

City Council Introduction: **Monday**, May 20, 2002  
Public Hearing: **Monday**, June 3, 2002, at **1:30 p.m.**

Bill No. 02R-114

## FACTSHEET

**TITLE: SPECIAL PERMIT NO. 1970**, requested by Chuck Salem on behalf of Fast Break, Inc., for authority to sell alcoholic beverages for consumption off the premises on property located at 4801 Randolph Street.

**STAFF RECOMMENDATION:** Denial.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 4/17/02 and 5/01/02  
Administrative Action: 5/01/02

**RECOMMENDATION:** Denial (6-3: Carlson, Taylor, Duvall, Newman, Krieser, and Steward voting 'yes'; Larson, Bills-Strand and Schwinn voting 'no').

### FINDINGS OF FACT:

1. The staff recommendation to **deny** this special permit request is based upon the "Analysis" as set forth on p.3-5, concluding that the premises is located approximately 21' from a residence and approximately 30' from a residential district, and because of this proximity it is not possible to mitigate any adverse effects of the reduction in distance of less than 100' that may be associated with this use through landscaping, screening or other methods.
2. This application appeared on the Planning Commission agenda for public hearing on April 17, 2002, at which time the applicant requested a two-week deferral to further develop a proposed mitigation plan.
3. Testimony in opposition on behalf of Tabitha Health Care Services at the initial public hearing is found on p.7, and the record consists of two letters in opposition (p.26-27).
4. The mitigation plan submitted by the applicant is found on p.18-20. The staff response to the proposed mitigation plan is found on p.21-22. The proposed mitigation plan meets and exceeds the requirements of the zoning ordinance relative to the required screening; however, this does not change the staff recommendation of denial.
5. The applicant's testimony is found on p.7-9. At the continued public hearing on May 1, 2002, the applicant submitted a petition in support signed by five neighboring property owners (p.23-25).
6. The Planning Commission discussion is found on p.10-11.
7. On May 1, 2002, the Planning Commission agreed with the staff recommendation and voted 6-3 to recommend **denial** (Commissioners Larson, Bills-Strand and Schwinn dissenting).

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** May 6, 2002

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

**DATE:** May 6, 2002

**REFERENCE NUMBER:** FS\CC\2002\SP.1970

**CITY OF LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**

**P.A.S.** Special Permit #1970

**DATE:** April 3, 2002

**PROPOSAL** A special permit to allow the sale of alcoholic beverages for consumption off the premises.

**LAND AREA:** Approximately 26,700 square feet (.61 acres)

**CONCLUSION:** This premises is located approximately 21' from a residence and approximately 30' from a residential district, and because of this proximity it is not possible to mitigate any adverse effects of the reduction in distance of less than 100' that may be associated with this use through landscaping, screening, or other methods.

<b>RECOMMENDATION:</b>	Denial
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**GENERAL INFORMATION**

**LEGAL DESCRIPTION:** Lots 3 - 7, Block 2, Linwood Addition, Lancaster County, Nebraska.

**LOCATION:** 4801 Randolph Street

**OWNER:** Quin-C, Inc.  
3003 South 13<sup>th</sup> Street  
Lincoln, NE 68502 (402)423-7369

**APPLICANT:** Fast Break, Inc.  
1234 South 14<sup>th</sup> Street  
Lincoln, NE 68502 (402)476-3333

**CONTACT:** Chuck Salem  
1234 South 14<sup>th</sup> Street  
Lincoln, NE 68502 (402)476-3333

**EXISTING ZONING:** B-1 Local Business District

**EXISTING LAND USE:** Convenience Store/Service Station/Car Wash (under construction)

**SURROUNDING LAND USE AND ZONING:**

North	Commercial	B-1
South	Single-family Residential	B-1
East	Single-family Residential	R-2
West	Office	B-1

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Comprehensive Plan designates commercial land use for the subject property.

**ANALYSIS**

**OVERVIEW:**

The site is of a former service station which has been demolished. A facility that includes a convenience store, a service station, and a car wash is under construction. This request is for a special permit to allow the sale of alcoholic beverages for consumption off the premises.

**1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC) 27.63.685:** Alcoholic beverages may be sold for consumption off the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1 and I-3 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which may be waived by the City Council:

**(a) Parking shall be in accordance with LMC Section 27.67.020.**

The parking lot on this site is paved, and the number of off-street parking spaces and the design of the parking areas comply with the requirements of Lincoln Municipal Code (LMC).

**(b) The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a permit under LMC Section 27.63.685 of this code.**

This application is for a special permit to allow the sale of alcohol for consumption off the premises, and must be approved for alcohol sales to occur at this location.

**(c) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.**

The premises is located closer than 100' to both a residence and a residential district to both the south and east. The approximate separation distances are as follows:

	Residence	Residential District	Day Care
South	21'	89'	n/a
East	94'	30'	n/a

Consistent with previous reviews, the Police Department finds that the proposed screen, in this case a 6' high cedar fence, does not mitigate the effect of this use being located less than 100' to a residence and a residential district, and therefore is recommending denial.

**(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.**

Any parking lot lighting must comply with the applicable City of Lincoln Design Standards.

**(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.**

A drive-through window is not being proposed in conjunction with the sale of alcohol.

**(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.**

No such devices are proposed with this special permit.

**(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.**

The doors face north and do not face a residential district.

**(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.**

No residential streets are used to access this site.

