City Council Introduction: **Monday**, December 15, 2008
Public Hearing: **Monday**, January 5, 2009, at **1:30** p.m.

Bill No. 08-170

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 08058,** from R-2 Residential District to R-T Residential Transition District, requested by Brian and Debra Marshall and Earl Visser, on property generally located at south of A Street and east of South 33rd Street (3333 A Street and 3345 A Street).

STAFF RECOMMENDATION: Approval.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 12/03/08
Administrative Action: 12/03/08

RECOMMENDATION: Approval (5-2: Cornelius, Partington, Taylor, Sunderman and Carroll voting 'yes'; Larson and Esseks voting 'no'; Gaylor Baird and Francis absent).

FINDINGS OF FACT:

1. This change of zone request and the associated Use Permit No. 08002 were heard at the same time before the Planning Commission; however, the only application before the City Council is the change of zone unless the use permit is appealed.

2. This is a request to change the zoning from R-2 Residential to R-T Residential Transition by the two owners of 3333 A Street and 3345 A Street, to allow office and residential uses by use permit. The intent of the property owner of 3333 A Street is to operate a full-service staffing agency, with focus upon the placement of paraprofessionals, personal assistants and non-medial in-home care services, excluding day labor. The intent of the owner of 3345 A Street is to continue the property as single-family residential with potential for office use in the future. The issues of access, traffic, parking and screening are conditioned by the use permit.

3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.4, concluding that the change of zone from R-2 to R-T is compatible with the surrounding neighborhood. The proposed uses will not cause a substantial increase in traffic through the neighborhood. The proposal is in conformance with the Comprehensive Plan. The staff presentation is found on p.6-7.

4. The applicants' testimony is found on p.7-8 and 11-12. The record consists of a letter in support from the 40th & A Neighborhood Association (p.22).

5. Testimony in opposition is found on p.8-10, and the record consists of three letters in opposition, two of which were submitted by individuals testifying in opposition (p.23-29). The issues of the opposition include encroachment upon the back yards of single family residences, property values, increased traffic, day labor, parking, screening, safety and operation of the business in violation of the zoning ordinance prior to the processing of this application.

6. On December 3, 2008, the majority of the Planning Commission agreed with the staff recommendation, finding that the proposal meets the intent of the R-T zoning district and the Comprehensive Plan, and voted 5-2 to recommend approval. Esseks and Larson were the dissenting votes, finding that there are other locations available in which to operate this business without encroaching upon the back yards of single family residences and that the property is currently being used as office in violation of the zoning ordinance (See Minutes, p.12-13).

7. On December 3, 2008, the Planning Commission also voted 5-2 to approve Resolution No. PC-01149, approving the associated Use Permit No. 08002, with conditions (a copy of which has previously been provided to the City Council). As of the date of this Factsheet, the use permit has not been appealed to the City Council.

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: December 8, 2008
REVIEWED BY: _____ **DATE**: December 8, 2008
REFERENCE NUMBER: FS\CC\2008\CZ.08058

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for DECEMBER 3, 2008 PLANNING COMMISSION MEETING

This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

PROJECT #: Use Permit No. 08002
Change of Zone No. 08058

PROPOSAL: ***To allow a change of zone from R-2 Residential to R-T Residential Transition District*** and a use permit to allow office and residential uses.

LOCATION: South of A Street and east of S. 33rd Street more particularly located at 3333 A Street and 3345 A Street.

LAND AREA: .31 acres more or less

EXISTING ZONING: R-2 Residential

WAIVER TO DESIGN STANDARD: To reduce the driveway width from 24 feet to 18 feet as shown on the site plan is **administratively approved** by the Director if the Use Permit is approved by Planning Commission.

CONCLUSION: The proposed office and residential uses are compatible with the surrounding neighborhood. The proposed uses will not cause a substantial increase of traffic through the neighborhood. The proposed change of zone and use permit are in conformance with the Comprehensive Plan.

RECOMMENDATION for the Use Permit:	Conditional Approval
RECOMMENDATION for the ***Change of Zone:***	***Approval***

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 7 and 8, Block 4, Marydell, Lincoln, Lancaster County, Nebraska

EXISTING LAND USE: Single family residential

SURROUNDING LAND USE AND ZONING:

North:	B-3 Commercial	Grocery Store and Liquor Store
South:	R-2 Residential	Single Family Residential
East:	R-2 Residential	Single Family Residential
West:	B-3 Commercial	Insurance office in former single family dwelling

HISTORY:

October 6, 2006 City Council approved the 40th and A Neighborhood Downzone (CZ06040) rezoning these properties from R-4 Residential to R-2 Residential

May 1979 The 1979 Zoning Update changes these properties from B Two Family Dwelling District to R-4 Residential.

COMPREHENSIVE PLAN SPECIFICATIONS:

New or established commercial uses should not encroach upon, or expand into, existing neighborhoods. (36)

Encourage renovation and reuse of existing commercial centers. Infill commercial development should be compatible with the character of the area and pedestrian oriented. As additional centers are built, the City and developers should be proactive in redevelopment of existing centers to make sure that redevelopment is sensitive to the surrounding neighborhood and happens quickly to reduce vacancies. (36)

Due to lesser potential impacts, the centers can be located closer to residential, though residential uses should be buffered through landscaping, large setbacks and transitional uses, such as office or open space. (39)

Promote the preservation, maintenance and renovation of existing housing and neighborhoods throughout the city, with special emphasis on low and moderate income neighborhoods.
Maintain and enhance infrastructure and services in existing neighborhoods. While acknowledging the need for affordable housing, recognize that broad economic diversity within existing neighborhoods encourages reinvestment and improves quality of life for all residents. (67)

Encourage a mix of compatible land uses in neighborhoods, but similar uses on the same block face. Similar housing types face each other: single family faces single family, change to different use at rear of lot. Commercial parking lots should not intrude into residential areas where residential uses predominate a block face. More intense commercial uses (gas stations, big box stores, car wash, fast food, etc.) may not be compatible due to impact on nearby housing. Expansion in existing centers should not encroach, or expand to encroach, on existing neighborhoods, and commercial areas must be screened from residential areas.(68)

Encourage pedestrian orientation with parking at rear of residential and neighborhood commercial uses.(68)

Require new development to be compatible with character of neighborhood and adjacent uses (i.e., parking at rear, similar setback, height and land use).(68)

UTILITIES: Existing

TRAFFIC ANALYSIS: A Street is a two lane with center turn lane, minor urban arterial.

AESTHETIC CONSIDERATIONS: The applicants do not intend to change the exteriors or to tear down the existing structures. If in the future the existing structures were to be torn down and rebuilt, the R-T zoning district would require that they(1) Have a two and one-half inch in twelve inch pitched roof or steeper; (2) A nonreflective exterior siding material which is or simulates wood, stucco, brick, or stone; (3) A nonreflective roof material which is or simulates asphalt or wood shingles, tile, or rock; (4) and no air conditioners on the roof.

