City Council Introduction: **Monday**, March 14, 2011
Public Hearing: **Monday**, March 21, 2011, at **3:00** p.m.

Bill No. 11R-61

FACTSHEET

TITLE: **SPECIAL PERMIT NO. 10037,** requested by Mark Hunzeker on behalf of Emerald Care Company, for authority to construct a domiciliary care facility for up to 48 residents, on property generally located southwest of the intersection of South 48th Street and Pioneers Blvd.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 01/26/11 and 02/09/11
Administrative Action: 02/09/11

STAFF RECOMMENDATION: Conditional Approval.

RECOMMENDATION: Conditional Approval, with one amendment (5-2: Taylor, Gaylor Baird, Partington, Esseks and Cornelius voting 'yes'; Lust and Francis voting 'no'; Larson and Sunderman absent) **Resolution No. PC-01222**

FINDINGS OF FACT:

1. The purpose of this special permit request is to allow the construction of a domiciliary care facility for up to 48 residents on property generally located southwest of the intersection of South 84th Street and Pioneers Boulevard (4305 South 84th Street).

2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.7-9, concluding that the request complies with the requirements for a special permit for a domiciliary care facility pursuant to Section 27.63.530 of the Lincoln Municipal Code, and is an appropriate use of land at this location. The staff presentation is found on p.12 and 13. The conditions of approval are found on p.9-10.

3. The applicant's testimony is found on p.12-14, wherein the applicant requested:

   A. That Conditions #1.1.4 and #1.3, which require a right turn lane in 84th Street to serve the driveway for this facility, be deleted. There is not enough right-of-way at 84th Street to provide a turn lane without acquiring property from a different property owner to the north, and the property owner to the north has declined this opportunity. In addition, the applicant submitted that this proposed use does have the traffic to justify the need for a right-turn lane at this location. This right turn lane would add over $100,000 to the cost of acquiring this property for this use. (**Note: This amendment was not approved by the Planning Commission).**

   B. Amend Condition #1.1.3: "Revise the site plan to show water service ~~as approved by Public Works & Utilities~~ from the existing fire hydrant line with well service backup." The applicant submitted that the remedy preferred by Public Works & Utilities would again require the acquisition of additional right-of-way from a different property owner. There are two wells on the property, one of which serves the existing house, and the other is not being used, is operable and could serve as a backup for water supply in the event of a water main break. **(Note: This amendment was approved by the Planning Commission).**

4. The Planning Commission discussion with staff is found on p.15.

5. There was no testimony in opposition.

6. On February 9, 2011, the majority of the Planning Commission agreed with the staff recommendation and voted 5-2 to adopt Resolution No. PC-01222, with the amendment to Condition #1.1.3, as requested by the applicant. The Planning Commission did not delete the requirement for a right turn lane. Commissioners Lust and Francis voted "no" because they did not believe the right turn lane should be a requirement (See Minutes, p.16-17).

7. On February 18, 2011, a letter of appeal was filed by Mark A. Hunzeker, specifically appealing Conditions #1.1.4 and #1.3 requiring the right turn lane in South 84th Street (p.2). These conditions are paragraphs 2.a.iv. and 2.b. of Resolution No. PC-01222 (p.3-5)

FACTSHEET PREPARED BY: Jean L. Preister

DATE: March 7, 2011

REVIEWED BY:_____

DATE: March 7, 2011

REFERENCE NUMBER: FS\CC\2010\SP19936 Appeal

BAYLOR EVNEN
BAYLOR, EVNEN, CURTISS, GRIMIT & WITT, LLP

WALTER E. ZINK II
RANDALL L. GOYETTE*
STEPHEN S. GEALY
GAIL S. PERRY
DALLAS D. JONES
JILL GRADWOHL SCHROEDER
DAVID A. DUDLEY
BRENDA S. SPILKER
STEPHANIE F. STACY
W. SCOTT DAVIS
MARK A. HUNZEKER

WILLIAM G. BLAKE
PETER W. KATT
CHRISTOPHER M. FERDICO
DARLA S. IDEUS
JARROD S. BOITNOTT
TIMOTHY E. CLARKE
ANDREW M. LOUDON
CHRISTINA L. BALL**
JENNY L. PANKO
CAROLINE M. WESTERHOLD*
JAMES D. HAMILTON*

DEREK C. ZIMMERMAN
JARROD P. CROUSE
ANDREA D. SNOWDEN
JULIE M. KARAVAS
ANDREA A. ORDONEZ
COLIN A. MUES*
TORREY L. JANUS GERDES

OF COUNSEL
DONALD R. WITT
ROBERT T. GRIMIT
J. ARTHUR CURTISS

*ALSO ADMITTED IN IOWA
**ALSO ADMITTED IN KANSAS

February 16, 2011

RECEIVED
FEB 23 2011
Lincoln/Lancaster Co.
Planning Department

Ms. Joan Ross
City Clerk
City of Lincoln
555 S. 10th Street
Lincoln, NE 68508

RE: Special Permit No. 10037
(Domiciliary Care Facility 4205 S. 84th Street)

Dear Joan:

Please take notice that the Applicant appeals from the decision of the Planning Commission on February 9, 2011 regarding the above captioned Special Permit. Specifically, the Applicant appeals from the imposition of the following conditions:

1.1.4 Revise the site plan to show a right turn lane in South 84th Street and which maintains a 6 foot separation between the side walk and turn lane.

1.3 The required right-of-way (and easement if necessary) dedication to accommodate Condition No. 1.1.4 to be accepted by the city Council and recorded prior to building permits.