**(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.**

**(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:**

**(1) Revocation or cancellation of the liquor license for the specially permitted premises; or**

**(2) Repeated violations related to the operation of the permittee's business.**

**Planning Commission review and City Council approval is required for this use.**

**2. DEPARTMENT RESPONSES:**

**POLICE:** The Police Department finds that landscaping or screening cannot mitigate the adverse effects of the proposed use on the adjacent residences and residential district, and is therefore recommending denial.

**PUBLIC WORKS:** Public works has no objections to this request.

The premises is less than 100' from a residence and a residential district, and the adverse effects cannot be mitigated through landscaping or screening due to the proximity. However, if after a public hearing the City Council approves this application, approval should be subject to the following conditions:

**CONDITIONS:**

Site Specific:

1. This approval permits the sale of alcohol for consumption off the premises at the convenience store located at 4801 Randolph Street.

General:

2. Before receiving building permits:
  - 2.1 The construction plans comply with the approved plans.

**STANDARD CONDITIONS:**

3. The following conditions are applicable to all requests:
  - 3.1 Before occupying these structures all development and construction is to comply with the approved plans.
  - 3.2 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.
  - 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 3.4 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:

Brian Will, AICP  
Planner

## SPECIAL PERMIT NO. 1970

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

April 17, 2002

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

Staff recommendation: Denial.

#### Proponents

1. **Rob Otte** appeared on behalf of the applicant and requested a two-week deferral. The applicant has met with the staff and would like additional time to further develop a mitigation plan. Steward moved to defer for two weeks, with continued public hearing and administrative action scheduled for May 1, 2002, seconded by Bills-Strand and carried 8-0: Newman, Steward, Larson, Bills-Strand, Carlson, Duvall, Taylor and Schwinn voting 'yes'; Krieser absent.

#### Opposition

1. **Jim Iosbaker**, Tabitha Health Care Services, 4720 Randolph Street, testified in opposition. Iosbaker stated that Tabitha would like to be on record in opposition to the sale of alcohol at this facility because it is in very close proximity to Tabitha's residential housing of approximately 150 seniors. These are independent living apartments and most of the people are ambulatory. When the weather is good they walk in this area. The sale of alcohol would increase danger to them because of the increase in traffic. The Tabitha Intergenerational Center is two blocks north, where there are 40-60 children and 6-12 seniors daily. Also, the location is between the elementary school and the junior high school, which are both on the same side of the street and there is a large number of junior high kids walking to and from school down 48<sup>th</sup> on that side of the street. Tabitha also takes the position that the Super Saver which is less than one mile away has a very adequate liquor establishment.

### CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 1, 2002

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

Brian Will of Planning staff submitted a letter in opposition from the Principal of Lefler Middle School.

#### Proponents

1. **Rob Otte**, 201 No. 8<sup>th</sup>, Suite 300, appeared on behalf of the property owner and the applicant, Fast Break, Inc. This special permit application comes to the Planning Commission only by reason of one issue; that is, that the tape measure shows that this building is within 100' of a

residential district. The ordinance does allow the property to be mitigated to lessen the impact if located within 100' of a residential district or residential use.

Otte advised that this is a building already under construction. The property was previously an old gas station and car wash business. This owner has completely razed that site, brought in new dirt and started construction of a convenience store, seeking approval of the neighbors and the city.

First, Otte agrees that it is critical to have neighborhood support. He showed a map indicating support from five neighboring property owners that have signed a petition which reads:

We would like to express support for a full-service convenience store at 48<sup>th</sup> and Randolph. This would include a license for off-sale beer. The convenience store is a very welcome addition to our neighborhood, and your support would be appreciated.

Otte indicated that Chuck Salem, President of Fast Break, has met with the neighborhood association and has received resounding support for this facility at this location.

The applicant has submitted a mitigation plan showing a 15' buffer area on the east side of the property which will have nice landscaping plantings. There will be a fence and adequate screening. The store faces towards the corner of 48<sup>th</sup> & Randolph, shielding some of the neighbors. The neighbor immediately south of this store is delighted and agrees with the screening plan. The retaining wall has also received his support and endorsement.

Otte acknowledged that there are a couple of schools--elementary and junior high--a few blocks away. However, Otte pointed out that Belmont, Clinton, Elliott, Cavett, McPhee, Lakeview, Rousseau and Sheridan are all no further than 3 blocks from a business with an off-sale liquor license. Some are within one block. This isn't something new. Lincoln Lutheran, Goodrich, Scott, Mickle and Dawes are all within at least four blocks of a business with an off-sale liquor license. Otte suggested that these are probably not all of the examples.

Otte went on to state that Chuck Salem has been in this business for a long period of time. The beer sales do not occur at 9:00 a.m. or 2:30 to 4:00 p.m. Most of the beer sales are happening in the evening or on the weekends. Otte is not attempting to under-emphasize the impact, but he suggests that the impact on school children walking by or residents from Tabitha is really not a big issue in reality.

Most importantly, Otte noted that there was a big article in the paper about the Town Hall meeting last night and the city is talking about roads and traffic. Fast Break is on 48<sup>th</sup> & Randolph. If you want to keep people off the streets, keep traffic from a very busy 48<sup>th</sup> Street; and keep traffic from 48<sup>th</sup> & "O" and off of 40<sup>th</sup> & Randolph, one way is to allow this to be a full-service convenience store where people can walk.

Otte further advised that Salem Oil has been in business in Lincoln for about 46 years. During that time, Salem Oil has never had an alcohol complaint and has never had a tobacco complaint. The

most recent report from the Health and Police Departments regarding a compliance check in 2002 at 69 locations, indicates that Salem Oil has not sold tobacco or liquor to minors. The operator of this store makes it a quality Lincoln business.