ALTERNATIVE USES: Remain single and two family residential

ANALYSIS:

1. This is an application for a change of zone from R-2 Residential to R-T Residential Transition District on two properties east of the commercial center at S. 33rd and A Street. The owner of the property at 3333 A Street wants to use the existing single family house as an office for a staffing agency. The owner of the property at 3345 A Street intends to continue to use the building on his property as a single family house, but desires a change to R-T zoning for potential office use in the future. A change to an office use in an R-T zoning district requires a use permit.

2. Although residential uses are allowed in the R-T district, a use permit is required on both properties because a shared commercial driveway will be required to convert the residential properties to commercial. The shared driveway and easement will need to be shown on the use permit site plan.

3. Having a shared commercial driveway is important since both properties front on A street which is a two lane with center turn lane, minor arterial street. Reducing the number of driveways on such a street, in this case combining two residential driveways into one commercial driveway, will improve safety and traffic conditions.

4. An R-T Residential Transition designation may be granted to any property abutting upon, or directly across a street from and fronting the same street as property zoned B-1, B-2, B-3, H-2, H-3, H-4, I-1, and I-2. The proposed R-T is directly across the street from B-3 commercial zoning.

5. The R-T zoning district requires the following screening when a residential use is converted to a commercial use: the screen shall be evenly distributed horizontally; however, it may vary in height so as to screen at least sixty percent (60%) of the surface area of a vertical plane extending along the entire length of each side and rear lot line adjacent to a residential district from the ground to a height of ten feet (10') above the adjacent ground elevation. Fences may not be used to meet more than fifty percent (50%) of this screening requirement.

   The applicant changing the use of her property from residential to office will be required to screen her rear lot line to the above standard.

6. This change of zone and associated use permit will have no significant impact on the surrounding neighbors. The intent of the R-T zoning district is to act as a buffer between intense commercial uses and the abutting neighborhood. The site plan review associated with the use permit for the R-T zoning district provides a mechanism for ensuring that the site development is consistent with the scale and character of the surrounding neighborhood. In this case the properties to be re-zoned face both a grocery store and a liquor store and are adjacent to an office use with a significant amount of paving and parking in the front yard. This change of zone will effectively create a boundary separating the commercial character of this area and the surrounding single family residential neighborhood.

This approval permits the change of zone from R-2 Residential to R-T Residential Transition District with a use permit allowing residential and offices uses.

Prepared by

Christy Eichorn
Planner

DATE: November 20, 2008

APPLICANT/OWNER:	Brian and Debra Marshall 3333 A Street Lincoln, NE 68510	Earl Visser 3646 N. 48th ST., Ste A Lincoln, NE 68504

CHANGE OF ZONE NO. 08058
and
USE PERMIT NO. 08002

PUBLIC HEARING BEFORE PLANNING COMMISSION: December 3, 2008

Members present: Cornelius, Partington, Larson, Taylor, Esseks, Sunderman and Carroll; Francis and Gaylor Baird absent.

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone and conditional approval of the use permit.

These items were removed from the Consent Agenda due to a letter received in opposition with concerns about parking.

Staff presentation: **Christy Eichorn of Planning staff** presented the proposal for change of zone and use permit on property generally located at S. 33rd Street and A Street. The property is currently zoned R-2 for single family residential. This is a request to change that zoning to R-T Residential Transition.

In early discussions with the applicant, they wanted to know what would be best for the neighborhood. They had originally wanted B-3 Commercial zoning, which is neighborhood commercial, and staff suggested something less intense such as the R-T zoning, which requires a use permit to show access, parking, landscaping and aesthetics. The applicant has indicated that they intend to have a staffing agency on the property at 3333 A Street, which is the property in this change of zone that is closest to the B-3 zoning district at 33rd & A Street. The owner of the other residential property included in this change of zone request which is further to the east intends to keep the property as single family residential until such time in the future that he might want to use it for something such as office. The use permit only allows residential and office uses on these two properties.

The staff is requesting just one driveway coming off of A Street for safety and traffic purposes, which requires a common access easement with a shared commercial driveway on the two properties.

Eichorn noted that the owners directly across the street are concerned about people parking on their existing small parking lot for the grocery store and that the traffic will cross mid-block to get to the staffing agency. With the use permit in place, the applicant will be required to have four parking stalls, which will be located behind the existing building. Neither house will be changed in structure in any way. There will be required landscaping along the back property line for the house converting to an office use to screen the residential use to the south.

The Comprehensive Plan talks about making transitions from more intense uses in the B-3 to less intense uses in the residential zoning district. The staff believes that R-T is appropriate for this particular area, specifically because the two houses included in this change of zone front upon a grocery store, liquor store and insurance agency. The Comprehensive Plan also talks about similar uses facing each other.

Cornelius inquired whether the use permit covers both houses. Eichorn advised that one of the conditions of approval is that there be one site plan for both houses.

Esseks noted that the letter in opposition talks about the applicant's clientele parking across A Street on their property and then crossing over. That suggests that the westward house is already being used for office purposes. Eichorn did not know. The staff looks only at the zoning and the application itself and whether the zoning is appropriate, not whether or not the house is currently being used for office purposes. The applicant has not so advised so she assumes that it is still single family residential. Esseks then inquired under what circumstance the property could be legally used for office purposes. Eichorn suggested that by this application the office use would be allowed. Building & Safety would be in charge of enforcing any violation of the zoning ordinance, not the Planning Department and not in this venue.

Sunderman noted that there are four parking stalls on the site map and that it also talks about a new garage someday. Is the new garage part of this plan? Eichorn explained that there is an existing single stall garage that the applicant indicates would be torn down and they would like to construct a new garage sometime in the future. In order to get the required parking, the old garage will need to be removed. They are showing a garage in the future rather than having to come back and amend the use permit.

Proponents

1. Brian Marshall stated that he and his wife, Debra, own the property located at 3333 A Street, in which they are proposing to operate a full-service staffing company. They are currently involved in placing paraprofessionals, personal assistants and laborers. The benefit to the community is apparent. They would like to use this property for the purpose of filling needs of the community and for people to have jobs. Most of their work is done on the phone and out in the field. Most appointments are "by appointment only". The Marshalls are following sound business practices by going through the Planning Commission and they have received a letter of support from the 40th & A Neighborhood Association. There are businesses around the whole area, including the grocery store across the street, as well as the insurance company and cleaners to the right and left.

Larson asked whether they provide temporary workers. **Debra Marshall** advised that they do staff temporary workers. They have owned the property for about a year and she has spent a lot of time fixing up the house. She is now available full-time and is just now starting to work on this business.

Larson inquired whether there would be workers standing outside. Ms. Marshall stated that they would not be involved in day laborers. The staffing industry is very diverse. Day labor is not something she wishes to further pursue.

Mr. Marshall offered that they are more interested in non-medical in-home care services. He has been in health care industry for 19 years as an administrator.