Please schedule this matter for public hearing on March 21, 2011, as I will be unavailable prior to that time in March.

Sincerely,

Mark A. Hunzeker
For the Firm
mhunzeker@baylorevnen.com

MAH/smj
cc: Gene Preister
Planning Department

470007

002

RESOLUTION NO. PC- 01222

SPECIAL PERMIT NO. 10037

WHEREAS, Leo Bader has submitted an application designated as Special Permit No. 10037 for authority to construct a domiciliary care facility for up to 48 residents on property generally located southwest of the intersection of South 84th Street and Pioneers Blvd., and legally described as:

> Lots 2 and 3, Block 1, except the east 17 feet and except the west 72.2 feet, Mar-Ma-Ra-Lo Heights Addition to Lincoln, Lancaster County, Nebraska;

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

WHEREAS, the community as a whole, the surrounding neighborhood, and the real property adjacent to the area included within the site plan for this domiciliary care facility will not be adversely affected by granting such a permit; and

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

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

That the application of Leo Bader, hereinafter referred to as "Permittee", to develop a domiciliary care facility for up to 48 residents be and the same is hereby granted under the provisions of Section 27.63.530 the Lincoln Municipal Code upon condition that construction of said domiciliary care facility be in substantial compliance with said application, the site plan, and the following additional express terms, conditions, and requirements:

1. This permit approves a domiciliary care facility for a maximum of 48 residents.

2. Before receiving building permits:

a. The Permittee shall cause to be prepared and submitted to the Planning Department a revised and reproducible final site plan including five copies showing the following revisions:

i. Add a general note that states, "This facility to be served by City water and sewer service, and any septic system on the site shall be abandoned per the requirements of the Health Department."

ii. Revise the general note regarding signs to state, "Signs will comply with LMC Chapter 27.69 and need not be shown on this plan."

iii. Revise the site plan to show water service from the existing fire hydrant line with well service backup.

iv. Revise the site plan to show a right turn lane in South 84th Street and which maintains a six foot separation between the sidewalk and the turn lane.

v. A grading and drainage plan approved by Public Works & Utilities prior to building permits.

b. The required right-of-way (and easement if necessary) dedication to accommodate Condition 2.a.iv to be accepted by the City and recorded prior to building permits.

c. The construction plans must substantially comply with the approved plans.

3. This facility shall be licensed to comply with all state requirements for domiciliary and/or residential care facilities.

4. Before occupying the building or starting the operation of all development and construction must substantially comply with the approved plans.

5. All privately-owned improvements, including screening, must be permanently maintained by the Permittee.

6. The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters must be in substantial compliance with the location of said items as shown on the approved site plan.

7. The terms, conditions, and requirements of this resolution shall run with the land and be binding and obligatory upon the Permittee and the Permittee's successors and assigns.

8. The Permittee shall sign and return the City's letter of acceptance to the City Clerk within 60 days following approval of the special permit, provided, however, said 60-day period may be extended up to six months by administrative amendment. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

The foregoing Resolution was approved by the Lincoln City-Lancaster County Planning Commission on this 9th day of February, 2011.

ATTEST:

Chair

Approved as to Form & Legality:

Chief Assistant City Attorney

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for January 26, 2011 PLANNING COMMISSION MEETING

****As Revised and Approved, with Conditions, by Planning Commission****
February 9, 2011
Resolution No. PC-01222

PROJECT #: Special Permit No. 10037 - Emerald Care Co.

PROPOSAL: A request per Section 27.63.530 for a domiciliary care facility for up to 48 residents

LOCATION: Southwest of the intersection of South 84th Street and Pioneers Blvd

LAND AREA: Approximately 2.77 acres

EXISTING ZONING: R-3 Residential

CONCLUSION: This request complies with the requirements for a special permit for a domiciliary care facility per the Zoning Ordinance and is an appropriate use of land at this location.

RECOMMENDATION: Conditional Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 2 and 3, Block 1, except the east 17 feet and except the west 72.2 feet, Mar-Ma-Ra-Lo Heights Addition, located in the NE 1/4 of Section 10, T9N, R7E, Lancaster County, Nebraska.

EXISTING LAND USE: Single-family Residential

SURROUNDING LAND USE AND ZONING:

North:	Office	O-2
South:	Residential	R-3
East:	Office	O-3
West:	Residential	R-3

COMPREHENSIVE PLAN SPECIFICATIONS:

Page 17 - The Future Land Use Map designates urban-density residential land uses for this tract of land.

Page 65 - Overall Guiding Principles - A safe residential dwelling should be available for each citizen: the efficiency apartment and the country estate, the small single family "starter" home and the large downtown apartment suite, the most affordable and the most expensive dwelling unit, completely independent living and living within the care of others. Provision of the broadest range of housing options throughout the community improves the quality of life in the whole community.

- Provide different housing types and choices, including affordable housing, throughout each neighborhood for an increasingly diverse population.

- Create housing opportunities for residents with special needs throughout the city that are compatible with residential neighborhoods.

Page 71- Strategies for New and Existing Urban Neighborhoods - The key to both new and existing urban neighborhoods is diversity. For new neighborhoods, it is having a greater mix of housing types and land uses. New neighborhoods should have a variety of housing types and sizes, plus commercial and employment opportunities. Developing a pedestrian orientation of buildings and streets is also a priority.

-The congregate living facility codes and regulations were recently updated in order to continue to provide housing opportunities for residents with special needs throughout the city that are compatible with residential neighborhoods. Congregate facilities should be designed and located to enhance the neighborhood. Reasonable spacing, design, and operational requirements were established for all congregate facilities to preserve the neighborhood character while providing for those with special needs.