Otte submitted that the question is, what's the hurdle? He understands the concern with the proximity of stores that sell alcohol to neighborhoods, but the ordinance allows a hurdle to be set, and he believes that this particular convenience store clears that hurdle by a large margin because of the construction of the store; the investment in the local neighborhood; the screening that has been done; and because this building has been designed not just as a flat roof building but with a big glass atrium. The owner has gone beyond the call of duty in trying to mitigate everything possible on this site. Beer sales are not a significant part of any convenience store, but a full service convenience store should be supported in this particular instance.

**2. Chuck Salem**, the applicant, understands that the first step taken by the Police Department on this kind of application is to measure the distance from a residence to the store, and this is the issue to which this applicant cannot comply. He has been told that the Police Department automatically recommends denial if the site is within 100' of a residential use. He also believes that the Planning staff recommends denial to concur with the Police Department. Salem requested that the Planning Commission consider the overall project. Salem has been doing these stores for awhile—he believes he knows what he is doing, he believes he does a good job, and he works hard to comply with all of the laws, particularly concerning the sale of alcohol and tobacco to underage customers.

Salem referred to the letter in opposition from the Principal of Lefler Middle School. He did contact the Principal just before this meeting and they have agreed that regardless of the outcome of this special permit, they will meet and talk about several subjects, including finding a way to lessen any problems for the children walking up and down 48<sup>th</sup> and how to handle those kids when they come into the store. He believes they will be able to find a way to lessen the impact. Salem hired a part-time employee to watch the walking pattern of the school children on two consecutive school days and found that there were about 24-25 kids walking up 48<sup>th</sup> Street from Lefler Middle School—not the 70 as mentioned in the Principal's letter. He believes this is typical of what is found in other neighborhoods and other parts of the city. At the time these kids were walking past the store (3:00-3:45 p.m.), it would not be the big traffic time for any of the customers that might purchase beer. Salem is not dismissing the fact that they will have lots of customers—it is just that the beer license probably will not make a big difference.

Salem also advised that he sells the beer out of a "beer cave" which is a room by itself with an automatic door, so the beer will be segregated away from where the children might be shopping.

Steward inquired whether Salem has gone through the permit distance waiver process on any of his other establishments. Salem indicated that he has one before the City Council now out near the airport, 3100 N.W. 12<sup>th</sup>, but it did not need the waiver of the 100' distance from residential. Steward suggested, then, that Salem was aware that this distance requirement existed when he developed this property. Salem indicated that he was not aware of this until 60 days ago after he was well into the project. He received a building permit back on October 31<sup>st</sup> for Brester Construction to begin construction. Perhaps mistakenly he took that signature on that building permit to mean that the

property was appropriate for a convenience store. However, Salem believes he has done all he can to mitigate those circumstances. The special permit language allows this mitigation. He believes they have done a good job of mitigation.

There was no testimony in opposition.

Bills-Strand asked staff to respond to the proposed mitigation plan. Brian Will of Planning staff stated that it does meet and actually exceeds the requirements of the zoning ordinance relative to the required screening. However, the staff recommendation has not changed from denial based upon the separation distance and the review comments from Police. The staff does not believe the landscaping mitigates the close proximity to residential uses.

Bills-Strand wondered if the Police would recommend denial even if all of the neighbors were in support. Will assumes that would be the case but he could not really speak for the Police Department.

Taylor inquired whether there is any way that an applicant should be unconditionally aware of this type of restriction prior to getting a building permit. Will advised that the process for a convenience store starts with the Building & Safety Department. It is not necessarily assumed that alcohol sales would be part of a convenience store. The staff has discussed making some changes to the process to avoid this problem in the future.

Bills-Strand wanted to know how many other special permits allow for off-sale within 100' of a residence. Will did not know, but there are some. Ray Hill of Planning staff advised that some of the stores that you see next to residential areas are pre-existing so they may not have had to go through the special permit process. That process was only introduced within the last 5-10 years.

#### Response by the Applicant

Otte has talked with the Police Department and he was advised that they will recommend denial anytime the facility is less than 100' from residential. Otte believes that this rule got instituted because there have been some abuses. The Planning staff could point to a couple of other individuals or businesses that abused the privilege. In this case there is not any abuse.

Otte also wonders whether not having a permanent planning director may mean that the staff is taking a position of supporting the Police Department as opposed to using some discretion. This applicant is coming to the Planning Commission for that discretion. The last time Salem Oil built a facility, this ordinance was not in place and Salem was not advised such by the Building & Safety Dept. This is a relatively new ordinance.

Will advised that the ordinance came into effect around 1994.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 1, 2001

Steward moved to deny, seconded by Carlson.

Steward believes we have this ordinance in place out of respect for the neighborhoods and for the residential districts. In the early 1990's there was considerable difficulty with control of liquor sales and this was one means of trying to gain more public control of where and how and under what circumstances liquor would be sold. He is sure that there are commercial enterprises in this community that do an excellent job and need no regulation, but this Commission has turned down applications that were further away than this one but still less than 100'. His public view is that it is an ordinance that says 100', and if it is 98' it does not comply. He does not believe that the staff recommendation supporting the Police Department has anything to do with having an interim planning director.

Duvall commented that he used to be the President of the 40<sup>th</sup> & A Neighborhood Association. He does not believe it is necessary for a convenience store to have liquor when it is in close proximity to a church, housing or schools. There is a competitor across the street without a liquor license and he thinks all things should be equal.