Partington inquired about the size of the staff for the business with just four parking stalls. Ms. Marshall stated that they would typically operate with two to three employees. It would be basically one in the office and one working in the field. She has been there about a year now and she is eager to put in the parking spaces.

Esseks inquired why the applicants started this business in a residentially zoned house. Ms. Marshall stated that she wanted something quaint. She does not want the commercial aspect. She wants it to be integrated. They have a true passion to find the best quality people to help the elderly. She does a good job at screening. Her husband has an assisted living license. Mr. Marshall offered that they have also checked the demographic data which shows that this particular neighborhood needs this type of business.

Esseks inquired as to the use of the property before the Marshalls started this business. Ms. Marshall stated that it was a residential use. Esseks wondered why the Marshalls thought they could start a business in R-2 zoned property. Ms. Marshall stated that the pharmacy was a big attraction; she wants the quaint look to the business – she wants people to feel like they are getting an owner-occupied business; it has a fireplace which helps to create that atmosphere.

Esseks believes the applicants have violated the Lincoln Municipal Code. Ms. Marshall clarified that she has actually been employed by another business and just recently lost her job. She just started this business as she brought this application forward. She has been going there nights and weekends working on the house and remodeling the bathroom, painting, refinishing the floors, etc. She has not been running the business for a year. When she was operating the other staffing company, she had two to three staff, but they have not been working at this location until just recently – the last two months. That is because she spoke with the neighborhood association, Building & Safety and Planning. She has not heard any other opposition.

Taylor inquired whether the applicants would tailor their parking to facilitate the problem with parking across the street. Will you schedule your appointments in such a way that the people will not have to park across the street? Ms. Marshall was only aware of the one situation as noted in the e-mail, and she corrected the situation at that time.

Larson inquired whether there is an exit from the parking spaces into the alley. Ms. Marshall stated that there is no alley.

<u>Opposition</u>

1. Michael Barna, 3336 Washington Street, who lives directly behind the house proposed to be used for an office, testified in opposition. He stated that Envision Staffing (the applicant) is already doing business at this location without proper zoning and without consideration of the neighbors.

In fact, he placed a call to them yesterday and they offered a staffing appointment from this location and stated that they are open for business from 1:00 p.m. to 6:00 p.m., Monday through Friday.

Barna also pointed out that the Chamber of Commerce Web site is listing this as a business open at that location and there is a Web site available <www.commandonline.com>. As far as support from the neighborhood association, Barna believes that the applicants told the association that they plan to do medical and nursing temporary staffing. The Web site does not mention medical or nursing staff. It clearly states on the Web site, "looking for work, get paid today", which would be a day labor situation.

Barna submitted that there is other open retail space available in this community. He does not see the need to convert a residential dwelling for this business. They will be taking out the green space in the back yard and pouring cement. There is only a chain link fence. They have not talked about a privacy fence. This will result in a parking lot directly in his back yard. There is also a flood zone. There will be drainage issues. Cars will track in salt and street dirt. It will destroy the garden and his back yard. He thinks this opens up a can of worms. If this staffing agency goes out of business, the property would still be zoned for business use. He is also concerned about this being a temporary employment agency that is paying daily – people will be collecting paychecks daily across the street form a liquor store.

In addition, Barna is concerned because he was never approached by the applicants. There is already a vacant lot at 33rd & A Street. Traffic on A Street is already bad enough. It is a very quiet family-friendly neighborhood. It does not need more traffic and does not need to lose more green space.

2. Linda Witfoth, 3336 Washington Street, testified in opposition. She moved into her property in May of 2001 as a single parent with one son. She moved here because the homes are owner-occupied, in good repair, low crimes rates, and close to school. The brokers insurance business has been there for many years and she does not have a concern about that. Her home is close to local businesses, such as a grocery store, pharmacy, gas, etc. From her house you cannot see any of those businesses. She has good neighbors, neighbors of quality with long term family plans. She does not want a business in her back yard. Envision Staffing is already doing business at this location illegally. They have not approached the neighbors. The neighborhood is struggling with their home values already. A concrete lot in her back yard is not going to help. Once the property is a business, it is always going to be a business. There is a vacant house already available for retail in this immediate area. This business does not have any history of longevity. If they fail, what happens next? If they are doing most of their business on the phone and out in the field, then this location is not a strong argument. Her quality of life will go down drastically. She has two dogs in her back yard. If there is constant motion on her back fence, she will have to keep the dogs inside so that she is not a bad neighbor. If this is approved, she would want a barrier at least eight feet tall. She would also want some kind of parking rail so that nothing can come through the fence, with landscaping along that barrier so that any antifreeze, oil, leaks or salt is protected from going into her yard. She will want to move if this application is approved. How will I sell my home with the lower property value? She supports small business but she does not see the need for this business at this location. She would not have bought her home if she had known there would be a business in her back yard.

3. Seth Witfoth, 3336 Washington Street, testified in opposition. This has been a wonderful neighborhood in which to grow up because of all of the businesses established in the area at the intersection of 33rd & A. However, the approval of this proposal seems like the beginning of a strip mall with the insurance agency and the dry cleaners next door. He does not want the disruption in the back yard with strangers parking across the fence and being able to see into their back yard.

4. Mike Duweling, 3342 Washington Street, directly behind the second home in the application and catty-corner to this business, testified in opposition. He is not against small business but he does not believe it is appropriate in this area, especially with one of the corner lots being completely empty which could be used for any kind of business. He suggested that there is also office space available at 33rd and Cornhusker. As a parent, he bought his home in order to have a nice home in a neighborhood with a neighborhood feel. The proposed zone change will most likely diminish the quality of the neighborhood and therefore the quality of life for adjacent lots and those in close proximity. He was not approached by the applicant. He purchased his home based on the quality of the neighborhood, with three small children. He is not excited about a business in his back yard when they assumed the house would remain residential. He has put a lot of money and sweat equity into his home. Duweling has qualified for an interest-free loan predicated on the premise that the city desires to improve this select neighborhood. This zone change is in direct contradiction to the actual improvement of this area. There are numerous vacant lots and buildings available throughout Lincoln for this type of business. In raising a family, he feels his family's physical safety is at a greater risk if his back yard abuts a business and parking lot.

<u>Staff questions</u>

Cornelius inquired as to the distance between the back lot line and the parking lot. It was estimated to be 57 feet.

It was also clarified that the other house (3345 A Street) included in this change of zone is being used as a single family residence.

Esseks stated that he is very impressed with the arguments provided by the neighbors. It seems by extending this R-T to the second property east of the proposed business location just makes it worse. We are encroaching upon a residential neighborhood. Why the second lot? Eichorn noted that there was a downzone to R-2 done in this area a few years ago. This time we have two property owners that came forward and asked to have some sort of zoning other than residential because both of the properties face commercial zoning across the street, also with commercial zoning on the west. The R-T appeared to be the most appropriate change of zone.