ANALYSIS:

1. This request is for a special permit to allow a domiciliary care facility for up to 48 residents on an approximately 2.77 acre tract of land. The site plan shows two buildings on the site to accommodate the residents. One larger main building (approx. 25,000 sq. ft.), and a second smaller 'auxiliary' building (approx. 5,000 sq. ft.). The application notes that the smaller building may be used for patients that require separate programming and supervision, with a portion potentially being used for overnight respite care.

2. There are a single-family residence and accessory building on the site that will be removed to make way for the new facility.

3. A domiciliary care facility is allowed by special permit in the R-3 zoning district subject to the following requirements:

   A. Parking shall be in conformance with Chapter 27.67 unless modified under the condition of the special permit, provided that no parking shall be permitted in the required front or side yards.

   The parking requirement is one space for every four residents, and two spaces for every three employees. Based upon 48 residents, at least 12 spaces will be needed, plus one for each employee. In this case however, the overall parking area is delineated rather than showing individual parking spaces on the site plan, so a note is included on the plan stating that the required number of parking spaces will be provided at the time of building permits. This both provides flexibility in zoning administration and guarantees the required number of spaces will be provided on site.

   B. Domiciliary care facilities shall be licensed to comply with all state requirements for domiciliaries and/or residential care facilities.

   If the facility falls out of compliance with any licensing requirement, it will be in violation of both the City of Lincoln Zoning Ordinance and the applicable rules of the State of

Nebraska. Continued compliance is a requirement of the special permit and is included as a recommended condition of approval.

C. The total number of client or employee residents shall not exceed the lot area ratio below except as provided for in this section, and provided that all facilities may have up to four individuals sixty years of age or older and one family acting as the residential caretaker: (iii) R-3 zoning district: One person per 2,000 square feet of lot area.

The lot is 120,661 square feet in area. At the ratio of one resident per 2,000 square feet of lot area (using R-3 zoning), 60 residents are allowed, well in excess of the 48 being proposed.

D. Depending on the character of the development and impacts on adjacent land uses, the Planning Commission may grant an increase in the number of residents allowed in (d) above where the site plan and building plans comply with the barrier-free standards in the design standards as adopted by the City Council. Such increase shall not exceed fifty percent.

No density bonus has been requested as part of this application.

E. The height and yard requirements of the district in which the proposed use is located shall apply, provided, however, that if the area of the lot is one acre or more, the height requirement of the district may be adjusted to provide flexibility in the design of buildings and to provide compatibility with surrounding uses except that solar access to adjacent buildings or potential buildings on land under other ownership shall not be reduced by such adjustment.

Domiciliary care facilities are residential in nature and should be designed to both reflect their residential character and be compatible with a residential neighborhood. No adjustments to either the required setbacks or height are requested. While building elevations are not required and are not part of this application, the representations shown to neighbors at a neighborhood meeting represented a structure similar in character to a residential dwelling with similar type windows, roof pitch, etc.

The parking lot is required to be screened by the Design Standards, and a note on the plan states this will be done.

4. Public Works and Utilities notes that a commercial driveway to serve this project will only be allowed right-in, right-out access, and that it will not be approved without a right-turn lane in South 84th Street. Additional public right-of-way will need to be dedicated to accommodate this turn lane. As a result, if the driveway is built in the location shown on the plan, the adjacent property owner to the north will also have to dedicate right-of-way to accommodate the turn lane. If the neighbor to the north won't cooperate in such a dedication, the driveway will need to be moved to the south resulting in a revised site layout.

When the right-turn lane is constructed, the standard six foot separation between the driving lane and sidewalk which now exists along the west side of South 84th Street should be maintained. To accommodate this, either adequate right-of-way or a public access easement will need to be dedicated to ensure there is enough space for it.

5. Public Works notes the 24" water main South 84th Street cannot be tapped for individual water service, but rather a smaller main needs to shown being extended which can be tapped to provide an individual water service to this site. This plan for water service should shown on the site plan and is subject to approval by Public Works and Utilities.

6. Additional grading will be required on this site to accommodate the facility. Strom water runoff has been known to be an issue in this area, so grading must be done in a manner which does not negatively impact other properties in the area. A grading and drainage plan should be required to be submitted and approved by Public Works and Utilities prior to submission of any applications for building permits.

7. At one time the dwelling was served by individual well and septic systems. If it hasn't been done already, the septic system should be abandoned per the requirements of the Health Department before this development commences. Other advisory comments from the Health Department noted during the review are also attached.

8. Other minor items were noted during review and are included in the recommended conditions of approval.

9. Domiciliary care facilities are residential in nature, and the Comprehensive Plan suggests it's appropriate for them to be located in or near residential areas. This use is compatible at this location subject to the items noted in the conditions of approval.

Per Section 27.63.530 this approval permits a domiciliary care facility for up to 48 residents.

CONDITIONS OF APPROVAL:

General:

1. Upon approval of the special permit by the Planning Commission, the applicant shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 5 copies with all required revisions and documents as listed below before receiving building permits.

    1.1 Revise the site plan as follows:

        1.1.1 Add a general note that states "This facility to be served by City water and sewer service, and any septic system on the site shall be abandoned per the requirements of the Health Department."

        1.1.2 Revise the general note regarding signs to state "Signs will comply with LMC Chapter 27.69 and need not be shown on this plan."

