

FACTSHEET

TITLE: **LETTER OF APPEAL** filed by Richard K. Bollerup on behalf of Sutherland Park Partners, L.L.C., appealing the action of the Lincoln City-Lancaster County Planning Commission which denied **SPECIAL PERMIT NO. 1964**, requested by Richard K. Bollerup on behalf of Sutherland Park Partners, L.L.C., for authority to construct a private school for tumbling, dance, cheerleading and gymnastics, on property located at 4001 South 8th Street, generally located at So. 8th & Pioneers Blvd.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 04/17/02
Administrative Action: 04/17/02

RECOMMENDATION: Denial (6-2: Newman, Steward, Larson, Carlson, Taylor and Schwinn voting 'yes'; Duvall and Bills-Strand voting 'no'; Krieser absent).

STAFF RECOMMENDATION: Denial

FINDINGS OF FACT:

1. The staff recommendation to **deny** this special permit request is based upon the "Analysis" as set forth on p.10-12, concluding that the request is not in conformance with the Comprehensive Plan and creates a potential exposure of risk of children to hazardous materials.
2. The testimony by the applicants and their representative is found on p.15-19. Other testimony in support is found on p.19 and the record consists of one letter in support (p.41). The applicant requested amendments to the proposed conditions of approval (delete Condition #2; add language to Condition #3; and amend Conditions #4.1.1.10 and #4.1.1.11 accordingly – See Minutes, p.18-19). The applicant contends that this use is allowed in the I-1 Industrial District by the ordinance and the ordinance provides a means to make reasonable accommodations to address the health issues.
3. Testimony in opposition by representatives of the Lincoln-Lancaster County Health Department is found on p.19-21. The additional information provided by the Health Department subsequent to the issuance of the staff report is found on p.38-40. The Health Department submitted Material Safety Data Sheets (p.43-112) listing the hazardous materials located at the Cornhusker State Industries site. The Health Department is opposed to locating this use in this I-1 Industrial District based upon its proximity to the storage and transfer of hazardous materials.
4. The applicant's response to the opposition is found on p.21-22.
5. The Planning Commission discussion with staff is found on p.22.
6. On April 17, 2002, the Planning Commission agreed with the staff recommendation and voted 6-2 to **deny** Resolution No. PC-00741 (p.3-8), Commissioners Duvall and Bills-Strand dissenting (See Minutes, p.22-23).
7. On April 19, 2002, Richard K. Bollerup filed a letter of appeal with the City Clerk (p.2).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: April 29, 2002

REVIEWED BY: _____

DATE: April 29, 2002

REFERENCE NUMBER: FS\CC\2002\SP.1964 Appeal

BOLLERUP & HUXOLL, P.C.

Law Offices

A Limited Liability Organization

3930 South Street, Suite 101

Lincoln, Nebraska 68506

U.S. Bank Building

40th & South Streets

RICHARD K. BOLLERUP
JENNIFER A. HUXOLL
TERESA TRUKSA SKRETTA

PHONE: (402) 441-0000

FAX: (402) 441-0000

FILED
CITY OF LINCOLN
APR 19 AM 10 53
CITY OF LINCOLN
NEBRASKA

April 18, 2002

City Clerk
555 S. 10th St.
Lincoln, NE 68508

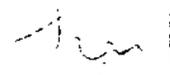
RE: Appeal of Special Permit Application #1964; Nova Sports private school

To whom it may concern:

Please accept this letter as our Notice of Appeal of the decision of the Lincoln, Lancaster County Planning Commission with regard to the above-referenced special permit application. Planning Commission took action on this matter at its regular meeting of April 17, 2002. We request that the matter be appealed to the city council for further review and action.

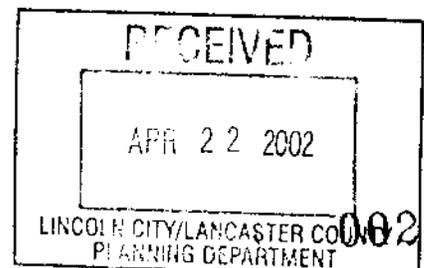
Please contact me immediately if you need anything further from me in order to perfect this appeal.

Sincerely,



Richard K. Bollerup
Attorney at Law

RKB:lk
cc: Jean Walker
Jim Hutchinson



**PLANNING COMMISSION FINAL ACTION
NOTIFICATION**

TO : Mayor Don Wesely
Lincoln City Council

FROM : Jean Walker, Planning 

DATE : April 18, 2002

RE : **Special Permit No. 1964**
(Private school for tumbling, dance, cheerleading and gymnastics at
4001 South 8th Street)
Resolution No. PC-00741

The Lincoln City-Lancaster County Planning Commission took the following action at their regular meeting on Wednesday, April 17, 2002:

Motion made by Newman, seconded by Carlson, to agree with the staff recommendation to **DENY Special Permit No. 1964**, requested by Sutherland Park Partners, L.L.C., for authority to construct a private school for tumbling, dance, cheerleading and gymnastics, on property located at 4001 South 8th Street. Motion to deny carried 6-2: Newman, Steward, Larson, Carlson, Taylor and Schwinn voting 'yes'; Duvall and Bills-Strand voting 'no'; Krieser absent.

The Planning Commission's action is final, unless appealed to the City Council by filing a Letter of Appeal with the City Clerk within 14 days of the date of the action by the Planning Commission.

Attachments

cc: Building & Safety
Rick Peo, City Attorney
Public Works
Richard K. Bollerup, 3930 South Street, 68506
Sutherland Park Partners, L.L.C., 1645 N Street, 68506

i:\shared\wp\jlu\2002 ccnotice.sp\sp.1964-denial

RESOLUTION NO. PC- 00741

SPECIAL PERMIT NO. 1964

1 WHEREAS, Sutherland Park Partners L.L.C. has submitted an application
2 designated as Special Permit No. 1964 for authority to construct a private school for
3 tumbling, dance, cheerleading and gymnastics on property located at 4001 South 8th
4 Street, and legally described to wit:

5 Lot 1, Block 1, Sutherland Park 1st Addition, Lincoln,
6 Lancaster County, Nebraska;

7 WHEREAS, the Lincoln City-Lancaster County Planning Commission has
8 held a public hearing on said application; and

9 WHEREAS, the community as a whole, the surrounding neighborhood,
10 and the real property adjacent to the area included within the site plan for this
11 dance/gymnastics school will not be adversely affected by granting such a permit; and

12 WHEREAS, said site plan together with the terms and conditions
13 hereinafter set forth are consistent with the comprehensive plan of the City of Lincoln
14 and with the intent and purpose of Title 27 of the Lincoln Municipal Code to promote the
15 public health, safety, and general welfare.

16 NOW, THEREFORE, BE IT RESOLVED by the Lincoln City-Lancaster
17 County Planning Commission of Lincoln, Nebraska:

18 That the application of Sutherland Park Partners L.L.C., hereinafter
19 referred to as "Permittee", to construct a private school for tumbling, dance,
20 cheerleading and gymnastics be and the same is hereby granted under the provisions
21 of Section 27.63.075 of the Lincoln Municipal Code upon condition that construction of

1 said dance/gymnastics school be in strict compliance with said application, the site
2 plan, and the following additional express terms, conditions, and requirements:

3 1. This permit approves a private dance/gymnastics school for 207
4 students and 10 staff on Lot 1, Block 1, Sutherland Park 1st Addition.

5 2. The Permittee agrees to terminate the use of the premises as a
6 private school within sixty days following receipt of notification from the building official
7 that hazardous materials are being stored on property within 300 feet of the building
8 used for the private school.

9 3. The Permittee shall not allow the storage or use of hazardous
10 materials on the premises of the special permit.

11 4. Before receiving building permits:

12 a. The Permittee shall complete the following instructions and
13 submit the documents and plans to the Planning Department
14 office for review and approval.

15 i. A revised site plan including five copies showing the
16 following revisions:

17 (1) Include only parking stalls that will be
18 constructed. Remove references to proposed
19 stalls.

20 (2) Remove parking stalls that do not meet Design
21 Standards.

22 (3) Indicate stalls required and stalls provided.

23 (4) Indicate landscaping materials and
24 specifications.

25 (5) Indicate sidewalks and street trees as
26 approved on the preliminary plat.

- 1
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
20
21
22
23
24
25
26
27
28
29
30
31
32
33
- (6) Remove references to contract area as the special permit will cover the entire lot.
 - (7) Correct the legal description.
 - (8) Remove references to area separation walls and the Uniform Building Code and site plan notations.
 - (9) Add a general site note indicating that the use of the building will comply with all applicable building and life safety codes.
 - (10) Add a note to the site plan to indicate that, should hazardous materials be located within the area of the special permit, the Permittee shall immediately terminate the use of the premises as a private school to the satisfaction of the Lincoln-Lancaster County Health Department and Law Department.
 - (11) Add a note to the site plan indicating that the building shall have an emergency shut-off switch for the ventilation system in case of a hazardous chemical spill in the area to the satisfaction of the Lincoln-Lancaster County Health Department.
 - (12) Add a note to the site plan indicating that the special permit shall be automatically terminated within sixty days following receipt of notification from the building office that hazardous materials are being stored on property within 300 feet of the building used for the private school.
 - (13) Provide an evacuation plan, in the event of a hazardous materials spill, to the satisfaction of the Lincoln-Lancaster County Health Department.

34 ii. A permanent final site plan with five copies as
35 approved.

36 b. The construction plans must conform to the approved plans.

1 c. The required easements as shown on the site plan must be
recorded with the Register of Deeds.

3 d. All development must comply with floodplain regulations.

4 5. Before occupying this private dance/gymnastics school all
5 development and construction must conform to the approved plans.

6 6. All privately-owned improvements, including landscaping, must be
7 permanently maintained by the Permittee.

8 7. The operation must meet appropriate local and state licensing
9 requirements.

10 8. The site plan, approved by this permit, shall be the basis for all
11 interpretations of setbacks, yards, locations of buildings, location of parking and
12 circulation elements, and similar matters.

13 9. The terms, conditions, and requirements of this resolution shall be
14 binding and obligatory upon the Permittee and the Permittee's successors and assigns.
15 The building official shall report violations to the City Council which may revoke the
16 special permit or take such other action as may be necessary to gain compliance.

17 10. The Permittee shall sign and return the City's letter of acceptance
18 to the City Clerk within 30 days following approval of the special permit, provided,
19 however, said 30-day period may be extended up to six months by administrative
20 amendment. The City Clerk shall file a copy of the resolution approving the special
21 permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be
22 paid in advance by the Permittee.

1
2

The foregoing Resolution was approved by the Lincoln City-Lancaster
County Planning Commission on this ____ day of _____, 2002.

ATTEST:

4/17/02: DENIED: 6-2 (Newman, Steward,
Larson, Carlson, Taylor and Schwinn voting 'yes';
Duvall and Bills-Strand voting 'no'; Krieser absent)

Approved as to Form & Legality:



Chief Assistant City Attorney

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Special Permit #1964 **DATE:** March 28, 2002
Dance gym at S. 8th and Pioneers Boulevard

PROPOSAL: A special permit for a private school for tumbling, dance, cheerleading and gymnastics at 4001 South 8th Street.

LAND AREA: 2.25 acres, more or less

CONCLUSION: The request is not in conformance with the Comprehensive Plan and creates a potential exposure risk of children to hazardous materials.

RECOMMENDATION: Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1, Block 1, Sutherland Park 1st Addition

LOCATION: Generally located at South 8th Street and north of Pioneers Boulevard.

APPLICANT: Richard Bollerup
3930 South Street
Lincoln, NE 68506
(402)441-0000

OWNER: Sutherland Park Partners L.L.C.
1645 N Street
Lincoln, NE 68506

CONTACT: Richard Bollerup

EXISTING ZONING: I-1, Industrial

EXISTING LAND USE: Architectural office, lawn sprinkler business and warehouse

SURROUNDING LAND USE AND ZONING:

North:	Undeveloped	I-1, Industrial lot and P, Public
South:	Plumbing contractors(2)	I-1
East:	NE Dept of Corrections warehouse and United Rent-all	I-1
West:	Undeveloped and RR ROW	I-1

HISTORY: Area was preliminary platted in **1995**, and final platted in **2000**.

City Council approved Change of Zone #2951 amending the Zoning Ordinance text to allow private schools in the I-1, Industrial district on **December 18, 1995**.