Taylor commented that he is glad that the convenience store is being built there because it was a blighted area. He does not believe it will have any problem with the competition in the area. There are residents in Tabitha and he is concerned about their plea at the last hearing. It is difficult for him to endorse something that is not really a positive. He does not believe that liquor sales are a positive, especially in a residential area. He does not believe that five residents can negate 25 students that go past the facility. He believes the convenience store will be successful whether there are liquor sales or not.

Larson will vote against the motion because: 1) the immediate neighbors are in support; 2) the fact that it is off-sale rather than on-sale; and 3) the record of the company for all these years. Bills-Strand believes this applicant has come up with an excellent mitigation plan and they have the support of the neighbors.

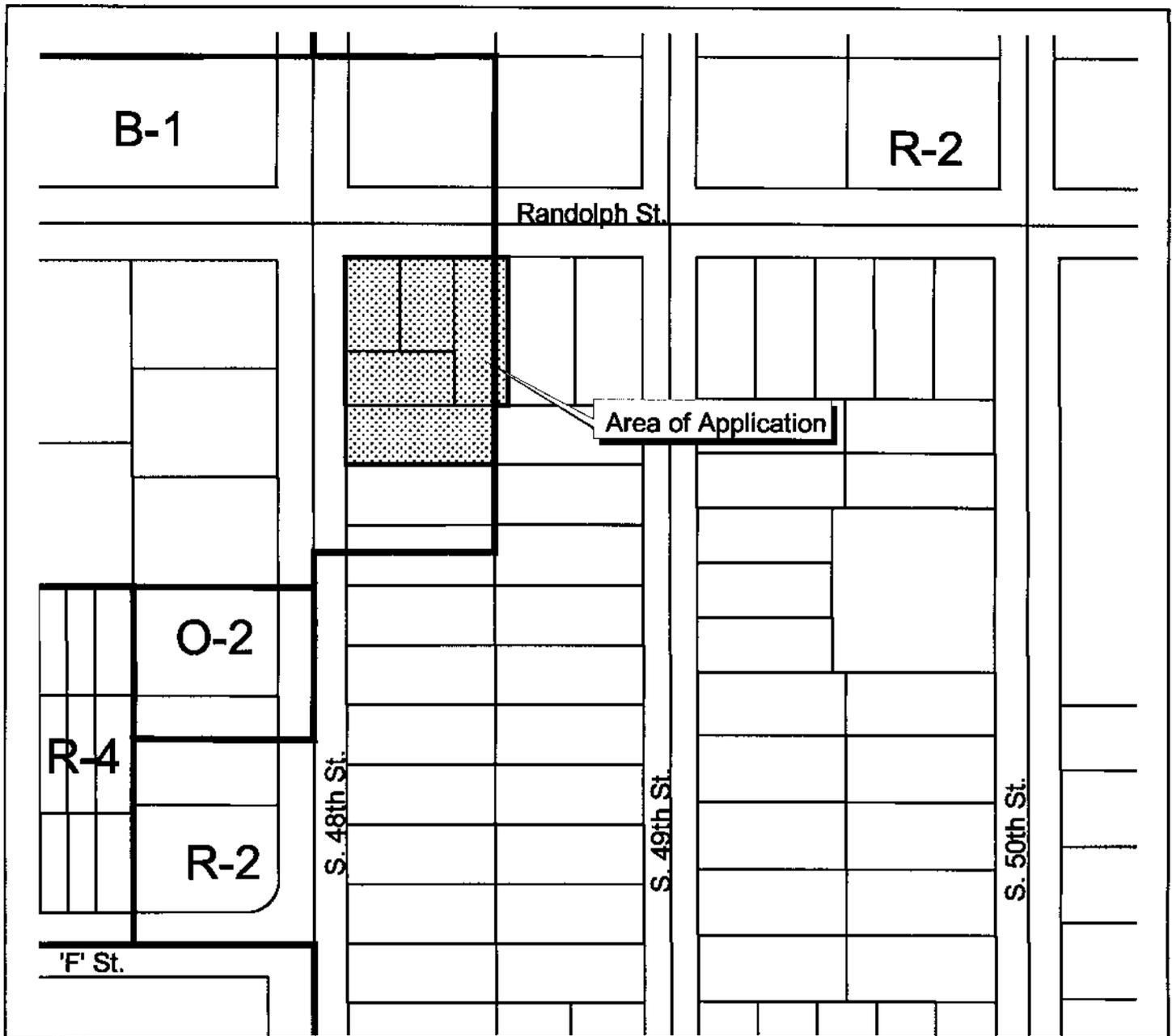
Schwinn indicated that he will always support these applications.

Motion to deny carried 6-3: Carlson, Taylor, Duvall, Newman, Krieser, and Steward voting 'yes'; Larson, Bills-Strand and Schwinn voting 'no'.



**Special Permit #1970  
S. 48th & Randolph St.**



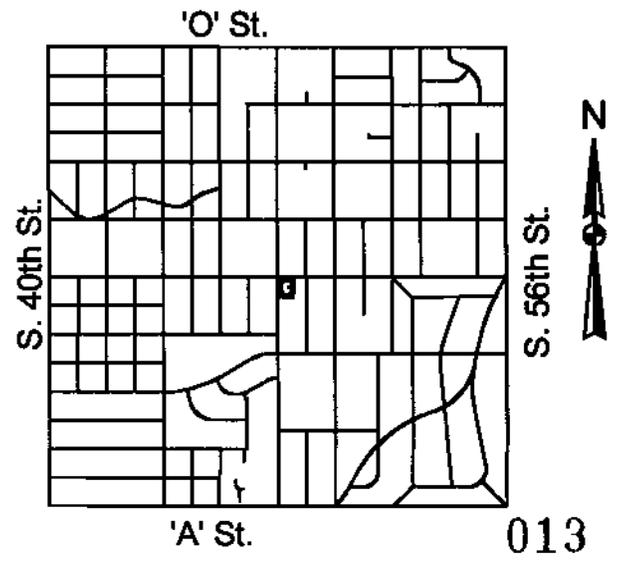
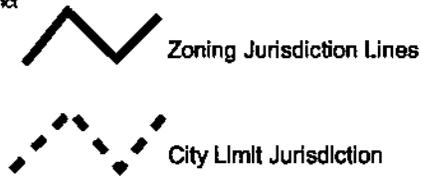