1.1.3 Revise the site plan to show water service ~~as approved by Public Works and Utilities~~ from the existing fire hydrant line with well service backup. **(**Per Planning Commission, as requested by the applicant, 2/09/11**)**

1.1.4 Revise the site plan to show a right turn lane in South 84th Street and which maintains a six foot separation between the sidewalk and the turn lane.

1.2 A grading and drainage plan approved by Public Works and Utilities prior to building permits.

1.3 The required right-of-way (and easement if necessary) dedication to accommodate Condition #1.1.4 to be accepted by the City and recorded prior to building permits.

2. The construction plans substantially comply with the approved plans.

3. This facility shall be licensed to comply with all state requirements for domiciliary and/or residential care facilities.

Standard:

4. The following conditions are applicable to all requests:

4.1 Before occupying the building or starting the operation all development and construction is to substantially comply with the approved plans.

4.2 All privately-owned improvements, including screening are to be permanently maintained by the owner.

4.3 The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters must be in substantial compliance with the location of said items as shown on the approved site plan.

4.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

4.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 60 days following the approval of the special permit, provided, however, said 60-day period may be extended up to six months by administrative amendment. The City 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, 441-6362, bwill@lincoln.ne.gov
January 11, 2011

APPLICANT/
CONTACT: Mark Hunzeker
600 Wells Fargo Center
1248 O Street
Lincoln, NE 68508
402-458-2131

OWNER: Leo Bader
4305 South 84th Street
Lincoln, NE 68516

SPECIAL PERMIT NO. 10037

PUBLIC HEARING BEFORE PLANNING COMMISSION: January 26, 2011

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

Ex Parte Communications: None.

Staff recommendation: Conditional approval.

Staff presentation: **Brian Will of Planning staff** explained that this is a request for a special permit for a domiciliary care facility located approximately southwest of the /intersection of Pioneers Boulevard and South 84th Street. The facility will accommodate up to approximately 48 beds, and will consist of a main facility and separate auxiliary dwelling.

Will stated that the staff is recommending approval, finding this to be an appropriate land use at this location, subject to conditions of approval.

Proponents

1. Mark Hunzeker appeared on behalf of **Emerald Care Company** and requested that the Planning Commission defer this application for two weeks. There are two issues they are hopeful to resolve with Public Works having to do with water supply and with access to the site, including the request for a turn lane.

Hunzeker explained that the request from Public Works is to provide a turn lane to the facility. The applicant was hoping to be able to consolidate the access to the facility along with the access to the office building to the north and avoid the need for the turning lane. The applicant thought that they might be able to accomplish that with the property owner to the north, but have not been able to do so thus far.

A neighborhood meeting was held, which Hunzeker believes was successful without objection from the neighbors; however, they do have to resolve the turn lane question. If the turn lane is required without the help of the neighbor to the north, it will mean moving the access to the south end of the site, which will require moving from the high point on 84th Street (where we are now) down the hill, perhaps creating some sight distance issues. The intent of locating the access as shown was to try to preserve a row of trees along the 84th Street frontage by coming in behind the trees and installing a retaining wall east of the parking lot. If they are required to move the access point (and if they can meet the sight distance requirements), it may require removing those trees. Hunzeker is hopeful that this issue will be worked out with Public Works prior to the next meeting.

Hunzeker also explained that the other question is getting a water line to the site, which they are also working with Public Works to resolve. There is water available, but there are some reliability questions that have been raised by Public Works. There are also requirements for this facility based on state licensing issues that require the facility to maintain a 24-hour potable water supply

as part of their emergency plan. Therefore, Hunzeker is not sure that the looping issue is quite as urgent or as big a public health issue as it might otherwise be. Hunzeker also hopes to have this issue resolved in two weeks.

Gaylor Baird moved to defer two weeks, with continued public hearing and action scheduled for February 9, 2011, seconded by Francis and carried 8-0: Francis, Cornelius, Gaylor Baird, Partington, Larson, Taylor, Esseks and Sunderman voting 'yes'; Lust absent.

There was no other testimony.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: February 9, 2011

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

Ex Parte Communication: None.

Staff recommendation: Conditional Approval.

Staff presentation: **Brian Will of Planning staff** explained that this is a request for a special permit for a domiciliary care facility southwest of the intersection of Pioneers Boulevard and South 84th Street. The larger area is zoned R-3 where a domiciliary care facility is allowed by special permit. Staff found this request to be in compliance. There are conditions of approval and at the last meeting the applicant suggested they wanted a two-week delay to allow more time to resolve the conditions. The staff recommendation of conditional approval has not changed.

Proponents

1. Mark Hunzeker appeared on behalf of the **Emerald Care Company.** Emerald Care Company is in the business of providing Alzheimers care and operates four facilities in Lincoln. This is a residential use and the building is designed to be compatible with the residential uses surrounding it.

There are two issues. The company attempts to provide affordable Alzheimers care and is the only provider in Lincoln which accepts Medicare patients. There are two issues with the conditions of approval which bear significantly on the costs of this project.

Conditions #1.1.4 and #1.3 have to do with the requirement for a right turn lane in 84th Street to serve the driveway for this facility. The location proposed is near the north edge of the property. The suggestion was that we provide a consolidated driveway with our neighbor to the north and a turn lane to the north of that. There is not enough right-of-way at 84th to provide a turn lane and they would have to acquire that right-of-way from the neighbor to the north, who has declined this opportunity.