Cornelius asked staff to explain the landscaping requirements for R-T. Eichorn stated that the applicant is required to screen at least 60% of the surface area of a vertical plain extending the

entire length of the rear lot line. They would need to screen from zero to 10', generally meaning a fence and some landscaping.

Response by the Applicant

Ms. Marshall expressed appreciation to the neighbors and their concerns. She assured the Planning Commission that the Web site referred to by the opposition is not her Web site. That is where she used to work. She is more interested in placing paraprofessional and non-medical. She does not have a Web site.

Ms. Marshall also advised that the property is no longer in a flood zone. She understands the concern about the parking lot. The proposed parking lot would not be a full parking lot like the insurance broker's parking lot. She has worked with Public Works on the parking lot. The use permit will require a privacy fence, similar to that which the broker insurance business has – a nice wood fence.

Ms. Marshall stated that they did speak with the neighbors that face their property with no objection.

Ms. Marshall reviewed the improvements they have already made to the property. They have replaced all of the galvanized piping, removed the ugly bushes and the dirty tree, and will continue to beautify the house. Ms. Marshall stated that she respects the back yard of Ms. Witfoth. She also likes a very nice clean look.

Mr. Marshall added that this is a very quality type neighborhood which they do respect and they will keep it that way. He believes some issues are misspoken. No one will be hanging out there at night. This is not a blighted area. They intend to continue it as a family-oriented area, which is part of their purpose and intent for this business. They have the experience and background to run a business and the knowledge and experience to make it successful. Staffing is a very necessary business for people to find jobs.

Cornelius asked whether they intend to have day labor, and the applicants responded, "absolutely not". Ms. Marshall would not oppose having that be a condition of approval on the use permit.

Marvin Krout, Director of Planning, cautioned that the purpose of the use permit is not to limit the uses that are allowed by the underlying zoning, but to control the site plan, the circulation, traffic, etc. The City Attorney has suggested that the use permit is really not the mechanism to limit uses. There have been instances where, separate from the change of zone, the applicant and City Council have agreed to a separate zoning agreement between the city and the applicant that would further limit the uses that would otherwise be allowed. But, it is another complication for Building & Safety in terms of tracking and monitoring the property.

Cornelius assumes the use permit has some limitation on trip counts. Krout agreed that it can, but this one does not. Generally, we say that the uses allowed in an office district will be more moderate – probably the heaviest in terms of traffic would be medical use, which is permitted in the R-T.

Cornelius asked whether the applicant met with the neighborhood association. Ms. Marshall answered in the affirmative, stating that there were 6 or 8 in attendance. No one expressed any opposition.

Cornelius inquired why the applicants did not approach the neighbors to the rear. Ms. Marshall indicated that it was her understanding that she should focus on the commercial area to the left, right and across the street.

Ms. Marshall advised that the hours of operation will be 8:00 a.m. to 5:00 p.m., Monday through Friday.

CHANGE OF ZONE NO. 08058
ACTION BY PLANNING COMMISSION: December 3, 2008

Taylor moved approval, seconded by Sunderman.

Taylor expressed appreciation for the dialog today with the neighbors. He is very cognizant of their concerns, but he also appreciates the response given by the applicant. He believes that the questions about a privacy fence will be resolved and they will not use the entire lot for the parking so there should be some green space remaining. He is also impressed with the applicants and their approach to their planning and their purpose in establishing the business in this location. The flooding situation mentioned by the opposition has been answered. The concern about safety of children is extremely important, but it appears that will be answered to a great degree by the barrier that will be in place. He is also impressed with the applicants' concern about the neighbors. He cannot find any real objection because some of the objections are based upon mis-information, if the applicants' information is true. He has seen operations similar to this. He is in support without the day labor. He believes that the fears of the opposition will go away.

Larson stated that he will vote against the change of zone. He sees no compelling reason for this business to be located in this particular area. The intersection is a retail center serving the immediate neighborhood. This business would not necessarily serve just this neighborhood, but certainly the whole city. He does not like that they have operated illegally before asking for this change of zone and sees no reason for the additional property to be tagged onto this change of zone.

Esseks agreed with Larson. He thinks it sets a bad precedent to approve a rezoning when we know that the property has been used for the applied use illegally. It seems that we have spent a lot of thoughtful time rezoning these communities to protect residential lifestyles. Here we have neighbors right behind that are owner-occupied who purchased the land with the expectation that those to the north would also be residential. Those are legitimate expectations that we are now going to violate. There appears to be no compelling reason to locate two potential office uses to the north. If they were going to serve the local community, it might be different, but it is a business that can be located elsewhere.

Sunderman likes the fact that this is using R-T to square off the business zoning on that corner. The R-T is designed to buffer between heavier use and lighter use. He believes that the driveway situation will be improved. The site plan will allow people to pull straight out with a safer

environment. He believes this is a low impact use. With the proper screening, he does not believe the neighbors will really notice a difference.

Cornelius pointed out that the Planning Commission is not an enforcement body. It is not our job to say this was wrong so we're not going to approve this use for the future. There is a process for that problem and he does not believe the Planning Commission should be concerned with the zoning enforcement issue. He believes this is a R-T use perfectly situated between a more intense commercial district and less intensive residential with restrictions that wouldn't apply were it strictly residential. He pointed out that any potential resident could do other things in the back yard that could be less appealing.

Partington agreed with Cornelius about the enforcement issue. The Neighborhood Association has recommended approval and the adjacent commercial activities are in agreement. He sympathizes with the neighbors abutting and it would have been well-served for the applicants to have talked with them, but he does not believe the impact will be that significant.

Carroll observed that this property was considered for downzoning in 2006, at which time these lots were discussed at length, and there was talk about R-T at that time. It does buffer the neighborhood from the intense zoning on the corner. No matter what office use it is, it will be a soft intense office use with use permit regulations.

Motion for approval carried 5-2: Cornelius, Partington, Taylor, Sunderman and Carroll voting 'yes'; Larson and Esseks voting 'no'; Gaylor Baird and Francis absent. This is a recommendation to the City Council.

USE PERMIT NO. 08002
ACTION BY PLANNING COMMISSION: December 3, 2008

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Cornelius and carried 5-2: Cornelius, Partington, Taylor, Sunderman and Carroll voting 'yes'; Larson and Esseks voting 'no'; Gaylor Baird and Francis absent. This is final action, unless appealed to the City Council within 14 days.