City Council approved Change of Zone #2081 from AG, Agricultural to I-1, Industrial in **February 1984**.

This area was converted from A-A, Rural and Public use District to AG, Agricultural with the **1979** Zoning Update.

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan states that Public Safety and Health Services shall;

“Assure that every child and youth are provided adequate housing, nutrition, health care, **protection**, education, recreation and creative freedom to develop his or her unique potential” (Page 167).

The situation created by the special permit does not assure protection of children from hazardous materials, but rather increases the potential exposure risk by allowing a private school intended for children in an area where hazardous chemicals are allowed and known to be currently stored.

TRAFFIC ANALYSIS: South 8th and Lowell Streets Street are local streets as classified by the Comprehensive Plan Functional Street and Road Classification(Page 92).

ENVIRONMENTAL CONCERNS: This is an industrial area that is not appropriate for facilities which offer classes to children. The Lincoln-Lancaster County Health Department states that children are a more susceptible population, requiring a higher standard of care.

ANALYSIS:

1. This is an application for a private dance/gymnastics school in the I-1, Industrial district as allowed by §27.63.075. The applicant indicated that the maximum number of students using the facility at any given time will be no greater than 207 with a maximum of 10 staff at any given time. The site plan provides adequate parking (94 spaces) based on the proposed intensity of use.
2. The applicant indicates that the proposed facility would be located in a portion of an existing building. Two other businesses are located in the building; an architectural office and a lawn sprinkler business. If one of the existing businesses closes, by right any permitted use, including a business that stores or uses hazardous materials may locate in the same building as the dance/gymnastics school.
3. Property to the south is being used by two wholesale plumbing supply distributors. Should either of the two properties to the south close, any permitted use may locate there, including facilities which use and store hazardous materials and create the potential for exposure.
4. The Lincoln-Lancaster County Health Department has serious concerns regarding the location of private schools or establishments with susceptible populations in industrial zones

and recommends denial of this application. The potential exposure of children to hazardous materials is the primary concern of the Lincoln-Lancaster County Health Department. The I-1, Industrial district allows the storage and/or use of various hazardous chemicals.

5. Since 1953, 111 special permits have been approved for either private schools or child care centers. Of the 111, only five were for private schools. Two of the five special permits for private schools are located in an I-1, Industrial district. Special Permit #1837 is a special permit for an adult apprenticeship training school. Special permit #1594 is a special permit for a gymnastics school in which the special permit indicated had less than 18 students on site at any given time. This special permit proposes to have 207 students on site at any given time.
6. The applicant indicated that they were not aware of any hazardous chemicals stored or used within the vicinity of the requested special permit, however, there are currently hazardous materials being stored at the Nebraska Department of Corrections building immediately to the east of the proposed dance/gymnastics school. The specific type and amount was not available at the time this report was written, however, the Lincoln-Lancaster County Health Department is in the process of receiving detailed information from the Department of Corrections.
7. The applicant met with the Planning and Health Departments on March 28, 2002 to discuss the application relative to the Health Department Concerns. It was determined that by adding three conditions to the special permit the Health Department concerns could be alleviated. The first condition limits the permit by not allowing the permit to operate when hazardous materials are within the same building as the private dance/gymnastics school. The second condition limits the permit when hazardous materials are within 300' of the proposed facility and the third requires an emergency shut off switch on the ventilation system in the event of a chemical spill in the area. Since that meeting the Health Department contacted the properties within the area of the proposed facility and determined that there are currently hazardous materials stored in the area.
8. The Public Works & Utilities Department indicated that there are a variety of undeveloped lots in the area, allowing any use permitted in the I-1, Industrial District to locate in the area.
9. The Public Works & Utilities Department indicated that the building and site are located in the 100 year floodplain and any additions to the building must meet the minimum floor elevations of the floodplain zoning.
10. The Public Works & Utilities Department indicated that the parking shown along the west side of the building does not meet aisle width design standards. These stalls should be revised to meet design standards or removed.
11. The Public Works & Utilities Department indicated that the application refers to a student drop off area, however, none is shown on the plan. The applicant needs to clearly indicate whether or not there is a student drop off area and indicate it on the plan without interfering with existing parking areas.

12. The Building and Safety Department indicated that the note regarding area separation walls and the uniform building code and site plan notations should be deleted and/or replaced with a general site note indicating that the use of the building will comply with applicable building and life safety codes. Building and Life Safety Codes may not be dictated or modified by zoning actions. Specific building code requirements should not be included with zoning plans and documents nor based on limited zoning related plans, but rather should be determined on full building plans in the building permit process.
13. The applicant has not provided an evacuation plan in the event of a hazardous materials spill as required by §27.63.075.
14. Parking must be reserved and signed for this use and not others.
15. Guarantees cannot be given that there will not be hazardous materials in the area that could pose a danger to the students.

The staff recommendation of this special permit is denial, however, should the Planning Commission choose to approve the special permit, the following conditions shall apply.

CONDITIONS:

Site Specific:

1. This approval permits a private dance/gymnastics school for 207 students and 10 staff on Lot 1, Block 1, Sutherland Park 1st Addition.
2. Upon signature of the letter of acceptance, the permittee agrees to terminate the use of the premises as a private school within sixty days of receipt of notification from the building official of the storage of hazardous materials on property within 300 feet of the building used for the private school.
3. The permittee shall not allow the storage or use of hazardous materials on the premises of the special permit.

General:

4. Before receiving building permits:
 - 4.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department office for review and approval.
 - 4.1.1 A revised site plan including 5 copies showing the following revisions:
 - 4.1.1.1 Revise the site plan to indicate only parking stalls that will be constructed. Remove references to proposed stalls.

- 4.1.1.2 Remove parking stalls that do not meet Design Standards.
- 4.1.1.3 Revise the site plan to indicate stalls required and stalls provided.
- 4.1.1.4 Revise the plan to indicate landscaping materials and specifications.
- 4.1.1.5 Revise the plan to indicate sidewalks and street trees as approved on the preliminary plat.
- 4.1.1.6 The special permit will cover the entire lot, remove references to contract areas.
- 4.1.1.7 Correct the legal description.
- 4.1.1.8 Remove references to area separation walls and the Uniform Building Code and site plan notations.
- 4.1.1.9 Add a general site note indicating that the use of the building will comply with all applicable building and life safety codes.
- 4.1.1.10 Add a note to the site plan to indicate that should hazardous materials be located within the area of the special permit, the special permit shall be immediately revoked to the satisfaction of the Lincoln-Lancaster County Health Department and Law Department.
- 4.1.1.11 Add a note to the site plan indicating that the building shall have a emergency shut off switch for the ventilation system in case of a hazardous chemical spill in the area to the satisfaction of the Lincoln-Lancaster County Health Department.
- 4.1.1.12 Add a note to the site plan indicating that the special permit shall be terminated within sixty days of receipt of notification from the building office of the storage of hazardous materials on property within 300 feet of the building used for the private school.
- 4.1.1.13 Provide an evacuation plan, in the event of a hazardous materials spill, to the satisfaction of the Lincoln-Lancaster County Health Department.

4.1.2 A permanent final site plan with 5 copies as approved.

4.2 The construction plans comply with the approved plans.

- 4.3 The required easements as shown on the site plan are recorded with the Register of Deeds.
- 4.4 All development must comply with floodplain regulations.

STANDARD CONDITIONS:

- 5. The following conditions are applicable to all requests:
 - 5.1 Before occupying this private dance/gymnastics school all development and construction is to comply with the approved plans.
 - 5.2 All privately-owned improvements, including landscaping are to be permanently maintained by the owner.
 - 5.3 The operation is to meet appropriate local and state licensing requirements.
 - 5.4 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 5.5 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 5.6 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by

Becky Horner
Planner

SPECIAL PERMIT NO. 1964

PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 17, 2002

Members present: Newman, Steward, Larson, Bills-Strand-Strand, Carlson, Duvall, Taylor and Schwinn; Krieser absent.

Staff recommendation: Denial.

Proponents

1. Rich Bollerup appeared on behalf of Nova Sports, the applicant, and introduced Paula Hutchinson and Jim Hutchinson.

2. Paula Hutchinson testified that she and her husband, Jim, are involved in the development of this project. The development of this project started with some discussion on behalf of some parents who expressed some disappointment that there wasn't more activity in the community for young people that was structured, but not highly competitive. Frequently, they find that parents in the community believe that kids who want to bounce and tumble and engage in vigorous physical activity for fun are found wanting because the programs in this area generally are a complete gymnastics program. This proposal is a large facility that would offer structured, but non-competitive, activity that children enjoy. It would be a tremendous benefit to the community because there is a marked absence in the market in Lincoln for such activity. There are several examples of this proposal in Omaha that are highly successful. The Hutchinsons have discussed this with families and there is much enthusiasm. This facility will provide tumbling, dance and trampling in one location. They anticipate state-of-the-art safety features that are available. There would be all sorts of fun things for the smaller children as well.

Hutchinson submitted a letter from Kelly Hayes, former UNL cheerleader, who is willing to assist in seeing to it that the program would be well-staffed with qualified and certified safety instructors, spotters, etc.

Hutchinson believes that the staff recommendation of denial is based in part on a communication in which an administrator at Cornhusker State Industries (Dept. of Corrections) expressed concern that with the state facility in such close proximity, there might be some security risk to the children. Hutchinson stated that she did speak with the Assistant Director of Corrections and he has authorized her to tell the Planning Commission that that is not the position of the Dept. of Corrections. The persons involved in the Cornhusker State Industries program are those who have been specially selected for transition back into the community; that the Dept. of Corrections is always concerned with public safety and does not believe this program would be a threat to the public safety or the children participating in programs at the Nova Sports Center.

3. Jim Hutchinson, the architect for this proposal, indicated that he has reviewed some of the hazardous material statements and he does not believe there has been a determination at this time. He talked with the State Fire Marshall and asked whether they had done any recent

inspections of that facility. There have not been any recent inspections and Hutchinson has requested such an inspection to determine that the CSI facility is currently meeting safety standards. Hutchinson was assured that this would be taken care of and whatever is necessary to be in compliance with the state regulations will be done. The Nova Sports building is a type 2N building, solid construction of concrete, with adequate parking. They have tried to provide enough parking so that there is no congestion in the parking lot. There are a lot of different sports being pulled out of the University and High Schools right now due to the economy and Nova Sports is trying to provide an area for young people and adults to come and enjoy themselves and participate in a recreational rather than competitive field.

Steward asked whether Hutchinson had performed a site analysis to determine other possible locations for this facility. Hutchinson indicated that this was the only site available at the time as far as zoning. He believes this proposal could be categorized as a technical training center because they will be doing cheerleading along with other technical sports. He does not understand how this became a "private school" designation. He believes it is a loose interpretation as to whether this is a school or not. He considers it more of a training center. There is not a lot of zoning available for this type facility in this part of Lincoln. He believes that this is a great location being along the Bypass and Highway 2. The Hutchinsons did speak with Cornhusker Manufacturing and they did not believe they had any hazardous material at all. They called and talked to them before this process began.

Steward further inquired whether there were not more available sites than a site in industrial zoning?

Bollerup indicated that he is not entirely surprised with the Department's recommendation nor the recommendation of the Health Dept. This is a position they have taken in the past and apparently nothing has changed. The fundamental premise of the recommendation of Planning and Health is that these types of uses should never exist in an industrial zoning district. That's a position they have taken historically. The problem with that premise is that the issue has already been decided. Back in 1995, there was a text change offered in conjunction with a special permit application for a gymnastics academy within the I-1 zoning district. At that point, both that special permit application and the text change had a staff recommendation and a Health Dept. recommendation that is almost identical with the one before the Commission today. At that point back in 1995, this body voted unanimously to change the text to specifically allow for these types of uses in industrial zones and also to permit the gymnastics academy to exist within the I-1 zone. That was Special Permit No. 1592, the Solid Rock Gymnastics Academy at 3100 So. 6th Street. Bollerup submitted that the issues have not changed one iota since then.