The second option is to move the driveway from the north end to near the south part of the property. Again, there is a problem with insufficient right-of-way and an existing retaining wall which runs 100' and the grades of the property which raise about 10' from 84th Street to the existing house. The intention has been to leave that 4-5' retaining wall in place and some distance behind it to allow for the trees and some landscaping. The intent is to try to maintain a buffer and to go in behind that

area and create a second retaining wall to maintain a nice high buffer. Taking out that retaining wall and building the turn lane will be a cost of more than $100,000. In addition to that, the driveway as shown is at the high point of the hill. The alternative option would make the sight distance less desirable and the cost is prohibitive.

Therefore, Hunzeker requested that Conditions #1.1.4 and #1.3 be deleted because this use has a very light traffic load. The total traffic has been counted from 8:00 a.m. to 5:00 p.m. at about 72 trips. Peak hour is around 3:00 p.m. during a shift change. The deletion of the turn lane is justified. He does not believe that Public Works will agree, but he believes they would agree that the world will not end if this turn late requirement is deleted.

With regard to the water service (Condition #1.1.3), Hunzeker advised that there is a 24" water main in 84th Street, which is a non-tappable size main. They need to get water service to this project. There is a fire hydrant served by a 6" line at the northeast corner of the property. At a different facility, Emerald Care was allowed to tap a water line that served a hydrant and they are proposing to do that at this location as well. Public Works says that if there is a problem in the 24" line, they can turn it off at Pioneers and at Mandarin Circle, which are about 1,000 feet apart. And if there is a break in that 1,000' stretch, this facility might be without water for a period of time. Hunzeker pointed out that as a condition of the facility's license, they are required to maintain a 24 hour potable water supply as a backup. There are two wells on this property, one of which serves the existing house, and the other is not being used and is operable and could serve as a backup for water supply in event of a water main break. This is a cost issue. The ideal solution preferred by Public Works is to go back to 84th & Pioneers and tap the 16" line in Pioneers, which is about 600'. There is not enough right-of-way, and there are other facilities in the right-of-way. We would have to acquire right-of-way from a neighbor when there is no power to do so.

Hunzeker suggested that this type of facility should be encouraged. We have thousands of residential units all over the community which are served by dead-end water lines (cul-de-sacs). He believes this risk is adequately addressed by the backup water supply and well.

Therefore, Hunzeker requested that Condition #1.1.3 be amended:

> Revise the site plan to show water service ~~as approved by Public Works and Utilities~~ <u>from the existing fire hydrant line with well service backup</u>.

Esseks inquired as to the nature of the backup water supply. Hunzeker stated that the 48-hour backup is literally in bottled water for potable water use. They also have the capability to transport residents to other facilities on temporary basis, if it becomes necessary.

Francis inquired whether the well for the backup supply has been tested. Hunzeker indicated that the well which would be used has not been kept current on testing because the other well used by a residence is tested annually. It's the same aquifer and they have every confidence that it would test fine.

There was no testimony in opposition.

Lust asked staff to address the turn lane issue. She wondered whether part of the reason for requiring the turn lane is because we have plans to widen 84th Street. Bartels responded, stating that anytime you introduce a driveway on an arterial street, you increase the opportunity for rear-end

accidents and you reduce the capacity of the arterial street. The turn lane serves as a deceleration lane for the driveway so you do not impede the through traffic. You can handle more cars on a street that does not have a lot of conflicts, i.e. a driveway or intersection. The only feasible way to reduce the conflict of a driveway is a right turn lane.

Lust asked whether Public Works has any reason to dispute the problems they are having with putting in that type of turn lane. Bartels understands the neighbor to the north does not want a common driveway, and he has no obligation to cooperate. But from an engineering standpoint, Bartels indicated that there are some grade difficulties and they have not shown him any engineering data with regard to the retaining wall. He cannot verify the cost, but he realizes there are some complications. He suggested the driveway on the south end. The typical standard would be a 200' turning lane – 150' would be the absolute minimum. The turn lane would be for southbound traffic only. There is enough frontage to have the turning lane. Somewhere midpoint or south of the frontage would allow a driving lane without requiring right-of-way from another property.

Gaylor Baird asked for other examples of such a requirement for turn lane. Bartels referred to an elderly project on the east side of 84th Street across from Pine Lake Road that was recently approved, where the entrance was required to be a right turn lane. There are other examples as well.

Francis wondered whether there would be any issue with moving this driveway if the property were not being rezoned. She understands rear-end accidents and not anticipating the turn. But if this house was sold and not being rezoned to be used as a commercial facility, would this driveway have to be relocated? Bartels stated that the driveway they are showing is in the same location as it would be for the single family house. Bartels assumes the city built the driveway that is there for a single family residence when 84th Street was built. Francis wondered why the turn lane was not an issue at that time. Bartels stated that a single family house will generate 6-10 trips a day, where we are probably talking about that many trips in the peak hours off this facility with employees and supply vehicles.

Lust inquired whether there are other situations where we have allowed applicants to tap into the hydrant lines for access to water. Bartels answered in the affirmative. “You can find an example or two”. The design standards forbid tapping a sizable water main. The issue is the reliability aspect. While every other piece of property has paid for the water main that fronts that piece of property, this property has never paid for the water main. It was totally paid for by the city.

Other than the reliability of the water supply, Lust inquired whether there were other concerns about the tapping. Bartels reiterated that the reliability is the big concern.

Gaylor Baird inquired whether the Fire Department has concerns. Bartels did not recall that they had expressed any concerns.

Response by the Applicant

Hunzeker pointed out that the driveway has been located there for over 40 years (when the street was widened). The water has always tested well. There has never been a problem with water quantity or quality to serve the existing home.