Change of Zone #08058 & Use Permit #08002 S. 33rd & A Street

Zoning:

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

m:\plan\arcview\08_cz\cz08058

One Square Mile
Sec. 31 T10N R07E

N

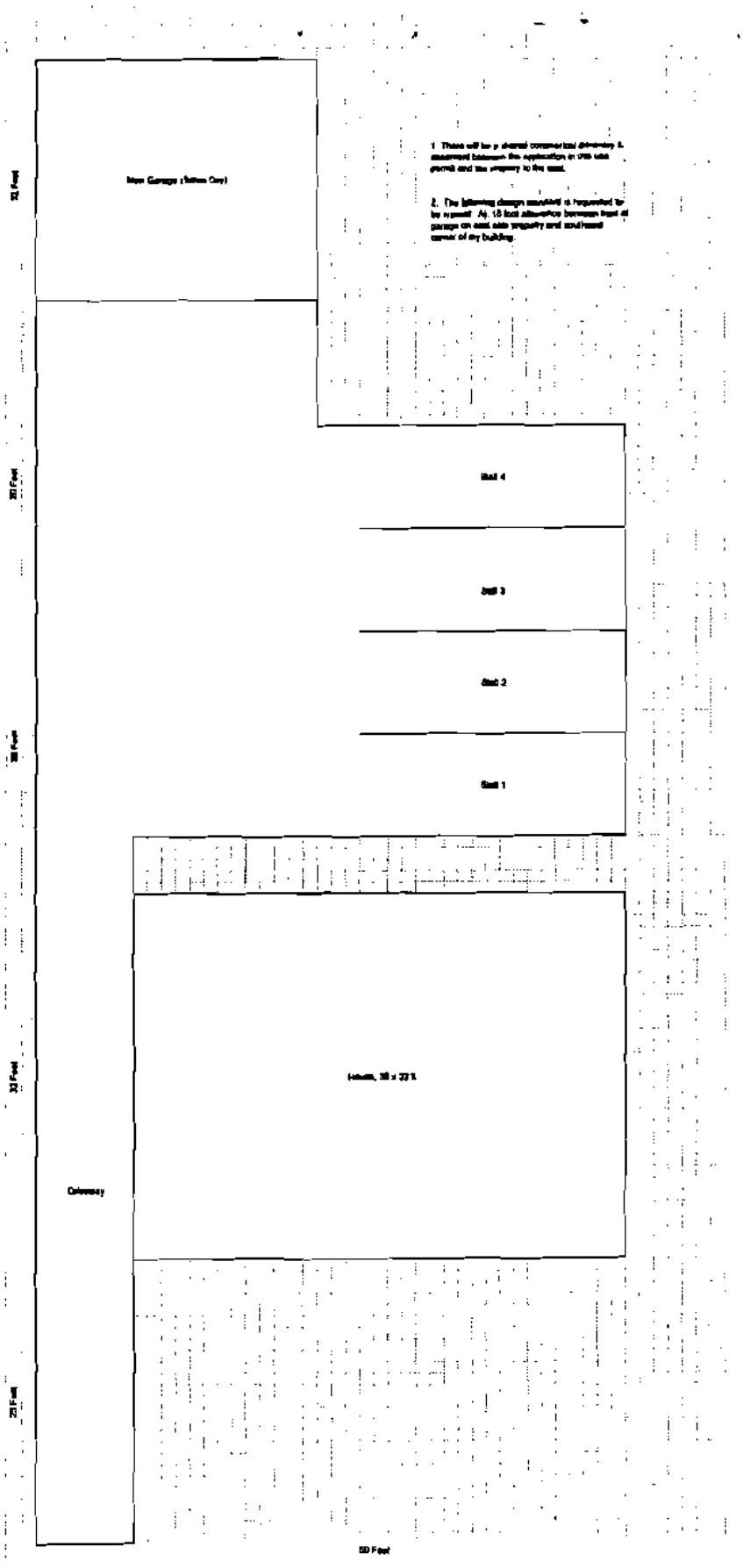
Zoning Jurisdiction Lines

City Limit Jurisdiction

2007 aerial

SITE MAP
3033 A Street, Lincoln NE 68510
Property ID: 17-31-324-000-000
Legal Description: Marydale, Block 4, Lot 8

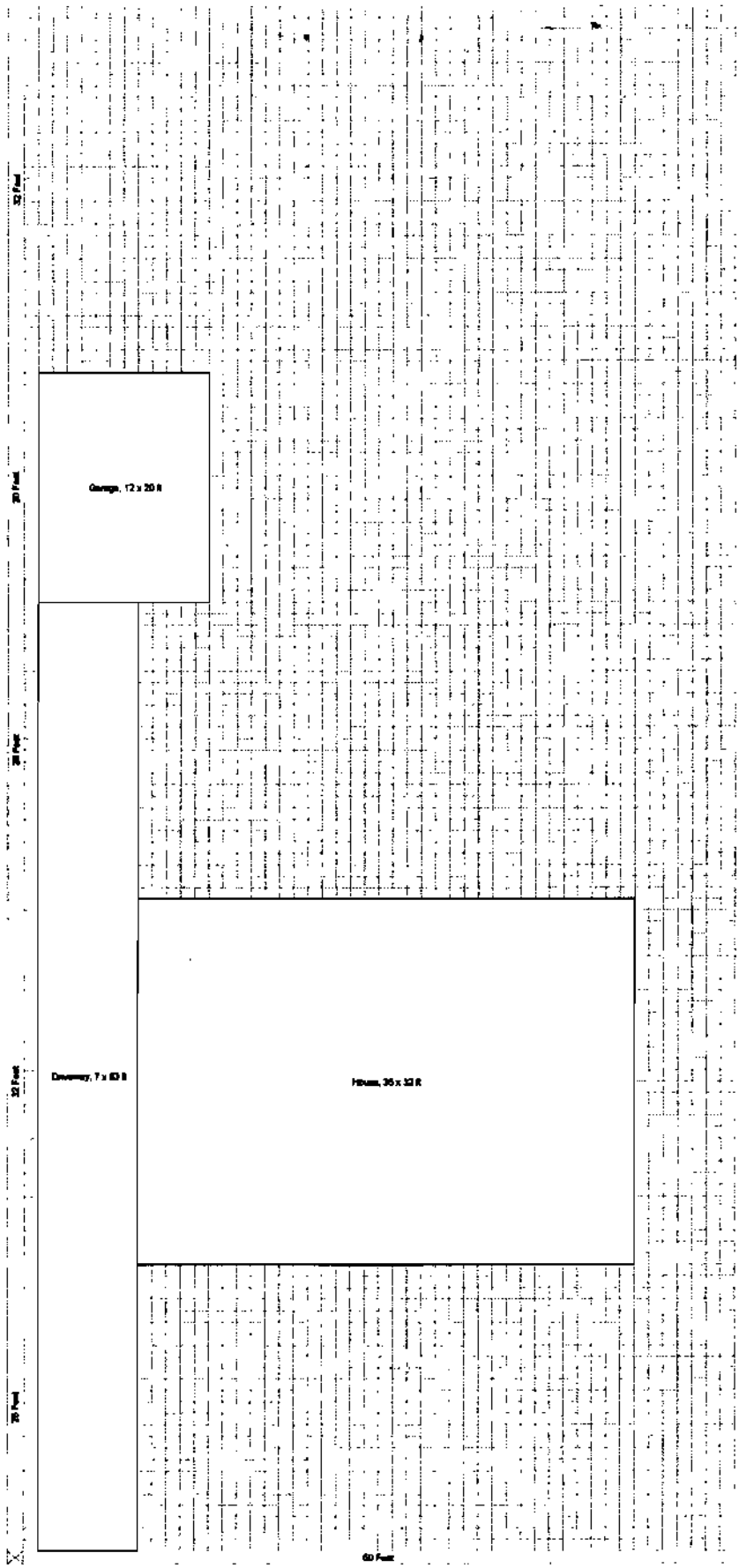
PROPOSED



A STREET

SITE MAP
3333 A Street, Lincoln NE 68510
Property ID: 17-31-224-002-000
Legal Description: Marydell, Block 4, Lot 8