Bollerup went on to state that the reason for the decision back in 1995 is really no different than the reasons we need to locate in this particular zoning district with this particular project. That is, if we as a community are going to accommodate these types of uses for kids, just about the only place that they will ever exist is in an industrial area. The reason for that is that you need an extremely large building to accommodate these types of uses; you also need a building that is affordable. If these things are going to be permitted so that families can afford them, the building has to be affordable. It also has to have an incredible amount of parking—far more than is ever used for these facilities, but the zoning code requires an incredible number of parking spaces on site. Lastly, it

requires access to a transportation system or road network to support that kind of a commercial area. You can't do that in a commercial zone where you are paying seven, eight, nine dollars a square foot for this type of facility—they will never be built. Just about every other similar type of facility, whether it requires a special permit or not, exists in the industrial districts. You rarely see these types of facilities—skating rinks, Champion Fun Center, exercise facilities, those kind of large scale projects—outside of industrial areas. It is interesting to note that this, because it is somehow classified as a “private school” (which he does not quite understand), requires a special permit. Most types of similar uses could exist in the I-1 district without any need for a special permit. We could build Champion Fun Center, which would include more children with less adult supervision and less structure, within this very same zoning district, as a matter of right. We could put in a commercial skating rink as a matter of right; we could put in a commercial gym where you have workout equipment and a basketball court, etc., as a matter of right if marketed strictly for kids under 20 years of age. But because this use is somehow for instruction, it requires the special permit.

Bollerup suggested that the more accurate or more relevant question that needs to be answered with respect to this application is, what is the level of risk posed to this particular project in this particular zone? What is the “realistic” level of risk as opposed to some kind of abstract level of risk that the Department of Health seems to want the Planning Commission to consider. If you look at the I-1 zoning district, the most hazardous types of activities that would ordinarily take place there are regulated by the need for a special permit before they can locate in an I-1 zoning district. I-1 is not “no holds barred industrial” zoning. You don't see huge, heavy industrial in I-1 zoning districts. The types of uses allowed as a matter of right in I-1 zoning districts are precisely the kind of uses you see in this project. In this particular area, there are two plumbing supply distributors, a construction equipment rental facility, and the warehouse for the Department of Corrections—Cornhusker Industries. If you look at the Nova Sports existing building, there are no neighbors at all to the west—it's an open field; we have no neighbors to the north because that is a nonbuildable drainage area for a creek—it looks like a park. We regard to the area to the west, there is some concern mentioned that we don't know what could be developed to the west. Bollerup submitted that as a practical matter, if it develops at all, it is going to develop very similarly to what has already been developed in this district. That area is not easily developed because of the railroad to the west of that lot with a substantial amount of railroad right-of-way and there is a very limited street system into that vacant lot, so Bollerup believes that we are not likely to any kind of large scale industrial uses develop there ever, let alone within the near future.

Bollerup submitted that the only use that exists there now that could conceivably be deemed at all risky to the proposed operation is the warehouse for Cornhusker Industries. The Department of Health originally suggested that if the applicant could agree to a condition that no hazardous chemicals are stored within 300', they would approve it. This applicant was not willing to do that. The Health Department then checked with Cornhusker Industries and apparently they were told there may be some hazardous chemicals there. Bollerup does not know what they are. The applicant talked to Cornhusker Industries and they said there were none. Cornhusker Industries is a warehouse facility. Cornhusker Industries is the inmate work project where they refinish and build office furniture. The kinds of hazardous materials would be like varnish and stripping materials for rehabilitating office furniture. That's what that is used for. It is not the type of hazardous material that is going to cause widespread risk of harm with clouds of poisonous gas wafting through an I-1

zoning district. All they do there is refinish furniture. You could refinish furniture and store a 55 gallon drum of lacquer in downtown Lincoln or in any of the zoning districts where this use would be allowed as a matter of right. The difference is that Cornhusker Industries is highly regulated by the Department of Health, EPA and the State Fire Marshall so that they have state-of-the-art safety equipment to handle any potential problems that could exist at that site if something like that should happen.

Bollerup agreed that there is some potential risk, small as it may be, but the next relevant question is whether or not the realistic level of risk in this particular site is any greater than what we permit elsewhere in the community on a regular basis. Bollerup submitted that that risk is no greater than what we live with day-in and day-out in every zoning district in this community. We can locate I-1 zoning districts across the street from residential districts and commercial districts throughout the city. There are I-1 zoning districts no further away from residential districts or commercial districts than these uses are away from Nova Sports. If there is an I-1 zoning district across the street from a residential district, we can build this facility as a matter of right in the residential district, even though we are no further away than we are in this case. We could put a grade school across the street from the I-1 district in any of those situations where the residential zoning occurs across the street from the industrial as a matter of right, but because Nova Sports is within the zoning district, somehow that makes Nova Sports different. The risk is no different, but somehow in the Health Department's mind it makes our situation different.

Bollerup also asked the Commission to consider what could be built in I-1 as a matter of right—Champion Fun Center, a skating rink, an exercise facility like the Cottonwood Club. We could build any of those facilities. We could market those strictly to children. We could have that situation where we have less adult supervision and less structure, and we could build that as a matter of right. But because Nova Sports is going to give instruction to the kids, they are required to have a special permit. That is the only difference. That does not change the risk level, it only changes how we are going to go about it and the level of structure and adult supervision that we are going to have, which is actually greater than what we would have on those matter of right uses.

Lastly, Bollerup requested that this request be treated no differently than other similar uses have been treated by the city. For example, Solid Rock Gymnastics Academy is an identical use--an identical special permit. It was approved by this body unanimously, and exists to this day. The only recommendation of any conditions on that special permit was that there not be any storage of hazardous chemicals on the premises. That was a part of the original special permit. That was subsequently amended when it was discovered that there were in fact some hazardous chemicals in a facility by a cotenant of the building, and that condition was then eliminated by the Planning Commission and the City Council. Solid Rock has no condition at all about hazardous chemicals on their premises or elsewhere.

With regard to the proposed conditions of approval in the staff report. Bollerup requested that Condition #2 be deleted: "Upon signature of the letter of acceptance, the permittee agrees to terminate the use of the premises as a private school within sixty days of notification from the building official of the storage of hazardous materials on property within 300 feet of the building used for the private school." This creates an outrageous burden upon the developers of this project. Bollerup pointed out that the can of WD-40 in someone's garage is a hazardous chemical.

This applicant cannot live with that condition. No one could live with that kind of condition.

Bollerup generally agreed with Condition #3: "The permittee shall not allow the storage or use of hazardous materials on the premises of the special permit." He can agree with this condition because the developers of this project control the building. There will be an office use in part of the building. There will be a residential sprinkler installation business in one small corner of the building. Neither of these would store any kind of hazardous chemicals. However, Bollerup requested that "hazardous chemicals" be defined realistically. He suggested that a sentence be added to Condition #3: "Hazardous chemicals shall mean types and/or quantities of chemicals which would not otherwise be permitted for use and/or storage in the following zoning districts: B-1, B-2, B-3, H-2 or H-3." We could build this facility as a matter of right in any of those zoning districts. This additional language allows for reasonable accommodation of the normal types of "hazardous chemicals" that would otherwise be stored in virtually any kind of business district.

Bollerup requested an amendment to Condition #2.1.1.10 (now #4.1.1.10) and #2.1.1.12 (now #4.1.1.12) to correspond with the deletion of Condition #2 and the amendment to Condition #3.

Bollerup also noted that Condition #2.1.1.11 (now #4.1.1.11) requires an emergency shutoff switch for the ventilation system. This is a condition that this applicant proposed in order to prevent any kind of ventilation problems if there were a spill somewhere in the neighborhood. This goes above and beyond the requirements of any other special permitted use like this or any other use like this in an industrial area.

Bollerup requested that this application be approved. The developer is willing to make reasonable accommodations to promote legitimate safety issues, but don't hold this developer to a higher standard than virtually any other use in this city. And certainly, don't put conditions on this special permit that as a practical matter make it impossible to operate. If we are going to accommodate these uses, they will occur in I-1. The ordinance provides for that and provides a means to make reasonable accommodations to address the health issues, but it certainly is not some kind of standard preclusion of that use through unreasonable conditions or a flat out bar to that use.

4. Kelly Hayes testified in support. She attended UNL for her undergraduate work and she was a cheerleader at the University. Despite all of the problems that have gone on with Nebraska cheerleading recently, she knows that there is a huge demand for a gym such as is being proposed. A lot of the movement in cheerleading competition and gymnastics competition has moved towards a club perspective. She believes that it ends up being a more safe and more fun environment. The Hutchinsons have what it takes to have a successful business. They are taking the proper safety precautions, dedication and money to make this work. They will provide qualified spotters and it will be a safe and fun place for kids.

Opposition

1. Rick Thorson, Assistant Chief for Environmental Public Health at the Lincoln-Lancaster County Health Dept. and Chris Schroeder, Environmental Engineer in the Air Quality Section of the Health Department, appeared on behalf of the Health Department. Thorson stated that the Health Department supports any kind of activity that encourages physical

development and exercise. However, the Health Department does have grave concerns when we look at allowing children to be subjected to potential risks in an I-1 situation.

The Health Department has checked with Cornhusker State Industries and has acquired copies of the Material Safety Data Sheets (MSDS) that are required to be stored on site.

Thorson believes that the intent of the ordinance allowing schools or trade schools in the I-1 zoning is really for industrial trade schooling such as plumbing, electrical, structural engineering, trade schools, construction. He does not believe the intent was ever to allow a gymnastics facility with young children coming and going. Some of these children may come several times a week. Thorson believes the intent of the ordinance is for post-high school individuals who are learning a trade.

As far as the future in this I-1 area, Thorson suggests that we do not have any idea what could come in the future or what types of industry could be located there in the future. There is little or no control over that type of thing. We would have no control because that is the nature of the I-1 zoning ordinance.

The petitioner has mentioned the Solid Rock Gymnastic organization. Thorson agreed that Solid Rock is located in an I-1 district, and yes, indeed, the Health Department did have a problem there. There was a problem with hazardous materials. Thorson pointed out that two wrongs do not make a right.

Thorson submitted the MSDS. Some of the chemicals contained in the data sheets include formaldehyde, hexane, hydrochloric acid, methanol, methyl ethyl ketone, toluene and xylene, to name a few. Also in those MSDS under the health related information, Thorson referred to some of the problems that can occur: irritation of respiratory tract, mucous membrane irritation, fatigue, drowsiness, dizziness, headache, loss of coordination, nausea, vomiting, central nervous system depression, anesthetic effect, narcosis, irritation of eyes and ears, allergic reactions, severe stomach pain, rapid heart beat, choking sensation, unconsciousness, peripheral nerve damage, female and male reproductive damage, chest pain, pink frothy sputum, lung tissue damage, chemical pneumonia, extremely high concentrations may result in blindness, chronic exposure may cause liver and kidney damage. These health risk assessments are based on an otherwise healthy average 35-year old male that weighs about 170 lbs. They are not based on young children who are still in the physical developmental stage. This is the main premise for the Health Department's opposition for this type of activity in an I-1 zone.

Thorson again referred to the case involving Solid Rock Gymnastics. As it turned out, the Health Department worked with the neighbor in that case and they were able to design a better system to contain those vapors, preventing them from going into the Solid Rock facility.

Thorson displayed a map and photos of the proposed facility. Located directly across the street to the southeast of the proposed site is Cornhusker State Industries (CSI). They do store chemicals there and transport them back and forth to the correctional facility where mixing and repackaging occurs. These chemicals are transported right in the street that separates the proposal facility from CSI, using a simple tractor with an open trailer. Anyone can see that this could lead to the potential

for a spill. In addition, there is a 300' buffer zone required to store and transfer hydrochloric acid. The proposed site is within that 300' buffer zone. Clearly, there is a potential health risk. The hazards are real.

With regard to the storage of hazardous materials in the facility, Thorson stated that the Health Department does not object to janitorial supplies, WD-40, common cleaning supplies—even those that are more industrial in nature--in small quantities typically stored in well-contained areas. The Health Department does have a problem with the potential for release at Cornhusker State Industries and a problem with potential for future location of various industrial facilities within that area. Thorson re-emphasized that the Health Department does support physical activity. Many of the Health Department employees have children that are in gymnastics and cheerleading. We would love to see this kind of facility come into an area that is not subject to these types of hazards, and that is the bottom line for the Health Department.