In addition, the policy of requiring turn lanes off of arterial streets is mentioned in the report as being one for "commercial" driveways. The staff refers to this as a "residential" project – not "commercial". There are two lots here. The second lot could have a single family or duplex built upon it as a matter of right without anyone requesting a turn lane. This is a situation where the policy is to request the turn lane, but he believes that everyone recognizes that there are circumstances when policy is more or less important, and Hunzeker submitted that this is one where policy is less important. Six to ten trips at peak hour amounts to one car entering or leaving the site about every six minutes during the peak hour – that is not a high volume of traffic. The applicant's counts would suggest that it is probably even lower.

With respect to the water line, Hunzeker believes that there is an underlying concern at Public Works that this property has never paid for a portion of the water line to go in front of the house. This house has been here for 30 years. It was in the country when it was built. It was annexed relatively recently and they were mandated to abandon the septic system, but because there was no water line available they could not be required to hook onto city water. They stayed on the well. The city had the opportunity when widening 84th Street to install a water line that would have served these lots, and could have created a district to do so. And now, after we have pavement which is just about five years old in 84th Street, we are being told that it is appropriate to tear up the pavement and install the valves and create the necessary water lines to provide a loop, which is not even required of cul-de-sacs in other locations in the city.

Hunzeker reiterated the request to delete Conditions #1.1.4 and #1.3, and to amend Condition #1.1.3.

Lust wondered why they couldn't use the well. Hunzeker believes the answer probably comes in the form of "we have to be here to ask you for a special permit so you could make us do things we wouldn't have to do if we were building a single family house."

ACTION BY PLANNING COMMISSION: February 9, 2011

Esseks moved to approve the staff recommendation of conditional approval, with the amendment to Condition #1.1.3 as requested by the applicant (water service), seconded by Gaylor Baird. This motion does not delete the requirement for the turn lane.

Esseks believes that public safety requires the provision for a turning lane, even though it may cost over $100,000. This is not a single family home. The total number of cars turning into that property will exceed two or three or more single family homes.

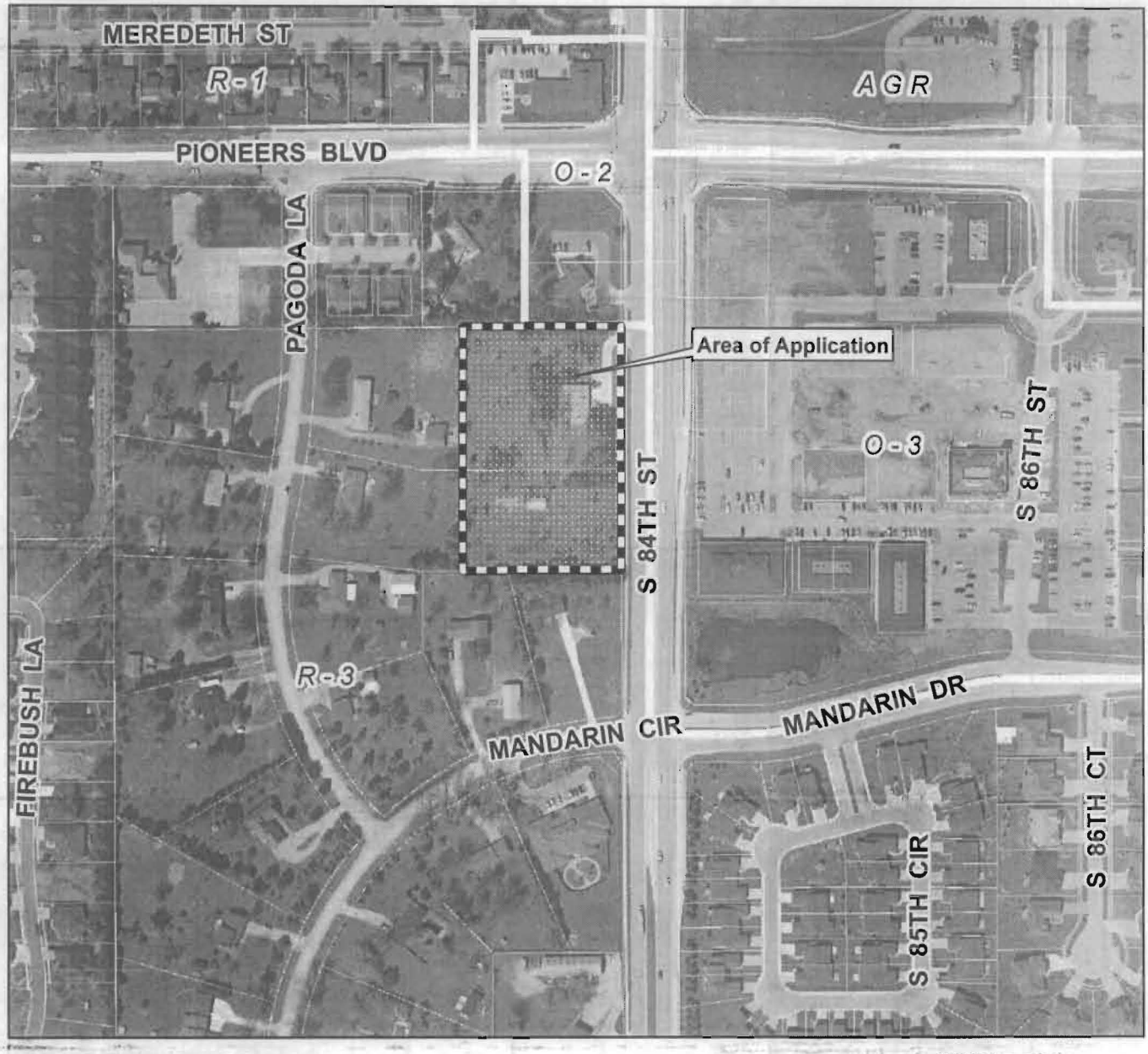
Lust has experience with long term care facilities that accept Medicaid and Medicare and the profit margin is "razor thin" if at all. She does believe the cost of the turning lane would be significant to this type of facility.