**Special Permit #1970  
S. 48th & Randolph St.**

**Zoning:**

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

One Square Mile  
Sec. 29 T10N R7E



W. MICHAEL MORROW  
TERRANCE A. POPPE  
ROBERT R. OTTE  
DAVID W. WATERMEIER  
TIMOTHY C. PHILLIPS  
JOEL G. LONOWSKI  
JOSEPH E. DALTON  
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Lincoln, Nebraska 68508  
*Mailing Address:*  
P.O. Box 83439  
Lincoln, Nebraska 68501-3439

March 20, 2002

Brian Will  
Planning Department  
Hand Delivered

Re: 4801 Randolph  
Lots 3-7, Block 2, Linwood Addition

Special Permit of Fast Break, Inc

Dear Brian:

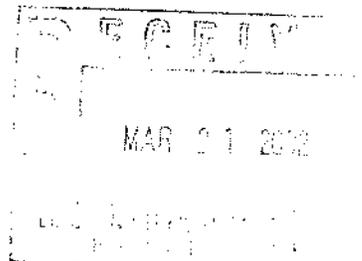
Please be advised that I represent Quin-C, Inc., the "Owner" of the above referenced property and Fast Break, Inc., the Special Permit Applicant "Applicant". Please consider this my certificate that the Owner and the Applicant have entered into a written Lease Agreement for the entire property described above for a term of years and that said Lease Agreement is a legal and binding instrument upon the parties for the construction of the building, occupancy of the premises and operation of the business to be located thereon.

I further certify to you that both corporations are in good standing in the State of Nebraska.

Thank you for your consideration. Please let me know if you have any questions.



Robert R. Otte  
Morrow Poppe Otte PC



**EXHIBIT "A"**

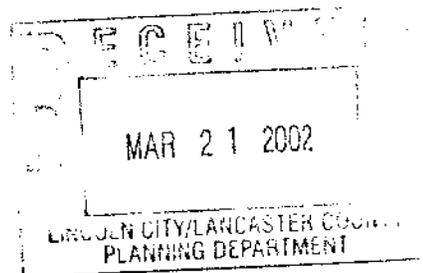
Special Permit Zoning Application of Fast Break, Inc.

The Applicant is particularly aware of the requirements of Section 27-63 regarding special permits for liquor sales. The construction of this new convenience store facility replaces a formerly blighted site. The site is in an older neighborhood, and the owner and Applicant have taken and shall take measures to measure sure that lighting is designed and erected in accordance with lighting standards and that landscaping, screening and other methods that might be suggested or approved will be used to mitigate adverse effects, if any, of the proximity of the facility to any residential use.

There will be no drive-thru window used as part of the business, and no part of the operation will be conducted on any required building setback. The parking ratios are in compliance, and the business shall not have amplified outside sound or noise. No access door to the premises shall violate the requirements of Section 27-634 as specifically set forth.

The Applicant has worked with the City to provide vehicular ingress and egress to and from the property which benefits the intersection and does not disrupt the residential district.

It is important to the owner and Application that the facility be incorporated into the neighborhood as opposed to standing apart from it. The Applicant will work with the neighbors and City to minimize any impact of the facility on the abutting residential neighborhood.





MAR 28 2002

LINCOLN POLICE DEPARTMENT  
COMMUNITY POLICE OFFICER

# Memorandum



**To: Mr. Brian Will**  
**From: Sergeant Michael S. Woolman #737**  
**Date: March 28, 2002**  
**Re: Fast Break, Inc. SP 1970**

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Mr. Will,

I have reviewed the Alcohol Sales Special Permit for Fast Break Inc. located at 4801 Randolph Street. Section 27.63.685 states that the licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved through the Planning Director. The building is located on the south portion of the lot allowing parking for patrons on the north side of the business.

The far south portion of the building contains a carwash that is connected to the Food Mart. Investigator Russ Fosler took measurements from the southwest corner of the carwash and the southwest corner of the Food Mart to the residence that located directly south of the building (834 So. 48<sup>th</sup> Street).

Carwash to 834 South 48<sup>th</sup> St. (NW corner of house) = 21 feet

Carwash to north edge of the driveway located at 834 South 48<sup>th</sup> St. = 8 feet

Food Mart to 834 South 48<sup>th</sup> St. (NW corner of house) = 44 feet

Food Mart to north edge of the driveway located at 834 South 48<sup>th</sup> St. = 31 feet

Although we did not measure other residences, east and south from the Food Mart, they could also fall within the 100 feet of the Food Mart.

The Lincoln Police Department is recommending denial based on the criteria that the proposed location 4801 Randolph Street Lincoln, Nebraska is within 100 feet of a residential district/residential use.

A handwritten signature in black ink that reads "Michael S. Woolman".