Duvall asked whether the MSDS refer to the quantities of the materials that are on hand at any one given time, the age of the chemicals and the rate of use. **Chris Schroeder** stated that he spoke with Don Lincoln, one of the site managers of CSI, and 99% of their business is the purchase of bulk chemicals—55 gallon drums. When Schroeder was on site they probably had on hand 15-20 drums of these chemicals. They take these chemicals by way of the tractor and open trailer over to the State Penitentiary where the inmates pare them down into smaller containers and box them up. That is their finished product. The finished product is then brought back to CSI for shipment. Therefore, there are multiple handlings of chemicals. The quantities are very dynamic.

Duvall noted the amount of MSDS, but what type of chemicals do they have a lot of and at what point in time? Schroeder stated that the chemicals listed on all of the MSDS are on site—maybe not all at once, but they have to have this MSDS because they handle those chemicals. In further answer to the question, Schroeder stated that CSI had hydrochloric acid, phosphoric acid, toluene, xylene and some of the more flammable substances on site when he visited. Schroeder confirmed that these chemicals are purchased by CSI in large quantities, pared down into smaller containers and then sold to nonprofit agencies.

Response by the Applicant

Bollerup observed that Thorson is incorrect in his declaration of the intent of the special permit ordinance. It specifically mentions “dance academies and gymnastics academies” in addition to the trade school types of things. They are specifically mentioned. That is why we’re here. If it wasn’t specifically mentioned, Bollerup would call it an exercise facility and go out and build it. This special permit ordinance is not limited to trade schools.

With regard to the Solid Rock situation, Bollerup explained that there was a spill on premises by a cotenant. It was that spill that generated that applicant to come forward and ask for an amendment to the special permit, allowing the storage of those chemicals on the premises, and that was passed. That wasn’t something that occurred afterwards. That was something that triggered them to come in and ask for the amendment that was ultimately granted allowing them to store chemicals within the same building as their operation.

Bollerup believes there has been an attempt here to scare the Commission. He finds it a little bit offensive. These same types of chemicals can be stored in the B-1, B-2, B-3, H-2 and H-3 zoning districts. Sure, if you read the warning label on them, there is a list of horrors that can happen. If you took a 55 gallon drum and poured it on the dance floor, we might have a problem. But the fact is that we as a society live with these chemicals in our midst on a regular basis. They are not limited to the I-1 zoning district. You could build this same warehouse in the H zoning districts and Nova Sports could locate there as a matter of right and there would not be an issue at all with respect to these chemicals.

Staff questions

Steward asked staff to enumerate the districts where this facility would be allowed by right. Becky Horner of Planning staff stated B-1, B-3, B-4 (Downtown), H-2 and H-3. You can also get a special permit in any of the residential districts, O-1 and O-2 for this use. The only districts where you cannot do this are H-1, H-4, I-2 and I-3.

Schwinn knows that there is a building project located at the CSI site with inmates actively building homes for low income outstate sites and they have plans to increase that to building at least 8 houses at a time, which would mean an awful lot of inmates on that site that are not supervised all that well, being minimum security inmates. Horner indicated that it was the Health Department that talked with CSI. She did not. However, the ordinance does not talk about this issue so the staff would not have reviewed it in considering this special permit. There is nothing in the ordinance about locating next to prison facilities.

Carlson believes that there is something in the special permit language that provides consideration for health, safety and welfare. Horner agreed that this is in the Comprehensive Plan and she cited it in the staff report.

Bollerup pointed out that the work release center at Airpark is located next to a residential area where there are city parks and recreation facilities where kids come and go on a regular basis. The types of inmates located here are basically trustees who are ready to be released back into the community. We have businesses located right next to the Penitentiary with far more dangerous people than what you would have anywhere near the proximity of this facility. Frankly, if we're going to get to the situation where we say well, a prisoner may escape and that causes a risk of harm to this particular facility, Bollerup would then argue that maybe we shouldn't be locating prisons within the city. If you are going to assume that prisoners are going to escape, then the entire community is at risk. Not just this one facility. Bollerup suspects that if someone escapes from across the street, the last thing they are going to do is stop and watch some kids practicing cheerleading. They are going to want to get out of that area rather than loiter in that area and try to harass patrons of this business.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

April 17, 2002

Newman moved to deny, seconded by Carlson.

Newman thinks it is a wonderful idea but it's the wrong location. Seeing the Health Department at this hearing and with them being so adamant about this application being wrong, she is pleased to support the Health Department.

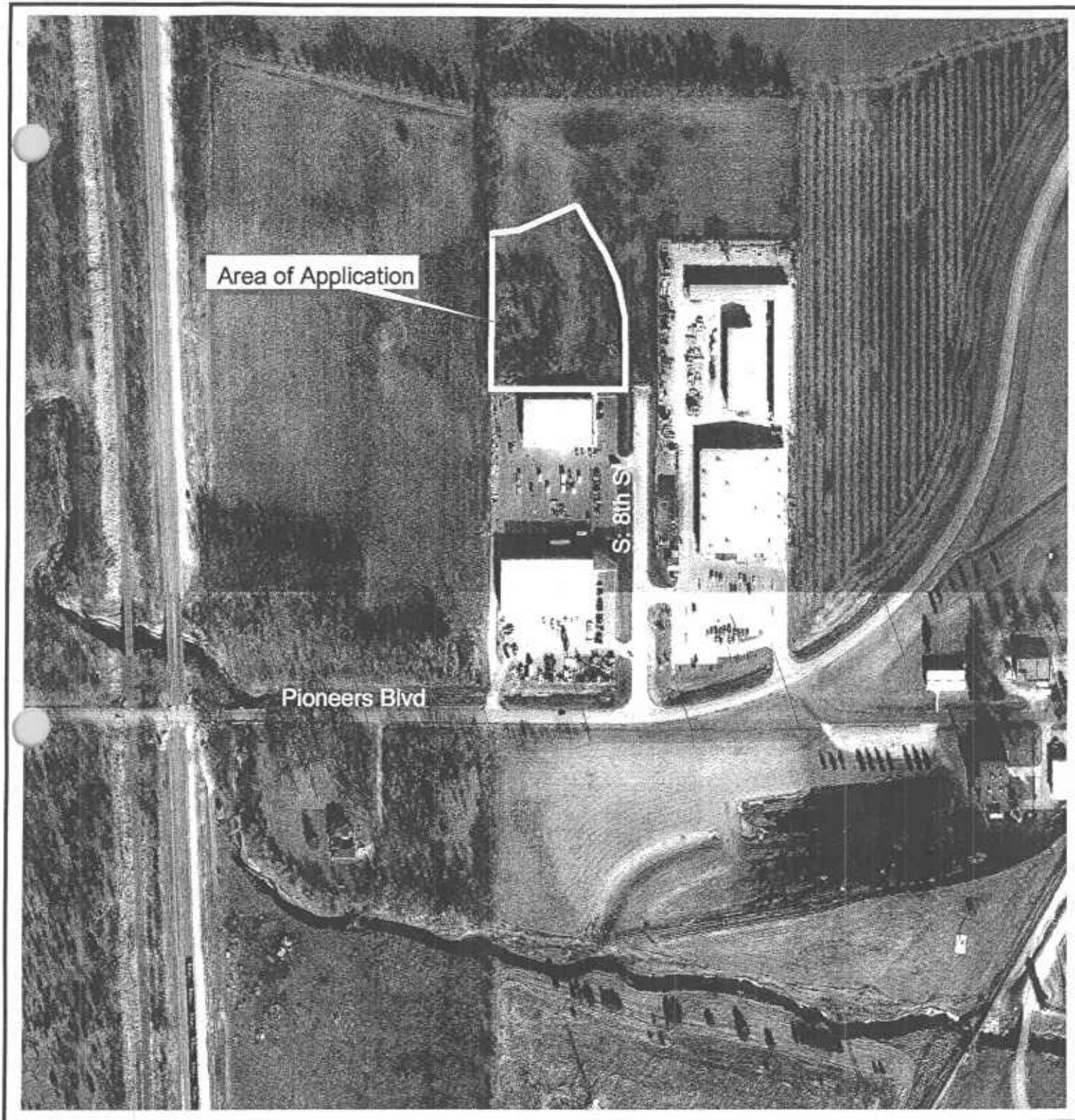
Duvall stated that he will vote against the motion to deny. The chemicals they have are common and widely used. We have gas stations around with fuel tanks. Gasoline is more explosive than any of these chemicals and we use that as part of our life. He cannot see where the chemicals in that area are an issue.

Taylor likes what they are proposing to do; however, he does not feel comfortable having that facility in that industrial type area.

Carlson disagrees with the argument that one special permit means that we should approve a second permit. The purpose of special permit process is to suggest that a particular use "may" be suitable for a particular zoning district, depending on all of the other criteria that fall around it. In this circumstance, because the code says it "may" be appropriate in a certain zoning district does not mean that it "must" be. In this case, he does not believe it is the appropriate location.

Motion to deny carried 6-2: Newman, Steward, Larson, Carlson, Taylor and Schwinn voting 'yes'; Duvall and Bills-Strand-Strand voting 'no'; Krieser absent.

This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.



Area of Application

S. 8th St

Pioneers Blvd

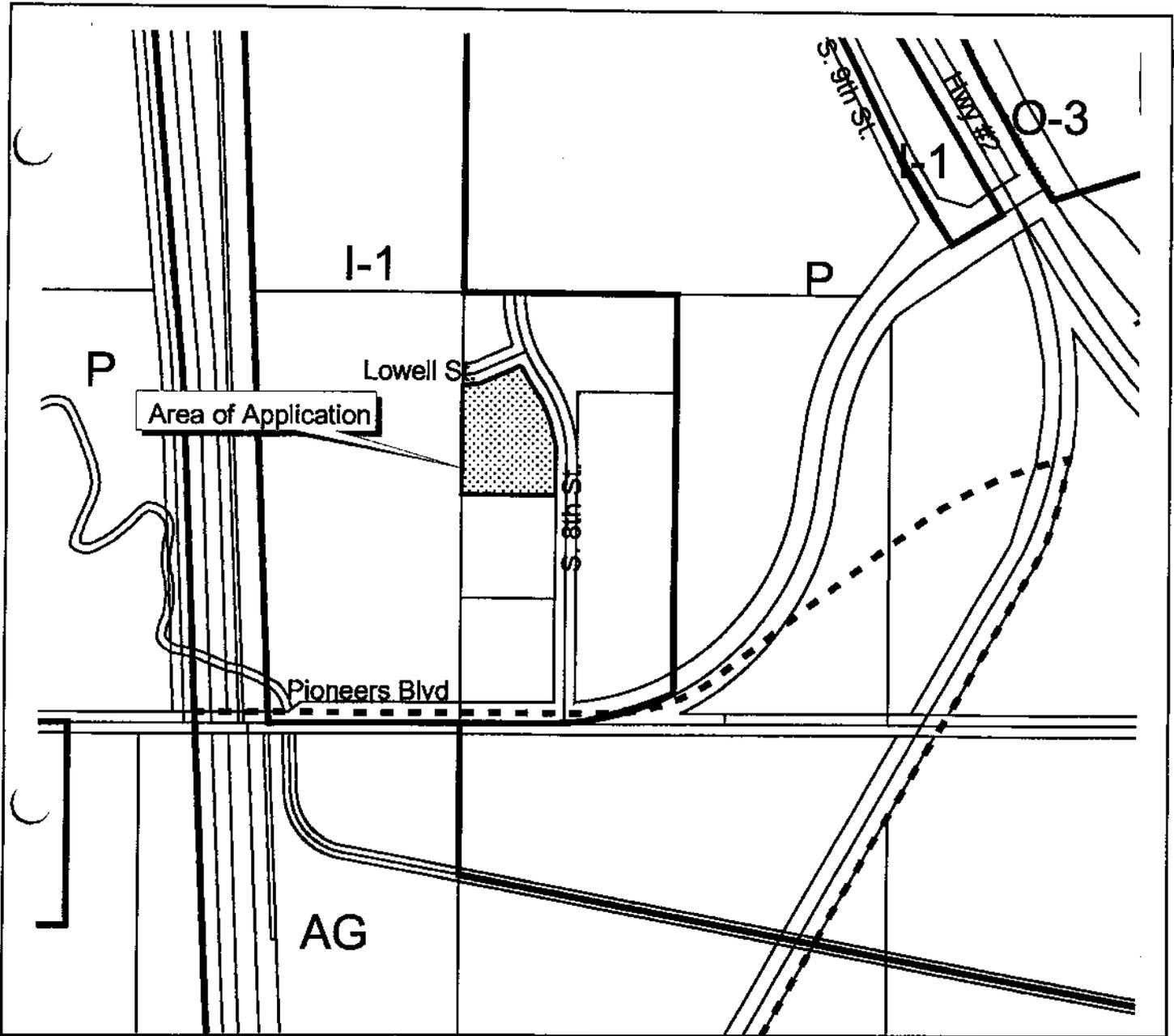
**Special Permit #1964
S. 8th St. & Pioneers Blvd**



