure in this area and the use would be outside the city limits. Does this represent good planning? Mr. Otte submitted that at this point it represents spot zoning and is not good planning.

### Staff questions

Bayer inquired about the process with respect to time and work effort to put together a subarea plan. Tim Stewart, Director of Planning, explained that the subarea planning process can be initiated by the staff or initiated by private sector group or groups. In this particular case, Mr. Stewart believes the Commission gave

pretty clear direction that the staff should take a look at a subarea plan for this area and the staff has been studying this area for quite some time as part of the Direction of Growth study and last year's annual review. He suggested that the Commission may see something in this year's annual review in January, 1998. The subarea plan deals with the future service limits and the provision of water, sewer and other infrastructure as part of the city's growth. We haven't begun the dialog with the property owners on the appropriate land uses in this area nor have we talked about this with the other city departments. Staff believes this change of zone is a premature change and recommends denial. The Annual Review process will look at potential expansions of the urban service limit. The north area was recommended by staff last year to be appropriate for urbanization in the long term; however, the staff was directed to hold that until other studies, including the Beltway study, further develop. Staff is continuing to study it. To be assured that it would be on the Annual Review, the property owners could specifically request that. He does not believe any formal requests have been made in the 56th & I-80 area for adjustments to the plan thus far.

Steward believes he called for a subarea plan effort when the north property was being reviewed by the Commission and the Commission had an excellent discussion at that time about the pressures, intensity and the logic of what is being asked for. Now we have another spot zone action with no Comprehensive Plan to guide us, no subarea plan to guide us and no infrastructure installation of utilities to guide us. Mr. Stewart agreed to address this subarea plan issue as part of the annual review. However, he would like to have formal direction from the Commission in terms of a motion so that it doesn't get lost.

Mike DeKalb of Planning staff clarified that Arbor Road is shown in the Comprehensive Plan as "long range potential paving". It is also shown in the County Engineer's one and six year plan for grading and engineering but not for paving; the County Engineer has no plans for paving Arbor Road west of 56th Street.

#### Response by the Applicant

Mr. Hunzeker apologized for stating that Arbor Road would be paved--he misread the report. However, this property is not going to be residential development--it is going to be commercial or industrial. He understands the desire to have a broader brush approach and to deal with these things on a larger scale, but at this point, this intersection has been in place as a four-lane divided highway from both directions for 25 years; it should not be a surprise that there is this type of pressure for development. He suggests that the city is behind the curve on the comprehensive planning aspect. It's a situation where the concern relative to applications encouraging more applications, misstates what really happens. What really happens is a demand for this type of property that is real and people who need it are asking for it. Mr. Hunzeker understands the concern with respect to the overall planning, but this is the type of use that is inevitably going to develop in

this area and he believes it is compatible with the zoning that is there and will be there in the future.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 27, 1997

Steward moved to deny, seconded by Bleed.

Steward believes the subarea planning process is critical in this circumstance and he would support staff in the principle that this is an act of spot zoning. He does not deny that this is ultimately probably a reasonable and appropriate use, but it impinges upon already existing uses as well as future uses. It is not in the city limits; it is not in the Comprehensive Plan; there are no public utilities. We have the responsibility to do the best we can to accelerate the process to accommodate the demand. He does not agree that we should have been ahead of the curve. The subarea planning process is a vehicle to respond to the market when the market shows evidence that it is putting pressure on the decision.

Bleed agrees with Steward, adding that she has problems putting in zoning which has certain "by right" uses that would potentially require water and sewer. We should not put in that zoning until we have a plan to provide services to it. She might be more open to a special permit in AG, but that does not appear to be an option.

Bayer will support the motion to deny because he really thinks this could be a neat part of town and he would like some hotels there, but we can't have them because we don't have a subarea plan with sewer and water. If the subarea plan has not been addressed by February, he will support this change of zone.

Motion to deny carried 6-1: Bayer, Bleed, Heier, Hopkins, Steward and Duvall voting 'yes'; Schwinn voting 'no'; Wilson and Magruder absent.