Michael S. Woolman

W. MICHAEL MORROW  
TERRANCE A. POPPE  
ROBERT R. OTTE  
DAVID W. WATERMEIER  
TIMOTHY C. PHILLIPS  
JOEL G. LONOWSKI  
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P.O. Box 83439  
Lincoln, Nebraska 68501-3439

March 21, 2002

Mr. Brian Will  
Planning Department

HAND DELIVERED

RE: 4801 Randolph  
Special Permit 1970 – Fast Break, Inc.  
Mitigation Plan

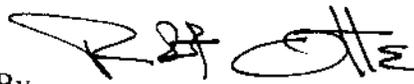
Dear Brian:

On behalf of Chuck Salem and Fast Break, Inc., I wanted to specifically address to you a formal remediation plan regarding the above-referenced Special Permit. We discussed the efforts of the Applicant to mitigate the effect of this site early in the planning process. As you know, the City Council may waive certain conditions required for a Special Permit. We are certainly interested in the approval of a mitigation plan by the Planning Department and Planning Director as provided in 27.63.680 and, therefore, respectfully submit the Mitigation Plan shown in Exhibit "A".

Thank you for your consideration. I look forward to meeting with you to discuss this matter in detail.

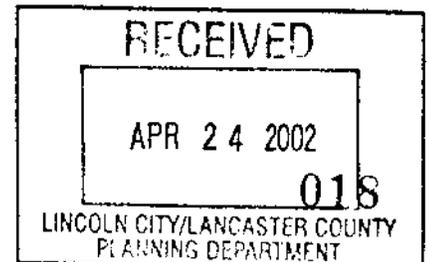
Sincerely,

MORROW, POPPE, OTTE,  
WATERMEIER & PHILLIPS, P.C.

By 

Robert R. Otte

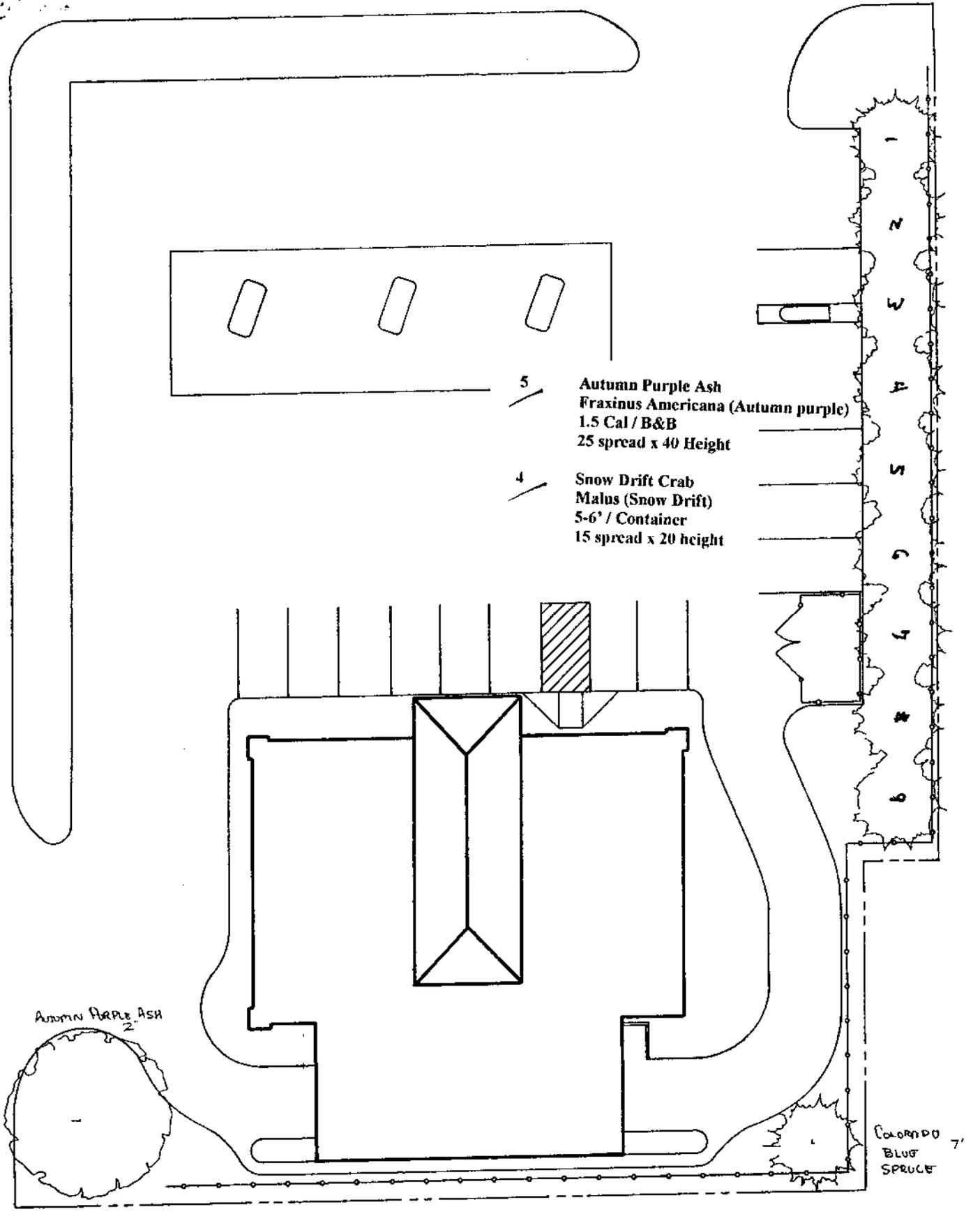
RRO/bc  
Enclosure  
c Charles R. Salem, Salem Oil Company