024

Photograph Date: 1997

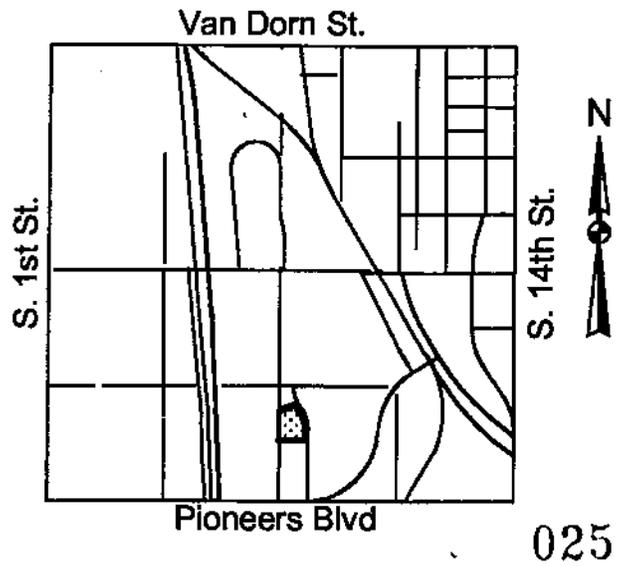
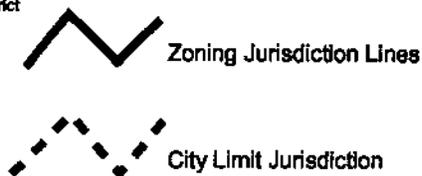
Lincoln City - Lancaster County Planning Dept.

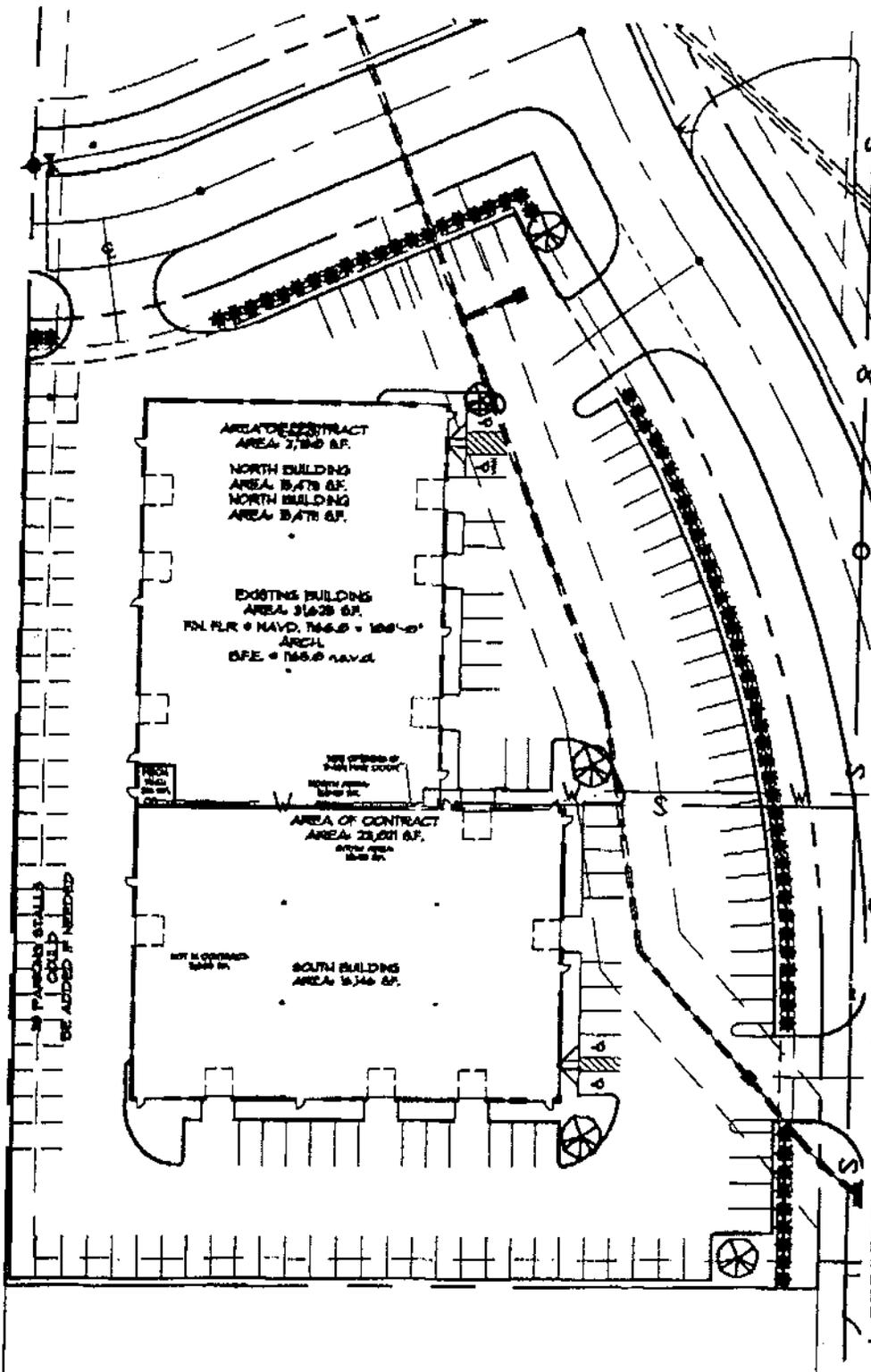


**Special Permit #1964
S. 8th St. & Pioneer Blvd**

- 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-4 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. 2 T9N R6E





**CHEERLEADING / DANCE
NEW GYM
INTERIOR FINISH**
4001 S. 84th STREET
LINCOLN, NEBRASKA



Hickman Design, P.C.
8015 S. 84th, Suite C-2
Lincoln, Nebraska 68519
Phone: (402) 421-1602
Fax: (402) 421-7886
Internet: www.hickmandesign.com
E-mail: hick@hickman.com

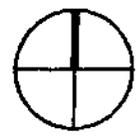
COPYRIGHT 2002

**SITE PLAN
PROJECT INFORMATION**

JOB NO: 02-0205
DATE: 02-04-02
REVISED:

8 SHEET
C-1

DRAWN BY:



1. SITE PLAN
SCALE: 1" = 60'

TYPE AND CHARACTER OF PROPOSED USE

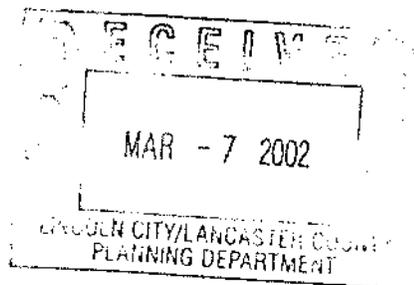
This application is for the conversion of a portion of the existing building located at 4001 S. 8th Street, Lincoln, Lancaster County, Nebraska, for use as a private school pursuant to Lincoln Municipal Code Section 27.63.075. That use will involve private instruction for students in the following areas: tumbling, dance, cheerleading, and gymnastics. Other uses within the building, which are not subject to this application, will include office use in approximately 2,750 square feet at the north end of the building; and warehouse use for a residential lawn sprinkler business in approximately 5,665 square feet of the southwest corner of the building. The private school use will occupy the remaining portion of the building which is approximately 23,021 square feet. Specific information regarding this application is as follows:

1. **Parking**: This special permit would make use of the existing 94 parking spaces which currently exist on site. Of those existing parking spaces, it is anticipated that 15 spaces will be used to support the office use and the warehouse use which are outside of the scope of this application. That leaves a total of 79 spaces devoted to this special permit. If additional parking is required, 28 additional parking spaces can be created along the western edge of the property as shown on the site plan.
2. **Number of Students and Staff**: It is anticipated that the maximum number of staff members on the largest shift will be no more than ten. It is anticipated that the maximum number of students using the facility at any given time would be no greater than two hundred seven for a teacher/student ratio of approximately 1/20.
3. **Limitations on Hours and Class Schedules**: It is anticipated that the hours of operation will be between the hours of 6:00 a.m. and 10:00 p.m. There will be a minimum of ½ hour separation between sessions in order to minimize the number of persons on site at any one time.
4. **Physical Description of Facility**: The proposed use shall be limited to the interior of the existing building located at this site. That building, including the landscape plan, has been fully approved as to all requirements of the I-1 zone. A site plan has been submitted with this application showing the location and arrangement of parking spaces, the traffic circulation pattern, loading and unloading areas, and entrances/exits to the facility. Traffic circulation to and from the site will be provided primarily through the two existing curb cuts at the eastern edge of the property onto South 8th Street. There is also an additional curb cut at the northwest corner of this property onto Lowell Street, which is an east-west street terminating at the west property line of this property and intersecting with South 8th Street at the northeast corner of this property. The primary entrance to the building for this use is at the northeast corner. Loading and unloading will occur primarily at that location.
5. **Hazardous Chemicals/Health Information**: The applicant is not aware of any storage or use of any hazardous chemicals within the vicinity of this proposed

MAR 7 2002

027

use. Neither the warehouse use nor the office use within the existing building involve use or storage of hazardous chemicals nor any other activity which could negatively affect the internal air quality of this facility. The existing building is bordered on the north by a large area of non-buildable real estate which is devoted to drainage control for a nearby creek; and is bordered on the west by an undeveloped field which is comprised of railroad right of way. There are currently two wholesale plumbing supply distributors located directly to the south of this property which include showrooms and the storage of plumbing equipment and supplies. A construction and industrial equipment rental business is located diagonally across the intersection of Lowell Street and South 8th Street. The State of Nebraska Department of Corrections, Cornhusker Industries, maintains a warehouse facility which is located across South 8th Street, to the east and southeast of this property. Specific Information has been requested by the applicant from the Department of Corrections as to the specific types of materials being stored in the warehouse. That information will be provided as soon as it is received from the Department of Corrections. The applicant is not aware, however, of any use or storage of hazardous chemicals within the warehouse. A vicinity map has been submitted with this application. It should be noted that there is considerable separation distance between this site and any other existing or potential future uses in this vicinity. The applicant does not believe that there is any concern regarding a risk of harm from the use or storage of any hazardous chemical nor does there appear to be any risk of harm regarding the internal air quality of the proposed facility.



BOLLERUP & HUXOLL, P.C.

Law Offices

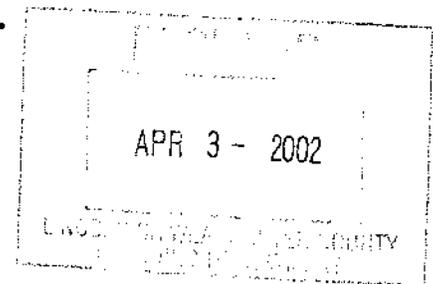
A Limited Liability Organization

3930 South Street, Suite 101

Lincoln, Nebraska 68506

U.S. Bank Building

40th & South Streets



RICHARD K. BOLLERUP

JENNIFER A. HUXOLL

TERESA TRUKSA SKRETTA

PHONE: (402) 441-0000

FAX: (402) 441-0007

April 2, 2002

Becky Horner

Lincoln-Lancaster County Planning Department

555 S. 10th St., Suite 213

Lincoln, NE 68508

Fax 441-6377

RE: Special Permit #1964 - Nova Sports private school

Dear Ms. Horner:

As I mentioned to you in our recent telephone conversation, my client is willing to abide by some of the suggestions that were made at the March 28, 2002 meeting. Specifically, they would agree to a condition requiring an automatic shutdown of the ventilation system, and a condition that there be no storage or use of significant hazardous materials on the actual premises that the private school would occupy. It was also suggested, however, that the ban on the use and/or storage of hazardous materials extend to adjacent lots within 300 feet of the premises. My client is simply not willing to agree to such a requirement as it would be an unacceptable risk to the significant investment that would be required in converting the existing building for the use as a private school. Even so, I would suggest the following language with respect to those proposed conditions:

1. That the applicant provide for and maintain a readily accessible on-site single switch shutdown of the ventilation system, controlling the entire area within the building used for the specially permitted use.
2. That there be no storage or use of hazardous chemicals either within the building in which the private school operates or within 300 feet of the building envelope. For purposes of this condition, "hazardous chemicals" shall mean types and/or quantities of chemicals which would not otherwise be permitted for use and/or storage in the following zoning districts: B-1; B-2; B-3; H-2; H-3.