Francis disagrees with the requirement for the turn lane. She does not think that the turn lane is a needed. There are a lot of other streets that abut 84th Street with lots of traffic going in and out of neighborhoods where there are no turn lanes. She will vote no on this motion.

Cornelius stated that he is uncomfortable with trying to use his own expertise to contradict an engineering principle that we are being told about in a land use decision where we are asked to examine a unique circumstance. We have a circumstance that is unique to the extent that we have a use that is very financially dependent upon initial conditions in terms of finances. On the other hand, the land use circumstance is not unique. It is the redevelopment of a parcel with some existing features that might be nice to keep. He is inclined to vote for the motion because he believes a right turn lane is sound on 84th Street.

Gaylor Baird would like further clarification from staff as to whether this is a "commercial" or "residential" use. Will confirmed that by definition the domiciliary care facility is a "residential" use.

Motion for conditional approval, with amendment to Condition #1.1.3, carried 5-2: Taylor, Gaylor Baird, Partington, Esseks and Cornelius voting 'yes'; Lust and Francis voting 'no'; Larson and Sunderman absent. <u>This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.</u>



2007 aerial

Special Permit #10037
S 84th St & Pioneers Blvd

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

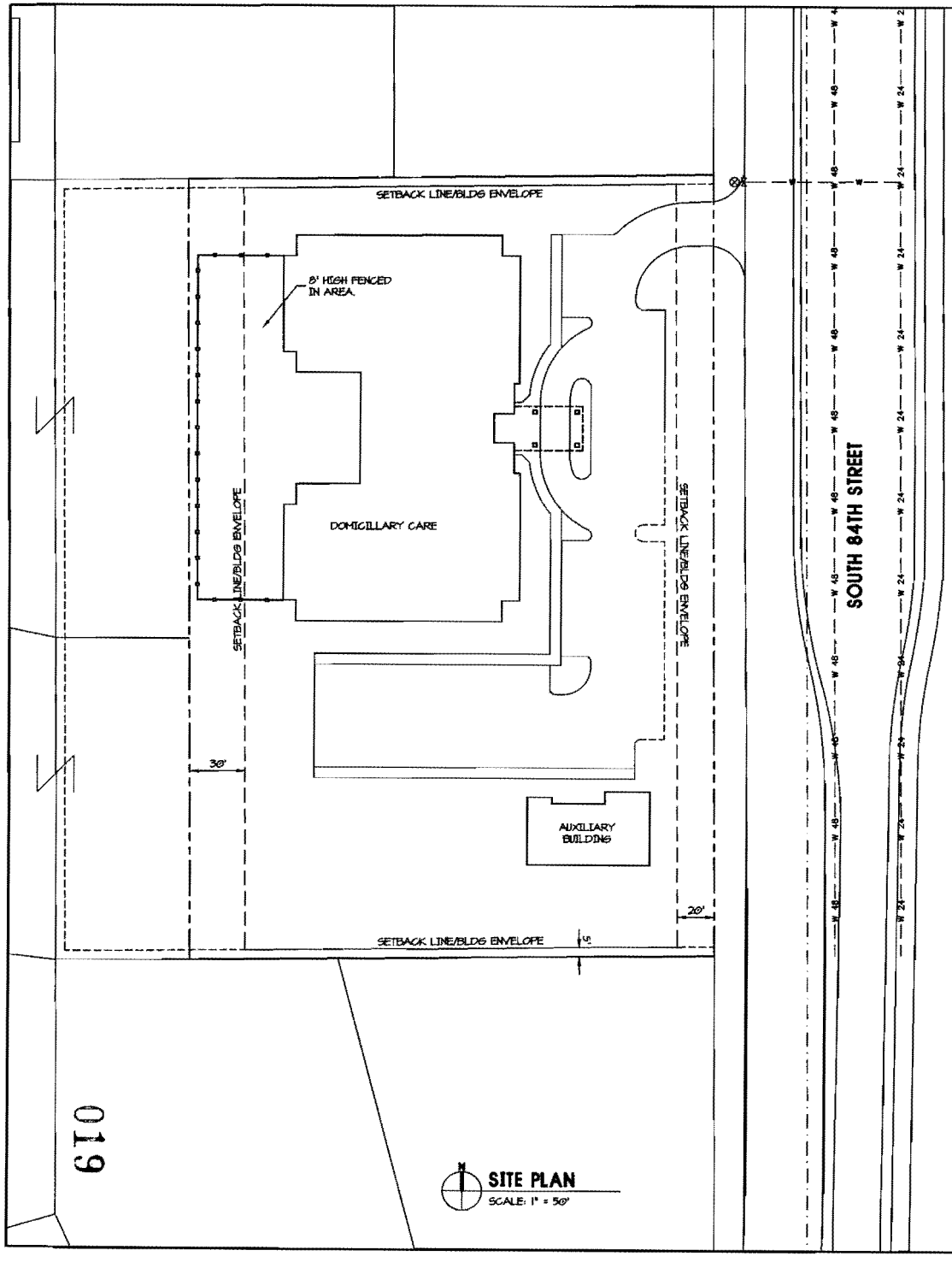
m:\plan\arcview\Agendadrawings.mxd (SP10037)

One Square Mile
Sec. 10 T09N R07E

N

Zoning Jurisdiction Lines

City Limit Jurisdiction



SITE PLAN
SCALE: 1" = 50'

ZONING

EXISTING ZONING: R-3

BUILDING USE TABLE

DOMICILLARY CARE FACILITY: MAXIMUM OF 25,000 SQUARE FEET
AUXILIARY BUILDING: MAXIMUM OF 5,000 SQUARE FEET

PARKING MATRIX

PARKING WILL COMPLY WITH CHAPTER 27.67 OF THE LINCOLN MUNICIPAL CODE

BUILDING ENVELOPES

BUILDING ENVELOPE ARE THE SETBACK LINES. BUILDINGS MAY BE CONSTRUCTED ANYWHERE OUTSIDE OF SETBACKS.