**EXHIBIT "A"**  
**MITIGATION PLAN**

4801 Randolph, Lincoln, Nebraska  
Special Permit 1970  
Fast Break, Inc.  
Salem Oil Company

1. Site Plan. From the Start the Applicant tried to mitigate any effect that a new convenience store at this location would have on the abutting neighbors. Several different site configurations were considered, and the current site plan was the result of much consideration about the effects of lighting, noise, traffic and exit doors would have on the neighborhood. The building is north facing rather than a more desirable west facing in order to protect the closest abutting land owners.
2. Hours of Operation. The Applicant would agree, as part of its mitigation plan, to limit its hours of operation to between the hours of 6:00 a.m. and 12:00 midnight.
3. Limited Alcohol Sales. The Applicant would further agree to limit alcohol sales by ending such sales at 10:00 p.m.
4. Landscape/Fencing. Although not required or shown on the original Site Plan, the Applicant has proposed rather significant landscaping (See Exhibit A-1 attached) and fencing. Our building plan also includes fencing on the south and east sides and retaining walls.
5. Rehab. Please remember that this corner was a blighted site. We have received many phone calls with neighbors who were absolutely delighted with the prospect of having a full-service convenience store, especially one of this quality, being built in the neighborhood. This was not just a significant remodel, but the whole site was excavated, the previous buildings (2) were removed, and the entire site was rebuilt.
6. Lighting. We have taken particular caution in using lighting under the gasoline canopy which will focus the light where it is needed the most and the least amount to peripheral areas. We are sensitive to any light bleed onto neighboring properties, and that went into the design of the facility and location of the facility on the lot.



- 5 / Autumn Purple Ash  
Fraxinus Americana (Autumn purple)  
1.5 Cal / B&B  
25 spread x 40 Height
- 4 / Snow Drift Crab  
Malus (Snow Drift)  
5-6' / Container  
15 spread x 20 height

Autumn Purple Ash

Colorado Blue Spruce

**Campbell's**  
CULTIVATING IDEAS  
7000 South 56th Street  
Lincoln, NE 68516  
(402) 423-4556  
www.campbellsdnurseries.com

**PROJECT:**  
**FASTBREAK CONVENIENCE STORE**  
800 SOUTH 48th STREET  
LINCOLN, NEBRASKA

**DESIGNED BY:**  
**DENNIS THEYE**  
DATE: 4/2002  
SCALE: 1"=10'  
SHEET: 1 OF 1



**Lincoln-Lancaster Planning Department**  
**Memorandum**

**TO:** Planning Commission  
**FROM:** Brian Wilk  Planner  
**DATE:** April 26, 2002  
**SUBJECT:** Mitigation Plan for SP#1970 - Fast Break, Inc. 4801 Randolph Street

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At the April 17, 2002 public hearing, Chuck Salem was granted a 2-week delay to allow time for him to prepare a mitigation plan to accompany his special permit application for the sale of alcohol for consumption off the premises at 4801 Randolph Street. The mitigation plan and cover letter was distributed to the Planning Commission with the May 1, 2002 agenda packet.

The mitigation plan has been reviewed by the Police and Planning Departments, and the comments of the Police Department are attached. Based upon that review staff still finds that because of the proximity to a residential use and a residential district, it is not possible to mitigate any adverse effects of the reduction in distance of less than 100' that may be associated with this use through landscaping, screening, or other methods. As a result, the recommendation for denial remains unchanged.



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

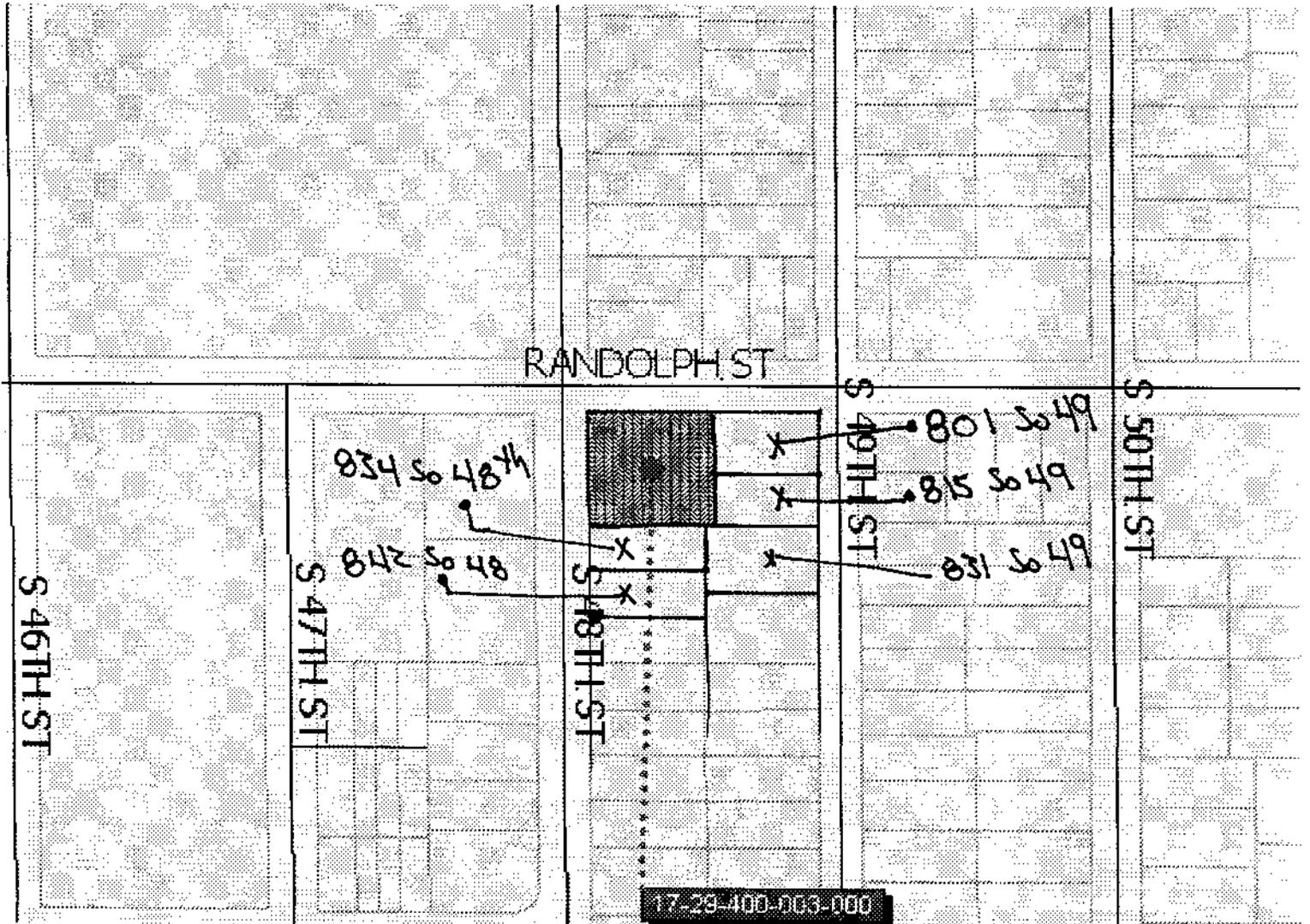
To: Brian Will <BWill@ci.lincoln.ne.us>  
cc:  
Subject: Special Permit 1970 - Fast Break, Inc.