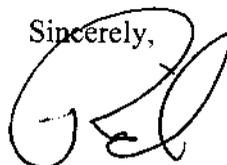
It is my understanding from our discussion that the suggested conditions be a requirement for the continued operation of the proposed use. It is my understanding that your intent is that any violation of those conditions would result in the revocation of the special permit. I have suggested that the condition relating to the use and/or storage of hazardous chemicals be tied to

the referenced zoning districts due to the fact that those zoning districts would allow for a private school as a matter of right. Further, I believe that such an approach would accommodate a reasonable allowance for the use and/or storage of limited quantities of chemicals that could otherwise be considered hazardous.

While I have suggested the above language for the conditions, please understand that it would be the intent of my client to contest the suggested condition relating to off-site chemicals.

Please feel free to discuss this suggested language with the law department and with the health department. If you would like to suggest any further changes, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'RKB', written in a cursive style.

Richard K. Bollerup
Attorney at Law

RKB\k

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Becky Horner

DATE: 4/2/2002

DEPARTMENT: Planning

FROM: Chris Schroeder

ATTENTION:

DEPARTMENT: Health

CARBONS TO: Bruce Dart, Director
EH File
EH Administration

SUBJECT: Nova Sports
SP #1964

On March 28, 2002, the Lincoln-Lancaster County Health Department (LLCHD) met with the Planning Department and a representative for Nova Sports, Richard Bollerup, to discuss our department's concerns that were expressed in a previous memo regarding this proposed dance/gymnastic school. After meeting with Mr. Bollerup, conducting additional research, and careful reexamination of the special permit application, the LLCHD notes the following concerns with locating a dance/gymnastic school in I-1 zoning:

- The LLCHD contacted Don Lincoln with Cornhusker State Industries to obtain information regarding their company's storage and/or use of hazardous materials or wastes. Cornhusker State Industries currently utilizes the former Sutherlands building and additional buildings for storage near the proposed Nova Sports. Mr. Lincoln stated that hazardous wastes are periodically stored in these buildings. In addition, Mr. Lincoln indicated that various other hazardous materials, specifically mentioned acids, are stored in these buildings, but was uncertain about the types and quantities of chemicals. At this time, the LLCHD has requested in writing a complete list of chemicals/materials and quantities that are stored in these buildings.
- While Mr. Bollerup has verbally agreed to place a condition in the special permit prohibiting hazardous chemicals/materials in the Nova Sports building, the LLCHD has serious concerns regarding storage of hazardous chemicals, materials, and wastes on adjacent property's. To alleviate this concern, the LLCHD recommended placing a condition in the special permit that creates a 300 foot buffer zone around Nova Sports which prohibits the storage and/or usage of hazardous chemicals or materials within the buffer zone. Therefore, in the event that hazardous chemicals/materials are stored or used in an adjacent business or building, the special permit for Nova Sports could be revoked. The LLCHD will not support the approval of special permit #1964 unless Nova Sports agrees to the aforementioned special permit condition of creating a 300 foot buffer zone in conjunction with prohibiting hazardous chemicals within the Nova Sports building.
- In addition, because of the potential for hazardous materials incidents in the area, the LLCHD

recommends the development and implementation of an emergency response plan and the heating, ventilation, and air conditioning (HVAC) system be equipped with an emergency shut-off switch to minimize the introduction and subsequent exposure of building occupants to hazardous materials.

M e m o r a n d u m

To: Becky Horner, Planning
From: *MB* Dennis Bartels, Engineering Services
Subject: Nova Sports Special Permit #1964
Date: March 18, 2002
cc: Roger Figard
Randy Hoskins

Engineering Services has reviewed the proposed Special Permit #1964 for a private dance and gymnastics school on I-1 zoned property at South 8th and Lowell and has the following comments:

1. Land use to the west of this property is undetermined because the land is undeveloped. Any used allowed in I-1 would occur on this property.
2. This building and site is located in the 100 year flood plain. Additions shown to the existing building must meet minimum floor elevations of the flood plain zoning.
3. Potential parking is shown along the west side of the building. This parking does not meet design standards because of the aisle width. The electrical service, gas meters, door swing area and what appears to be overhead doors occupy space that cannot be used to meet the 24' parking aisle requirement for 8.5' wide short term parking stalls.
4. The application speaks of a student drop off area. None is shown on the plans. Drop off areas may interfere with existing parking.



Chris M Schroeder

04/02/2002 10:57 AM

To: donlincoln@dcs.state.ne.us

cc: Scott E Holmes/Notes@Notes, Rebecca D Horner/Notes@Notes, Mark A Kenne/Notes@Notes, Chris M Schroeder/Notes@Notes, Rick L Thorson/Notes@Notes

Subject: Storage of Hazardous Wastes/ Materials request

Don,

As per our phone conversation this morning, the Lincoln-Lancaster County Health Department (LLCHD) is responsible for reviewing land-use proposals (such as preliminary plats, special permit applications, change of zones, etc.) for potential negative public health impacts.

Currently, the LLCHD is reviewing special permit #1964, which proposes to establish a private dance/ gymnastic school in an existing building located at 4001 S. 8th Street. The LLCHD has concerns regarding locating susceptible populations (children) in industrial zones.

Therefore, could you please provide a list of the types of hazardous materials/ wastes with approximate quantities that are stored in your facilities in the area of the proposed gymnastic school.

A timely response would be greatly appreciated because this proposed gymnastic school (special permit #1964) is slated for the April 3, 2002 planning commission agenda.

Regards,

Chris Schroeder
Environmental Engineer
Environmental Health Division

Memo



To: Jason Reynolds, Planning Department

From: Mark Canney, Parks & Recreation

Date: March 25, 2002

Re: Nova Sports SP 1964

Staff members of the Lincoln Parks and Recreation Department have conducted a plan review of the above-referenced application/proposal and have the following comments:

1. Planning Department needs to check landscape plan to make sure it conforms with their requirements for screening parking lots/commercial developments.

If you have any additional questions, comments or concerns, please feel free to contact me at 441-8248. Thank you.

035

DATE PRINTED: MARCH 12, 2002

City of Lincoln, Nebraska

IMPORTANT

All revisions to plans must include Building Permit # and Job Address.

Return this report with two sets of corrected plans. The corrections noted below are required to be made to the plans prior to issuance of a permit. Please indicate under each item where the correction is made by plan sheet number or plan detail number.

A separate set of plans for review and final approval must be submitted by the licensed installing contractor/s if fire suppression systems, sprinklers, dry powder, fire alarm systems or underground tanks are installed.

Plan Review Comments

Permit # DRF02030

Address

Job Description: NOVA SPORTS

Location: NOVA SPORTS

Special Permit: Y 1964

Preliminary Plat: N

Use Permit: N

CUP/PUD: N

Requested By: JASON

Status of Review: Approved

Reviewer: FIRE PREVENTION/LIFE SAFETY CODE

BOB FIEDLER

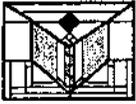
Comments:

Current Codes in Use Relating to Construction Development in the City of Lincoln:

- 1997 Uniform Building Code and Local Amendments
- 1994 Nebraska Accessibility Guidelines (Patterned after and similar to ADA guidelines)
- 1989 Fair Housing Act As Amended Effective March 12, 1989
- 1979 Zoning Ordinance of the City of Lincoln as Amended including 1994 Parking Lot Lighting Standards
- 1992 Lincoln Plumbing Code (The Lincoln Plumbing Code contains basically the 1990 National Standard Plumbing Code and local community Amendments.)
- 1999 National Electrical Code and Local Amendments
- 1997 Uniform Mechanical Code and Local Amendments
- 1994 Lincoln Gas Code
- 1994 NFPA 101 Life Safety Code
- 1997 Uniform Fire Code and Local Amendments
- Applicable NFPA National Fire Code Standards

2002

036



Rodger P Harris
03/18/2002 10:36
AM

To: Jason W Reynolds/Notes@Notes
cc: Rebecca D Horner/Notes@Notes, Chuck A
Zimmerman/Notes@Notes
Subject: SP 1964 - Nova Sports - private school at 4001 S. 8th St.

We have reviewed the above proposed development and have the following comments to offer:

1. This building is located within the 100 yr. flood plain was constructed in accordance with regulations for construction within a flood plain.
2. The note regarding area separation walls and the uniform building code (UBC), and site plan notations, should be deleted, and/or replaced with a general note that the use of the building will comply with applicable building and life safety codes. Building and Life Safety Codes may not be dictated or modified by zoning actions. Specific building code requirements should not be included with zoning plans and documents nor based on limited zoning related plans, but rather should be determined on full building plans in the building permit process.



MICHAEL WOOLMAN
<lpd737@CJIS.CI.LIN
COLN.NE.US>

03/11/2002 11:10
AM

To: Jason Reynolds <JReynolds@ci.lincoln.ne.us>
cc:
Subject: Nova Sports

Jason,

The Lincoln Police Department has no objections to the Nova Sports SP 1964.

Michael S. Woolman
Planning Sergeant
Lincoln Police Department

MEMORANDUM

TO: Planning Commission

DATE: April 15, 2002

FROM: Becky Horner, Planning ~~BA~~

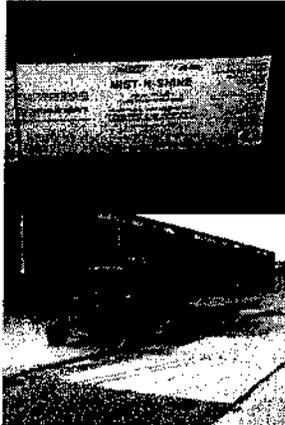
RE: Special Permit #1964 - Dance Gym at S. 8th and Pioneers Blvd.

COPIES: Richard Bollerup
File

Chris Schroeder of the Lincoln-Lancaster County Health Department submitted comments regarding the adjacent industrial use to the proposed dance/gymnastic school. His comments are attached.

Yesterday I met with Don Lincoln of Cornhusker State Industries (CSI) to conduct an on-site assessment of their chemical/materials storage.

CSI is currently utilizing the former Sutherlands site for the storage of bulk janitorial chemicals and their finished products. 99 percent of their business is the manufacture of janitorial chemicals. Essentially their company purchases janitorial chemicals in bulk (55 gallon drums and 50 lb bags) and then transfers these bulk chemicals via a tractor and trailer over to the state penitentiary for the mixing and transfer of these bulk chemicals into smaller containers. These small containers are finally packaged into labeled cardboard boxes.



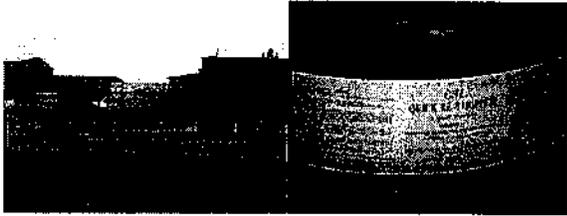
These finished products are then transferred back to the old Sutherlands facility for storage. I am currently working on receiving MSDS(s) for the chemicals stored on-site. Mr. Lincoln did mention that they have staff trained in hazardous materials response and a safety manager on staff.

Here are some more pictures....



Small quantity of flammables

More finished products



Delivery of bulk chemicals

Bulk chemical

During the interview, Mr. Lincoln mentioned a concern that he feels poses the greatest risk to children at the proposed gymnastic school. CSI employs inmates at the old Sutherlands facility. They are involved in warehouse tasks and the on-site building of low income houses. While the threat from children actually entering into the facility is very low due to high security, the possibility of an inmate escaping is present. I assume the inmates that are employed are low risk, but this does not guarantee anything. The picture below depicts how close the inmates are to the proposed gymnastic school. They are only a street width away in the event of an escape.



Proposed gymnastic school on left..
CSI on the right...