EXISTING CONDITIONS



540 W. INDUSTRIAL LAKE DR.
SUITE 1 · LINCOLN, NE 68528
(402) 476-3020
(402) 476-3138 FAX

K&M Inc.
Land Surveying

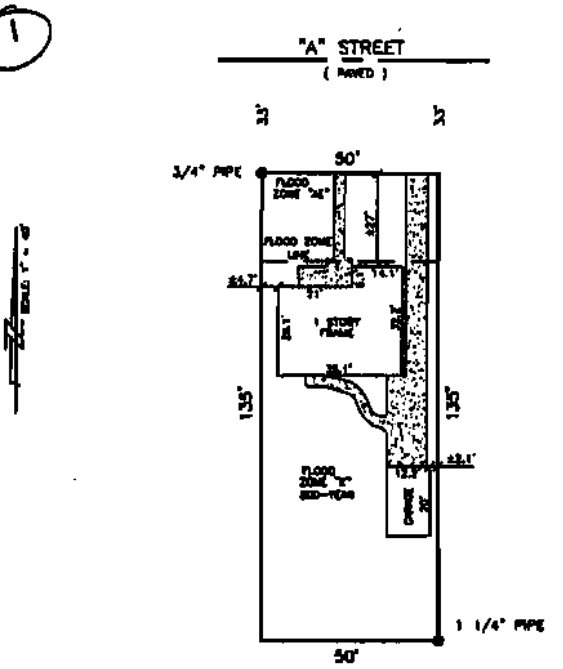
BRIAN & DEBORAH MARSHALL
CAPITOL TITLE
COMM.# CT42816

PROJECT # 0709027
DATE: 9/14/07 B/P: 92-143

3333 "A" STREET

IMPROVEMENT LOCATION REPORT

1



NOTE: THE LEVEL OF CERTAINTY OF THE MEASUREMENTS IS ±0.5'
NOTE: ALL EASEMENTS SHOWN AS THEY APPEAR ON ORIGINAL PLAT

Subject property apparently falls within the confines of Zone " AE & X " as determined by the FEMA-FIA Flood Rate Map community 315273, panel 0315 F, revised 8/21/01.

2 LEGAL DESCRIPTION: LOT 8, BLOCK 4, MARYDELL, LINCOLN, LANCASTER COUNTY, NEBRASKA

SURVEYOR'S CERTIFICATE

The undersigned does hereby certify that the IMPROVEMENT LOCATION REPORT is a representation of the conditions that were found at the time on the property as described in the legal description and that the report does not constitute a boundary survey and is subject to any inaccuracies that a subsequent boundary survey may disclose. This report should not be used to establish any fence, structure, or other improvements. The report is based on plat and or deed information and verified as shown. The report represents only visible building improvements. This report does not guarantee ownership.

Billy Joe Kerr, L.S.

NEBRASKA REGISTERED LS-439 LAND SURVEYOR BILLY JOE KERR

3 INTENT STATEMENT: TO OPERATE A FULL-SERVICE STAFFING COMPANY.

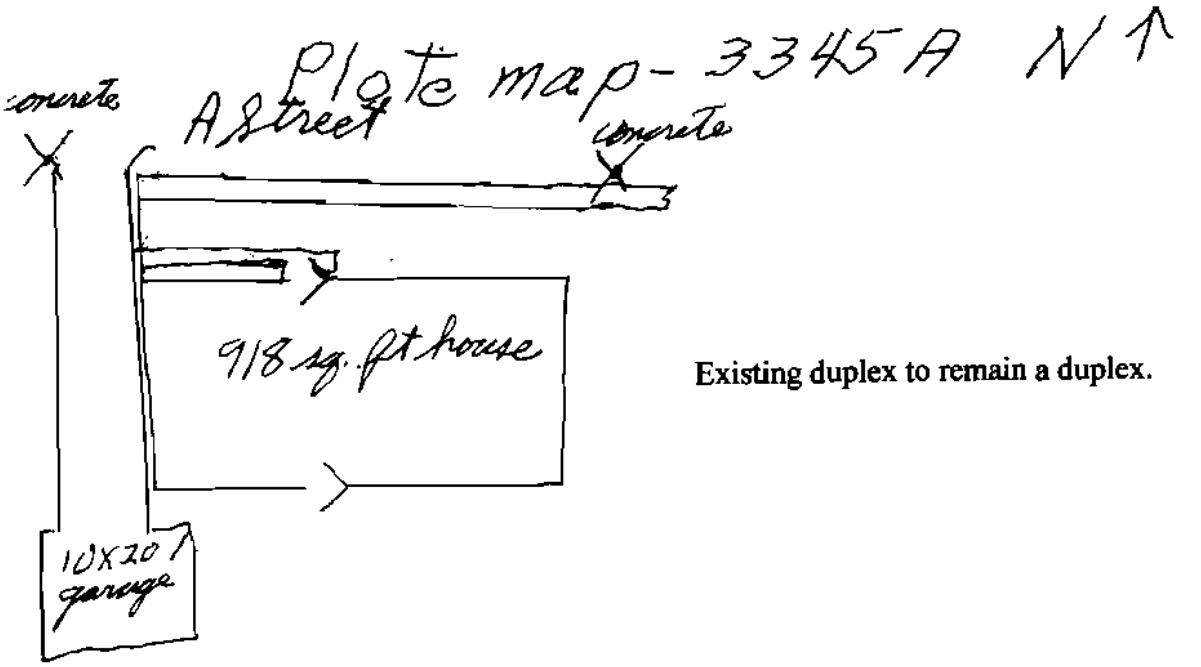
Earl Visser
3646 N 48th Suite A
Lincoln, Nebraska 68504-1691
(402) 730-1075 Fax: 466-6274
E-mail earl_v[illegible]

October 14, 2008

Memo: Purpose of application: R-1 to R- T for 3345 A Street with 3333 A Street

The combined application of Marydell, Block 4, Lot 7 – 3345 A Street with 3333 A Street will provide a unified entrance into the neighborhood.

Earl Visser



Existing duplex to remain a duplex.