04/25/2002 03:31 PM

Brian,

I have reviewed the "Mitigation Plan" submitted by Fast Break, Inc. The Lincoln Police Department is still recommending denial based on the fact that the Food Mart is within 100 feet of a residential district. If you have any questions please feel free to contact me at 441-7215.

Michael S. Woolman  
Planning Sergeant  
Lincoln Police Department



**TO THE PLANNING COMMISSION AND LINCOLN CITY COUNCIL**

We would like to express support for a full-service convenience store at 48<sup>th</sup> and Randolph. This would include a license for off-sale beer. The convenience store is a very welcome addition to our neighborhood, and your support would be appreciated.

	<u>Name</u>	<u>Address</u>	<u>Date</u>
1.	<i>Quinn</i>	815 S. 49 <sup>th</sup> 68510	4-26-02
2.	<i>Lorenzo / Delgado</i>	801 South 49 <sup>th</sup>	4/26/02
3.	<i>John J. Traudt</i>	534 2048	4-27-02
4.	<i>Nancy A. Adair</i>	831 So 49	4/28/02
5.			

**TO THE PLANNING COMMISSION AND LINCOLN CITY COUNCIL**

We would like to express support for a full-service convenience store at 48<sup>th</sup> and Randolph. This would include a license for off-sale beer. The convenience store is a very welcome addition to our neighborhood, and your support would be appreciated.

	<u>Name</u>	<u>Address</u>	<u>Date</u>
1.	<i>Ramirez</i>	815 S. 49 <sup>th</sup> 68510	4-24-02
2.	<i>Lorenzo Delgado</i>	801 SOUTH 49 <sup>TH</sup>	4/26/02
3.	<i>B. D. [unclear]</i>	842. S. 48 <sup>th</sup>	04/29/02
4.			
5.			

IN OPPOSITION

ITEM NO. 4.2: SPECIAL PERMIT NO. 1970  
(p.79 - Cont'd Public Hearing - 5/01/02)

**McDermott, Hugh**

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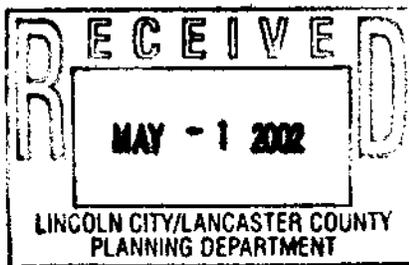
**From:** McDermott, Hugh [hmcderm@lps.org]  
**Sent:** Wednesday, May 01, 2002 7:09 AM  
**To:** plan@ci.lncoln.ne.us  
**Subject:** request for liquor license. new U-Stop at 48th and Randolph

Dear Planning Committee,

My understanding is that you will be discussing whether a liquor license should be granted to the new U-Stop or Convenience Store at 48th and Randolph. I would like you to know that I oppose this request. This location is fairly close to a number of elementary schools and our middle school, Lefler Middle School.

On a daily basis, we probably have over 70 students that walk north on 48th Street, past this location. Many of our students catch the city bus at the corner of Hawthorne School. I really believe there are enough liquor locations around this area without adding another one at this location. It is important that middle school kids stay clear of alcohol and that we try to model the importance of good behavior. We have enough issues to deal with, without kids and families having another place in the neighborhood to purchase alcohol. Please strongly consider the number of schools and students in this area as you make your recommendation and decision. Thank you.

Hugh McDermott  
Principal, Lefler Middle School



IN OPPOSITION

ITEM NO. 3.2: SPECIAL PERMIT NO. 1970  
(p.79 - Public Hearing - 4/17/02)

Planning Department,  
% Brian Will or Jean Walker

Dear Sirs,

I wish to let you know. I do not want liquor sold at this new facility being constructed at 48th & Randolph.

Sincerely  
Margaret E. Lyden  
824 S. 49th  
Lincoln, N. 68510