To Whom It May Concern:

My name is Kelly Hayes and I am currently a law student at the University of Nebraska. Prior to attending law school, I attended the University for my undergraduate work and I was a member of the cheerleading team. As one of only two members from Nebraska on a 40-member team, I was able to observe the effect that a lack of programs for girls and boys to learn tumbling, dancing, and cheerleading skills has had. Instead of local members, the team consisted of people from Texas, Kansas, and other states where multi-purpose gyms are found on every corner.

Despite the recent change in the cheerleading program at the University, there is still a great demand and desire for a gym like this in the city of Lincoln. Throughout the country, the cheerleading and gymnastics world is heading in the direction of club competition. I assisted with the development of a club gym located in Omaha that has already won numerous national competitions and has enjoyed great success and profitability for it's owners.

After speaking to the developers of this project, I have realized that they possess the level of dedication, desire, and knowledge required to develop a successful and positive business not only for themselves, but for the city of Lincoln as well. I am personally acquainted with Mr. and Mrs. Hutchinson and know them to be well-respected members of this community and they and the other persons involved have taken the time to ensure that this project will only be built with state-of-the-art equipment and involve only the most qualified personnel. The connections to the gymnastics and cheerleading community that the project developers have will give them the advantage of finding people with certified training who will ensure that safety is always a priority.

As for my involvement, I will be available to assist in finding the individuals they will need in order to have a qualified staff that is dedicated to a safe and fun environment. I will also assist in developing the program with respect to class offerings and equipment needs.

Please feel free to contact me if you need any further information or if you have any questions. Thank you for your time and consideration.

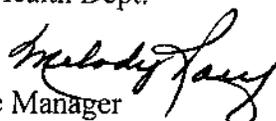
Sincerely,

Kelly Hayes

Contact Information:
Telephone: 730-4924
Address: 6449 Winding Ridge Cr.
Lincoln, NE 68512

DATE: April 12, 2002

TO: Chris Schroeder
Lancaster Co. Health Dept.

FROM: Melody Rouf 
CSI Warehouse Manager

RE: MSDS Sheets

In accordance with your request for MSDS sheets on chemicals, I am sending you the enclosed sampling.

As I explained on the phone, I have two 3" 3-ring binders of MSDS sheets, so it would be impossible to send them all (we are required to have one on each and every chemical that enters the warehouse), so I'm sending you a few to give you an idea of the type of chemicals we deal with.

If I can provide more (or different) information, please feel free to contact me.

FORMALDEHYDE

R-CH-030

R-CH-030

FORMALDEHYDE

MATERIAL SAFETY DATA SHEET

CORPORATE RESEARCH & DEVELOPMENT

SCHENECTADY, N. Y. 12305

Phone: (518) 385-4085

DIAL COMM 8*235-4085

MATERIALS
INFORMATION
SERVICES

No. 360

FORMALIN

Revision A

Date March 1981

#112

SECTION I. MATERIAL IDENTIFICATION

MATERIAL NAME: FORMALIN

DESCRIPTION: A water solution of formaldehyde (37% or 50%) which may contain up to about 15% methanol stabilizer.

OTHER DESIGNATIONS: Formaldehyde, Aqueous; Methanal, Aqueous; Methylene oxide solution; Methyl aldehyde solution; GE Material D5H1; ASTM D2378; CAS #000 650 000

MANUFACTURER: Available from several suppliers.

SECTION II. INGREDIENTS AND HAZARDS

	X	HAZARD DATA
Formaldehyde (HCHO)	37-55*	TLV 2 ppm (C)**
Methanol (CH ₃ OH) (MSDS #352)	0.0-15*	8-hr TWA 200 ppm (skin)
Formic acid (HCOOH) (MSDS #416)	Trace	8-hr TWA 5 ppm
Water	Remainder	

*Level is controlled by the purchase specification.

**ACGIH (1981) ceiling level 2 ppm. NIOSH (1977) proposed 1.0 ppm TWA (30 minute sampling period). Current OSHA 8-hr TWA is 3 ppm.

"Formaldehyde should be handled as a potential occupational carcinogen". OSHA/NIOSH (1981).

HCHO
Rat, Inhalation
TDLo 6-15 ppm/24Mo-1
(Nasal Cancer)

SECTION III. PHYSICAL DATA

	37% HCHO			50% HCHO
	1% CH ₃ OH	7% CH ₃ OH	15% CH ₃ OH	1.5% CH ₃ OH
Boiling pt, 1 atm, deg C	ca 100	ca 100	ca 100	ca 100
Specific gravity, 25/25 C	1.11	1.09	1.075	1.14
Water solubility at 25 C	Soluble	Soluble	Soluble	Soluble
Flash pt (TCC), deg F (C)	177 (80.5)	156 (69)	122 (50)	155 (68.5)
Min. storage temp, deg F (C)	ca 70 (21.1)	ca 60 (15.6)	ca 40 (4.4)	ca 120 (49)
Appearance & Odor: Clear, water-white liquid with a pungent odor which is detectable at about 1 ppm HCHO.				

SECTION IV. FIRE AND EXPLOSION DATA

Flash Point and Method	Autoignition Temp.	Flammability Limits in Air	LOWER	UPPER
(TCC) 120-165 F (50-80 C) (See Sect. III)	806 F (430 C)	% HCHO by vol.	7	73

Extinguishing Media: Water spray, dry chemical, "alcohol" foam, or CO₂. Use water spray to flush spills from area of exposure and/or to dilute to nonflammable mixtures. Use water spray to cool fire-exposed containers.

Firefighters should use self-contained breathing apparatus and full protection for eyes and skin when this material is involved in a fire situation.

SECTION V. REACTIVITY DATA

Formalin solutions can undergo a nonhazardous self-polymerization to form paraformaldehyde which precipitates out of solution. (Methanol content stabilizer.) Will polymerize with active organic materials such as phenol.

Oxygen from the air can oxidize formaldehyde to formic acid, especially when heated.

Formic acid is corrosive!

Acid catalysis can produce impurities: methylal, CH₂(OCH₃)₂ (from HCHO and CH₃OH) and methyl formate (from HCOOH and CH₃OH).

Avoid contact of this combustible liquid with strong oxidizing agents!

SECTION VI. HEALTH HAZARD INFORMATION	TLV 2 ppm or 3 mg/m ³ Ceiling Level
--	--

Formaldehyde is toxic by inhalation, by repeated or prolonged skin contact, or by ingestion. Inhaled vapors (2-5 ppm) can be irritating to the eyes, nose and upper respiratory tract. It can irritate and damage all body tissue it contacts and can cause allergic sensitization. Repeated or prolonged contact with skin can cause hardening and cracking. Ingestion causes severe acidosis from metabolism of formaldehyde to formic acid resulting in severe stomach pain, nausea, coma, and even death; a mean lethal dose is about 2 oz of 37% formalin.

FIRST AID:

Eye Contact: Immediately rinse with running water for 15 minutes. Contact physician.

Skin Contact: Wash thoroughly and promptly with soap and water.

Inhalation: Remove from exposure. Get medical attention for severe exposure or if irritation persists. [Possible edema for high level exposure (ca 50 ppm)].

Ingestion: Given victim 2 or 3 glasses of milk or water and induce vomiting. Get medical attention. Combat shock and respiratory failure.

SECTION VII. SPILL, LEAK, AND DISPOSAL PROCEDURES
--

Plan in advance for prompt handling of emergency situations. Evacuate area for massive spills. Remove sources of heat or ignition. Provide adequate ventilation. Clean up personnel to use approved respirators and appropriate protective clothing. Confine spills by diking. Neutralize with aqueous ammonia or complex with sodium sulfite. Wash residue with dilute ammonia to eliminate vapor.

DISPOSAL: Waste formalin can be incinerated. Neutralized solutions to be disposed in an approved landfill. Follow Federal, State and Local regulations. (EPA hazardous waste number under RCRA for formaldehyde is U122, 40CRF261).

AQUATIC TOXICITY: TLm 96: 100-10 ppm. Keep formalin out of sewage system and surface water. EPA (CWA) Reportable quantity (RQ) in event of spills is 1000 lb.

SECTION VIII. SPECIAL PROTECTION INFORMATION

Provide adequate exhaust ventilation to meet TLV requirements. Use totally enclosed processing as much as possible and reduce workplace exposure to minimum feasible level.

For nonroutine or emergencies above the TLV use organic cartridge respirator up to 12 mg/m³, canister respirator up to 120 mg/m³, or a self-contained or air-supplied respirator above 120 mg/m³. A full facepiece is required for all levels of exposure above the TLV.

Prevent skin contact by using impervious gloves, sleeves, aprons, trousers, and rubber boots as required. Use chemical safety goggles where splashing is possible, plus a face shield where splashing is probable.

Provide safety showers, washing facilities, and eyewash stations in areas where formalin is handled or used.

SECTION IX. SPECIAL PRECAUTIONS AND COMMENTS

Store in closed containers, well protected from possible damage. Store under controlled temp. (See Sects. III, V). Control inventory. Transfers of formalin must follow established safe procedures. Personnel working with formaldehyde must be trained in its use and for emergency situations. They should be medically evaluated regularly. Avoid prolonged or repeated contact or breathing of vapors. Use adequate ventilation. Practice good personal hygiene. No eating or smoking in use or storage area. Wash contaminated clothing before re-use. Discard contaminated shoes.

DOT: Combustible liquid or ORM-A (containers less than 110 gal.)

DATA SOURCE(S) CODE: 2-12, 16, 19, 23-26, 31, 34, 37-39

I.D. No. UN2209, 1198

APPROVALS: MIS
CRD

Industrial Hygiene
and Safety

MEDICAL REVIEW: 23 March 1981

Judgments as to the suitability of information herein for purchaser's purposes are necessarily purchaser's responsibility. Therefore, although reasonable care has been taken in the preparation of such information, General Electric Company extends no warranties, makes no representations and assumes no responsibility as to the accuracy or suitability of such information for application to purchaser's intended purposes or for consequences of its use.

HARCROS CHEMICALS INC
KANSAS CITY, KANSAS

JAN 7 1992

R-CH-033

#114

MATERIAL SAFETY DATA SHEET

PRODUCT NAME: MURIATIC ACID 20BE 500# DATE: 09/03/92 PAGE 01
PRODUCT CODE: 26-05176-05

CAS # 007647-01-0

FORMULA: HCL (Aqueous Solution)

CHEMICAL FAMILY: Inorganic Acids

CHEMICAL NAME AND SYNONYMS: Hydrochloric Acid, Aqueous Hydrogen Chloride, Chlorohydric Acid

SUPPLIERS NAME: Harcros Chemicals Inc
5200 Speaker Rd
Kansas City Ks 66106
SUPPLIERS PHONE NUMBER: 913-321-3131
TRANSPORTATION EMERGENCY PHONE NUMBER: 1-800-424-9300

S.A.R.A. INFORMATION

HAZARDS: Fire:No Pressure:No Reactivity:No Acute:Yes Chronic:Yes
PHYSICAL DATA: Mixture:No Pure:Yes Solid:No Liquid:Yes Gas:No

SECTION I Hazardous Ingredients

Ingredient	Percent	TLV
HYDROGEN CHLORIDE (CAS # 7647-01-1) <>	BY WEIGHT %HCL 31.5	PEL/TLV ceiling 5 ppm OSHA/ACGIH
Water (CAS # 7732-18-5) <>-This chemical is subject to S.A.R.A. Title III section 313 part 372 reporting.	68.5	N/A

SECTION II Health Hazards

Threshold Limit Value:
As indicated in Section I.

Potential Effects of Exposure:

Eyes:
Vapor or solution rapidly causes severe irritation of the eyes and eyelids.
If not removed by thorough irrigation with water, there may be prolonged or permanent visual impairment or total loss of sight.

Skin:
Contact causes severe burns unless immediately washed off.
Repeated contact with dilute solutions may lead to dermatitis and photosensitization.
Exposure to the concentrated vapor may result in burns or dermatitis.
Chronic exposure to low concentrations causes erosion of the teeth, skin tenderness and bleeding of the nose and gums.
Dermal LD(50) (rabbit): >5010 mg/kg. Practically non-toxic.