Post

Post

Memorandum

To: Christy Eichorn, Planning Department

From: Charles W. Baker, Public Works and Utilities

Subject: Staffing Agency 3333 "A" Street Change of Zone #08002

Date: November 14, 2008

cc: Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the Staffing Agency 3333 "A" Street Change of Zone #08002. Public Works has the following comments:

Our office has met with the applieant and it appears that with the anticipated cooperation with Earl Visser, the neighbor to the east of this property, a combination driveway that supports two-way traffic so vehicles can enter and depart the site in a forward motion can be accomplished.

The preliminary site plan for the parking at the rear of the property is satisfactory.

CZ08002 alcj.wpd

Review Comments for
Application #: CZ08058
S. 33RD AND A STREET

Comments as of: Monday, November 17, 2008

Status of Review: Active

Reviewed By: Building & Safety — ANY

Comments:

Status of Review: Denied — 11/17/2008 8:27:01 AM

Reviewed By: Building & Safety — Terry Kathe

Comments: If both lots are going to be reaoned then both lots need to be shown on a site plan and a joint driveway. R-T requires a UP and the site plan should show the entire area, because of the joint driveway issue. Setbacks should be shown if waivers are needed. A survey for this site should be required.

Status of Review: Active

Reviewed By: Fire Department — ANY

Comments:

Status of Review: Approved — 11/13/2008 2:20:22 PM

Reviewed By: Health Department — ANY

Comments: LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION

TO: Christy Eichorn DATE: November 13, 2008

DEPARTMENT: Planning FROM: Chris Schroeder
ATTENTION: DEPARTMENT: Health

CARBONS TO: EH File SUBJECT: Staffing Agency
EH Administration 3333 A Street
CZ #08058 UP #08002

The Lincoln-Lancaster County Health Department has reviewed the change of zone application and does not object to the approval of this application.

Status of Review: Active

Reviewed By: Lincoln Police Department — ANY

Comments:

020

Status of Review: Routed

Reviewed By: Planning Department COUNTER

Comments:

Status of Review: Active

Reviewed By: Planning Department CHRISTY EICHORN

Comments:

Status of Review: Complete 11/17/2008 8:39:45 AM

Reviewed By: Public Works - Development Services SIETDQ

Comments: Memorandum

To: Christy Eichorn, Planning Department
From: Charles W. Baker, Public Works and Utilities
Subject: Staffing Agency 3333 "A" Street Change of Zone #08002
Date: November 17, 2008
cc: Randy Hoskins

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Our office has met with the applicant and it appears that with the anticipated cooperation with Earl Visser, the neighbor to the east of this property, a combination driveway that supports two-way traffic so vehicles can enter and depart the site in a forward motion can be accomplished.

The preliminary site plan for the parking at the rear of the property is satisfactory.

Status of Review: Active

Reviewed By: Public Works - Watershed Management ANY

Comments:

Status of Review: Active

Reviewed By: School District ANY

Comments:

Status of Review: FYI

Reviewed By: Urban Development ANY

Comments:

021

40TH & A

1001 S. 37th Street
Lincoln, NE 68510

October 30, 2008

Lincoln/Lancaster County Planning Commission
555 South 10th Street
Lincoln, NE 68508

RE: 3333 A Street Change of Zone

Dear Planning Commission:

The 40th & A Neighborhood Association would like to offer support for a change of zone application on the property located at 3333 A Street.

The Neighborhood Association supports rezoning of this parcel from R-2 to R-T or Residential Transition District. Our understanding is that the owners of this property, Brian and Deborah Marshall, wish to open a staffing company at this site. We feel that an R-T designation would accommodate this business while protecting the best interests of the neighborhood.

We look forward to working with the Marshall's and the City of Lincoln during this rezoning process.

Regards,

Tracy

Tracy J. Corr
40th & A Neighborhood Association President

Jean L Preister/Notes
12/02/2008 02:36 PM

To Jean L Preister/Notes,
cc
bcc
Subject Fw: Change of zone 08058 & UP080002 Letter in Opposition

—— Forwarded by Christy J Eichorn/Notes on 12/02/2008 02:25 PM ——

Angela Barry
<barry.angela@yahoo.com>
12/02/2008 02:26 PM
Please respond to
<barry.angela@yahoo.com>

To <ceichorn@lincoln.ne.gov>
cc
Subject Change of zone 08058 & 080002

Dear Christy,

As per our conversation, I am sending our concerns and opposition to the zone change.

Our major concern is adequate parking. The employment agency has attempted to park in our shopping center lot and our employee lot. Four businesses share these spaces and parking is at a premium. We have asked the employment agency staff to move their vehicles many times with mixed results. Their reluctance to follow the rules currently does not inspire confidence in their ability to do so in the future, especially with the prospect of increased vehicular traffic. It also raises safety concerns with pedestrians crossing the street in the middle of the block.

We are not opposed to additional retail in the area however we expect them to be professional and responsible.

Thank you,

Larry Baus, President
MAG8 Properties
larrybaus@yahoo.com
(402) 499-3684

December 3, 2008

Thank you in advance for considering my concerns regarding the zoning ordinance that is under evaluation for 3333 A Street and 3345 A Street, currently doing business as Envision Staffing. My opposition to this motion is as follows:

1. Envision Staffing is already doing business out of this location without proper zoning and considerations of their neighbors.
2. The A Street neighborhood association was told by Envision Staffing that the business being set up would provide temporary medical and nursing employment. The website linked to Envision Staffing's Lincoln Chamber of Commerce is www.commandonline.com. This website states that this company is engaged in temporary staffing for administrative, construction and industrial, hospitality, and event services. There is no mention of nursing or medical staffing. I feel that Envision Staffing is possibly misleading the neighborhood association in regards to their business plan.
3. With a glut of open retail space in Lincoln, I do not see the need to convert this residential property to business zoning.
4. I am very concerned with the plan to remove the greenspace in the back of the property and convert it into a parking lot. This property abuts our property at 3336 Washington Street. I have no desire to have a parking lot directly next to our home. There will be drainage issues, as well as serious traffic concerns with customers exiting the proposed business onto A Street.
5. I feel that by rezoning this property, we may be opening a can of worms that cannot be put back. What is to prevent a less than desirable business from setting up shop at this address should Envision Staffing go out of business?
6. I have serious concerns with a business that will be paying its temporary employees on a daily basis when said business is directly across the street from a liquor store. This is a recipe for disaster.

I have been employed long term by a local independent business. I hold nothing personal against the owners of this property. I have admiration for people who have the ambition to start any business in today's economy. I do not think that this business is necessary in this location. This area is already under encroachment from developers. I do not want to witness this quiet and family friendly neighborhood subjected to more traffic, less greenspace, and less peace and quiet for its denizens.

Thank you for the chance to voice my concerns,
Michael Barna
3336 Washington Street
Lincoln, NE 68510

December 2, 2008

Thank you for the opportunity to voice my position. My name is Linda Witfoth. I have lived in Lincoln for 25 years. My son and I moved to 3336 Washington St. on May 1st, 2001. My intentions are to stay here for the rest of my natural life and later pass it to my son. I chose this location specifically for the following reasons:

1) Most of the homes are owner occupied and in good repair.
2) Low crime rates which was of great importance since I was a single mom.
3) Close to Lincoln High and the bike path so my son could safely ride his hike to school.
4) A backyard perfect for gardening, whicb is my devoted passion and hobby.
5) A 4' high chain link fence, in good condition, around the yard so my son could finally have a dog.
6) The privacy provided by the surrounding landscape.
7) The location is close to local businesses, but from this house at this time, they are invisible.
8) Easy access to friends, the downtown area, and Lincoln amenities that I appreciate.

We have enjoyed this location for nearly eight years. I have worked two or three jobs at a time to keep this property for my son and myself. I work hard to improve my residence in an effort to contribute toward neighborhood pride and my community. We have good neighbors with long-term goals. Unfortunately, I do not view Envision Staffing at 3333 A St. as a good neighbor. Furthermore, I have no idea what is intended for 3345 A St. That is why I am attending this zoning meeting and my concerns are as follows:

1) Envision Staffing is already **ILLEGALLY doing business** at the 3333 A St. location. They do NOT have business zoning. I don't have faith in them being a good neighbor since they are already violating laws. What business plan is in place for the property located at 3345 A St.? I need more information.
2) We are already struggling with our home values. This WILL further devalue them. Like many homeowners, I owe more than my house is now worth. My property value will further decrease with a business parking lot in my backyard.
3) We already have traffic issues in the 33rd & A St. area. The overflow parking would go across the street causing safety concerns with people crossing A St. as they try to reach the proposed business(es).
4) A staffing agency does not provide a neighborhood service and is not needed in this location. There are many nearby retail and office spaces ready to be utilized that are properly zoned. We already have enough businesses in place that DO meet neighborhood needs. Granting business zoning will aid in the appearance of a strip mall and if zoning passes for these residential homes, where does it stop? Why can they not utilize the blighted area just three doors down on the NW corner of 33rd & A St.? The office space at 1359 S. 33rd? Why not support Lincoln businesses by utilizing their more appropriate properties?
5) Longevity. I worked as a coordinator for a temporary agency. They are a dime a dozen, many going in and out of business because they are a cheap start-up. There is no established history to show longevity with Envision Staffing. I am concerned about what other sorts of companies would be allowed to conduct business in my backyard should the temporary agency fail. Will we get a tattoo parlor? Or discount tobacco perhaps? Maybe a check cashing place. IF Envision does fail, will the zoning remain commercial?
6) Quality of life. I will constantly have strangers on the other side of my fence talking, starting cars, slamming doors, loud music, trash, and other nuisances. Constant noise and motion on the other side of a fence will cause my dogs to bark. All of this will be disruptive to the neighborhood and my peace.
7) Security. Having worked at a staffing agency, I know there may be some clients that go across to the liquor store to spend their daily pay and I don't want them using the parking lot that abuts my backyard as a place to party. AND, I do not want Envision providing the opportunity for theft from my property.
8) Because I am HIGHLY concerned about security, I would want lighting to keep people from "hanging out" in 3333 A St.'s parking lot at night. However, I do not want my back yard lit up like a shrine, either. I

spend a lot of starlit evenings in my yard and putting lights in will GREATLY reduce the pleasure I experience. My bedroom is located in the back of the house and bright lighting would interfere with my sleep and wellness. IF this were to pass, I would require blinders to be strategically placed so the lights do not intrude upon my property.

9) If this zoning were to pass, I would require a security/privacy barrier that would prevent any viewing of my yard from the properties in question. 3333 A St. has windows that look directly into my backyard. The barrier would be no less than 8' tall and higher if needed to entirely block the view of my property.

10) **Envision is currently running their business illegally and without barrier or regard for my security and privacy. I demand immediate action on this point.**

11) There is no alley. Their property is butted up against mine. This creates a tight parking area and creates the greater possibility of someone crashing into my backyard, causing damage, etc. I would require a parking rail that would prevent any form of vehicle from entering my property.

12) We are in a 100-year flood zone. There is concern about drainage when the backyard of 3333 A St. is ripped up and paved into a lot. Where will the water go? What will happen at 3345 A St.? Who governs this and sees that the work is properly completed? Who is responsible if there are problems with the construction? Where is my protection as a tax payer and home owner?

13) There will be salt and oil run-off from the lot. This will kill the plants on which I have spent countless hours and hundreds of dollars, not to mention family heirloom plants which are irreplaceable. As the economy worsens, we have been relying more on items grown in our backyard. If zoning passes, I would require they provide an adequate natural barrier on the south side of the property via landscaping to help contain salt, oil, and other hazardous items such as antifreeze leaks. I would also require that they pay for landscaping on my property in order to move plants that need protection from their salt, oil, etc.

14) Lastly, should this pass, I would require the property to be professionally surveyed to protect my rights as a property owner before constructing a parking lot and appropriate landscaping, screening, and protection.

Consistently, I preach to everyone the importance of supporting our local businesses, keeping our city's identity, and helping the entrepreneurial spirit grow. However, I do not view this particular issue as one that keeps growth from the city. There is an abundance of temporary employment agencies in Lincoln, as there are an abundance of open office spaces. Our neighborhood fought hard to keep it owner occupied, single family dwellings. Letting business sprawl further into our residential area does not meet this agenda. I do not see it as a benefit to our neighborhood, nor do I see any benefit to me as a long-term home owner. It will only further devalue our properties and invite elements into our neighborhood that we've long been happy without.

Eight years ago, if I had any idea that there would be a business butted up against my backyard in the foreseeable future, I would have purchased a different home. However, I am almost a decade "dug in" now and I love it here. I love my neighbors, the comfort, and the safety provided by this location. This is where we live. I have attached photos so you can see we really do LIVE in our backyard. We don't just grill a burger and go back inside. This is our home and we desperately want to keep our quality of life.

I strongly suggest the zoning action for 3333 A St. and 3345 A St. be denied. Thank you for your careful consideration.

Sincerely,

Linda M. Witfoth
3336 Washington St.
Lincoln, NE 68506
402-202-9189
LMWitfoth@gmail.com

Linda M. Witfoth, 3336 Washington St., Lincoln, NE 68506

This is a photo of my backyard in the summer of 2001, approximately a couple months after we moved in. You can see the garage of 3333 A St and the back of the house and garage of 3345 A St. in the left of the photo:

This is a photo of my backyard in the summer of 2007. You can see the garage of 3333 A St. at the top left of the photo. I have done all of the work in the backyard myself, nothing hired out. My yard is my solace, my exercise, and my enjoyment. I spend hours a day in my yard. It took many years to bring it to where it now is.

This is another view of the garden provided to show how close 3333 A St. is to my house. It's the building on the right, Brokers is on the left. I assume the proposed parking lot would reach right against my fence as I can't see how there would be room to park with a suitable landscaping buffer and appropriate barrier.