Inhalation:
Inhalation of excessive concentrations of gas mist vapors immediately produces severe irritation of the upper respiratory tract, resulting in coughing, burning of the throat, headaches, rapid heartbeat and a choking sensation.
Reactions encountered in man have usually been limited to

220-40-2

MATERIAL SAFETY DATA SHEET

414

PRODUCT NAME: MURIATIC ACID 20BE 500#
PRODUCT CODE: 26-05176-05

DATE: 09/03/92 PAGE 02

SECTION II Health Hazards

CONTINUED

inflammation and occasional ulceration of the nose, throat, and larynx.
If inhaled deeply, edema of the lungs may occur.
35 ppm can cause irritation of throat and 50-100 ppm is nearly unbearable for 1 hour.
Inflammation, destruction of nasal passages and breathing difficulties can occur with higher concentrations and may be delayed in onset.
1000-2000 ppm can be fatal. LC(50) (rat): 3127 ppm/1 hour.
Vapor has such a sharp penetrating odor that inhalation of toxic quantities is unlikely unless victim is trapped.

Ingestion:

If swallowed, causes severe burns of the mucous membranes of the mouth, esophagus and stomach.
G.I. tract may perforate in extreme cases.
Asphyxia may occur from edema of the larynx.
The lips and mouth usually turn white, and later, brown.
There is pain in the throat and stomach, difficulty in swallowing, intense thirst, nausea, and vomiting, followed by diarrhea, respiratory distress, kidney inflammation, weakness from falling blood pressure, and in severe cases, collapse and death.
Oral LD(50) (rat): 700 mg/kg. Slightly toxic.

CHRONIC TOXICITY:

Exposures of 100 ppm for 6 hours a day for 50 days caused only slight unrest and irritation to the eyes and nose of rabbits, guinea pigs and pigeons.
The hemoglobin content of the blood was also slightly diminished.
Monkeys receiving twenty exposures of 33 ppm for 6 hours did not display any adverse effects.
Higher exposures (unspecified) have caused weight loss which paralleled the severity of exposure.
In humans long term overexposures has been associated with erosion of the teeth.

First aid:

Eyes:

Immediately flush with water for at least 15 minutes, holding eyelids open.
Do not use chemical antidotes.
Speed is essential.
Call a physician.

Skin:

Immediately flush with water for at least 15 minutes, while removing contaminated clothing and shoes.
Do not use chemical antidotes.
Wash clothing before re-use, destroy contaminated shoes.
Call a physician.
Speed is essential.

Inhalation:

Remove to fresh air.
If breathing difficult give oxygen.
If breathing has stopped, give artificial respiration, preferably mouth to mouth.
If symptoms persist get medical help.

Ingestion:

Drink large amounts of water milk or preferably a non-gassing

MATERIAL SAFETY DATA SHEET

PRODUCT NAME: MURIATIC ACID 20BE 500#
PRODUCT CODE: 26-05176-05

DATE: 09/03/92 PAGE 03

SECTION II Health Hazards

CONTINUED

neutralizer such as milk of magnesia.
Do not give carbonates, bicarbonates or chalk.
Do not induce vomiting.
Never give anything by mouth to an unconscious person.
If vomiting occurs spontaneously, keep head below hips to prevent aspiration.
Call a physician immediately.

Other Information:

NOTE TO PHYSICIANS:

This material is corrosive to the intestinal tract.
If swallowed, gastric lavage should be used with extreme caution.

Carcinogen Status:

Not listed as carcinogenic by IARC NTP or OSHA.

Medical conditions aggravated by exposure

Asthma, bronchitis, emphysema and other lung conditions and chronic nose, sinus or throat conditions.
Exposure may aggravate existing skin and/or eye conditions on contact.

Primary routes of Exposure:
Inhalation, and skin.

MUTAGENIC EFFECTS:

Chromosome damage, inhalation: 100 ppm, 24 hrs. Oral - 100 ppm

Cytogenic Effects, parenteral: 20 mg.

SECTION III Special Protection Information

Respiratory Protection:

For atmospheric concentrations above PEL/TLV and up to 50 ppm use a self-contained breathing apparatus.
For alternates up to this degree of exposure and recommendations for higher concentrations see NIOSH/OSHA Pocket Guide to Chemical Hazards DHEW(NIOSH) Publication No. 85-114.

Ventilation Required:

(1.) HEAVY HANDLING (e.g. cases of bottles/carboys/drums/pallets of cases/tank trucks): Sufficient to reduce acid mists and vapor concentrations below permissible PEL/TLV levels. Packaging and unloading areas and open processing equipment may require mechanical exhaust systems.

(2.) SPECIALIZED HANDLING (e.g. bottles): Handling should be done in a closed ventilated system (e.g. exhausted hood). All must be of corrosion-resistant materials.

NOTE:

Equipment must be engineered to prevent any condensate formed from dropping on workers.
Exhaust systems should be discharged to absorption or neutralizing equipment.

Protective Clothing:

MATERIAL SAFETY DATA SHEET

PRODUCT NAME: MURIATIC ACID 20BE 500#
PRODUCT CODE: 26-05176-05

DATE: 09/03/92 PAGE 04

SECTION III Special Protection Information

CONTINUED

Eyes:

Chemical splash goggles and face shield (8" min.) in compliance with OSHA regulations are advised; however, OSHA regulations also permit other type safety glasses.
(Consult your safety equipment supplier).
DO NOT wear contact lenses.

Skin:

As a minimum, wear acid-resistant apron, protective clothing, boots and gauntlet gloves, preferably neoprene, PVC, or NBR (nitrile-butadiene rubber), for routine product use.
For increased protection, include acid-resistant trousers and jacket.

Additional Protective Measures:

Emptied container retains vapor and product residue.
Observe all labeled safeguards until container is cleaned, reconditioned or destroyed.
Keep container closed.

SECTION IV Fire & Explosion Hazard Data

Flash Point (Method): Not Flammable

Flammable Limits (% Volume in Air):

Upper: NA

Lower: NA

Extinguishing Media:

Select media suitable for surrounding fire.
Use water spray to cool fire exposed containers to prevent rupture.

Special Fire Fighting Procedures:

Wear self-contained breathing apparatus and protective clothing.
If it can be accomplished safely, move containers away from fire area.

Unusual Fire and Explosion Hazards:

Releases hydrogen chloride gas when heated.
Flammable and potentially explosive hydrogen gas can be generated inside metal drums and storage tanks.
Product will react with most organic material with the evolution of heat and large quantities of dense, white fumes.

SECTION V Physical Data

Boiling Point (1 atm, deg. F):

For 20 deg. Be': 182 deg. F (Azeotrope(20.2%) Boils @ 228 deg F.

Specific Gravity (H₂O=1) @ 60/60 deg. F:

For 20 deg. Be': 1.160

Vapor Pressure (MM HG.):

CONTINUED ON PAGE 05

048

HARCROS CHEMICALS INC
KANSAS CITY, KANSAS

MATERIAL SAFETY DATA SHEET

PRODUCT NAME: MURIATIC ACID 20BE 500#
PRODUCT CODE: 26-05176-05

DATE: 09/03/92 PAGE 05

SECTION V Physical Data

CONTINUED

For 20 deg. Be': 28.05 @ 68 deg. F.

Vapor Density (AIR=1): 1.27

Evaporation Rate (Butyl Acetate=1): <1

Solubility in Water: Completely Soluble

Percent Volatile by Volume: nearly 100%

pH: (1% Solution) 0.8

Appearance and Odor:

Colorless to light yellow fuming liquid.
Pungent suffocating odor.

SECTION VI Reactivity Data

Stability:

Stable

Incompatibility:

Most metals, alkalis, metallic oxides, amines, strong oxidants, including fluorine; vinyl acetate, propiolactone (beta), propylene oxide.

Also water-reactive (beta), propylene oxide.

Also water-reactive materials such as concentrated sulfuric acid, oleum and acetic anhydride.

Also with this acid liberate toxic gases.

Store only in acid-proof liberate toxic gases.

Store only in acid-proof containers, i.e. rubber lined steel, glass or plastic.

DO NOT store near strong metals, mercuric sulfate, perchloric acid, carbides of calcium, cesium, rubidium, acetylides of

cesium and rubidium, phosphides of calcium and uranium, and lithium silicide.

Reacts with uranium, and lithium silicide.

Reacts with zeolites and other silicious materials to form hydrosilicic acid.

Hazardous Decomposition Products:

HCL evolution accelerated by heating or contact with water-reactive materials such as concentrated sulfuric acid.

Reactions with metals can release flammable hydrogen gas.

Hazardous Polymerization:

Will not occur.

SECTION VII Spill and Leak Procedures

Steps to be taken if material is released or spilled:

Keep people away.

Shut off or extinguish all sources of ignition.

Keep upwind.

Shut off leak if without risk.

If necessary to enter spill area, wear self-contained breathing

HARCROS CHEMICALS INC
KANSAS CITY, KANSAS

MATERIAL SAFETY DATA SHEET

PRODUCT NAME: MURIATIC ACID 20BE 500#
PRODUCT CODE: 26-05176-05

DATE: 09/03/92 PAGE 06

SECTION VII Spill and Leak Procedures CONTINUED
apparatus and full protective clothing including boots.
Dike with sand or earth and pump into salvage tank.
Flush spill area with water and neutralize washings with lime
or soda ash.
Run-off to sewers may create health and explosion hazards;
notify fire and health control authorities.
Keep out of watersheds and waterways.
If not possible, notify pollution control authorities.

Waste Disposal Method;
Flush large spills with water to holding area and neutralize
with soda ash or lime.
Flushing neutralized material to sewer depends on allowable
salt concentrations in effluent water.
Follow local, state and federal regulations.
Cover small spills with soda ash or slaked lime.
Flush the neutralized material to the sewer with much water.

If not diluted and neutralized, this product can become a
hazardous waste as designated by the Environmental Protection
Agency under authority of the Resource Conservation and
Recovery Act (RCRA).
The waste would have RCRA Hazardous Waste number D002
(Corrosive) as designated in 40 CFR 261.22.
Reportable quantity under U.S. EPA CERCLA Regulations:
Hydrochloric Acid, 5000lbs.
Federal, state, and local regulations should be followed in
disposing of this substance.

AQUATIC TOXICITY

282 ppm/96hr/mosquito to fish/TLm/fresh water
100-330ppm/48hr/shrimp/LC(50)/salt water

SECTION VIII D.O.T. Shipping Information

Proper Shipping Name: MURIATIC ACID SOLUTION
Hazard Class: CORROSIVE MATERIAL
ID Number: UN1789
Label Requirements: CORROSIVE
Reportable Quantity: NONE
Other Information:

SECTION IX Additional Information

This information may be of importance to you:

Store closed containers in clean, cool, open or well-ventilated
areas.
Keep out of sun.
Area should have acid resistant floor and approved drainage.
Keep away from oxidizing agents and alkaline materials and the
other incompatible products listed in Section VI.

HARCROS CHEMICALS INC
KANSAS CITY, KANSAS

MATERIAL SAFETY DATA SHEET

PRODUCT NAME: MURIATIC ACID 20BE 500#
PRODUCT CODE: 26-05176-05

DATE: 09/03/92 PAGE 07

SECTION IX Additional Information

CONTINUED

Protect containers from damage or breaking.
Use non-sparking tools and prohibit smoking in areas around tanks and pipes where hydrogen might be generated.

Minimize skin contact.

Wash with soap and water before eating, drinking, smoking or using toilet facilities.

Safety shower, eye bath and washing facilities should be available.

FDA regulations pertain to food-grade product (21CFR).

HMIS HAZARD RATING

NFPA HAZARD RATING

Health 3
Flammability 0
Reactivity 0
Special Protection X

Health 3
Flammability 0
Reactivity 0

***** END OF REPORT *****

NAME: GENE TURNER

DATE ISSUED: 10/24/1985
DATE REVISED: 10/19/1989

< = LESS THAN
> = MORE THAN

N/A = NOT APPLICABLE
N/D = NOT DETERMINED
N/E = NOT ESTABLISHED

UNK = UNKNOWN

The information provided in this Material Safety Data Sheet has been obtained from sources believed to be reliable. Harcross Chemicals Inc provides no warranties, either expressed or implied and assumes no responsibility for the accuracy or completeness of the data contained herein. This information is offered for your information, consideration and investigation. You should satisfy yourself that you have all current data relevant to your particular use. Harcross Chemicals Inc knows of no medical condition, other than those noted on this material safety data sheet, which are generally recognized as being aggravated by exposure to this product.