PARKING LOT

PARKING LOT IS CONCEPTUAL AND WILL COMPLY WITH CITY OF LINCOLN DESIGN STANDARDS, AND WILL BE SHOWN AT TIME OF BUILDING PERMIT.

LANDSCAPE

LANDSCAPE SCREENING AND SHADE TREES WILL COMPLY WITH CITY OF LINCOLN DESIGN STANDARDS, AND WILL BE SHOWN AT THE TIME OF BUILDING PERMIT.

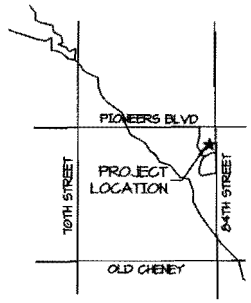
LEGAL DESCRIPTION

LOTS 2 AND 3, BLOCK 1, EXCEPT THE EAST 17' & EXCEPT THE WEST 72.2' MAR MA RA LO HEIGHTS ADDITION

PARCEL CONTAINS 2.77 ACRES MORE OR LESS.

SIGNAGE

SIGNAGE WILL COMPLY WITH SECTION 27.69 OF THE LINCOLN MUNICIPAL CODE.



VICINITY MAP
NO SCALE

17 DEC 2010
04 JAN 11

SPECIAL PERMIT - SP10037
THE INDEPENDENCE HOUSE AT PIONEERS BLVD
LINCOLN, NEBRASKA

Design Associates
ARCHITECTS • ENGINEERS • PLANNERS
PERSHING SQUARE 1600 "N" STREET LINCOLN NEBRASKA 68508
voice-402.474.3000 office@DesignLincoln.com fax:402.474.4045

1 OF 1

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BAYLOR EVNEN
BAYLOR, EVNEN, CURTISS, GRIMIT & WITT, LLP

WALTER E. ZINK II
RANDALL L. GOYETTE*
STEPHEN S. GEALY
GAIL S. PERRY
DALLAS D. JONES
JILL GRADWOHL SCHROEDER
DAVID A. DUDLEY
BRENDA S. SPILKER
STEPHANIE F. STACY
W. SCOTT DAVIS
MARK A. HUNZEKER

WILLIAM G. BLAKE
PETER W. KATT
CHRISTOPHER M. FERDICO
DARLA S. IDEUS
JARROD S. BOITNOTT
TIMOTHY E. CLARKE
ANDREW M. LOUDON
CHRISTINA L. BALL**
JENNY L. PANKO
CAROLINE M. WESTERHOLD*
JAMES D. HAMILTON*

AMANDA A. DUTTON
CYNTHIA R. LAMM
DEREK C. ZIMMERMAN
JARROD P. CROUSE
ANDREA D. SNOWDEN
JULIE M. KARAVAS
ANDREA A. ORDONEZ
SHANE R. THIELEN
COLIN A. MUES*
TORREY L. JANUS GERDES

OF COUNSEL
DONALD R. WITT
ROBERT T. GRIMIT
J. ARTHUR CURTISS

*ALSO ADMITTED IN IOWA
**ALSO ADMITTED IN KANSAS

January 4, 2011

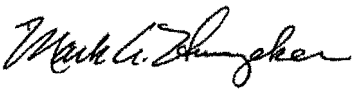
Mr. Marvin Krout, Director
City County Planning Department
City of Lincoln
555 S. 10th Street
Lincoln, NE 68508

RE: Special Permit Application for Domiciliary Care Facility
4305 S. 84th Street

Dear Mr. Krout:

This letter is for the purpose of revising our Application for a Special Permit for a Domiciliary Care Facility to be located at 4305 S. 84th Street. The Application is for the purpose of providing residential care to Alzheimer's patients. The facility will include a maximum of 48 beds. The accessory building shown on the site plan will be a "Clubhouse" for early-onset Alzheimer's patients, for whom separate programming and supervision will be provided. Consideration is being given to dedicating a portion of the accessory building to beds for overnight respite care, which is the reason for revising our application from 40 to 48 beds. Early-onset patients may be, but need not be, permanent residents of the facility.

Sincerely,



Mark A. Hunzeker
For the Firm
mhunzeker@baylorevnen.com

MAH/smj

020

City of Lincoln - Lancaster County
PLANNING DEPARTMENT

555 S. 10th Street, Suite 213
Lincoln, NE 68508
Ph: (402) 441-7491
Fax: (402) 441-6377

ePlan
ePlan Submittal

Application Information			
Application #	SP10037	Title	EMERALD CARE CO. DOMICILLIARY
Associated Requests			

Planning Department Use Only			
Submission Date	12/17/2010	Review Due	12/27/2010
Project Planner	Brian Will		

Review Agencies (Planning Department Use Only)

Review Agencies	<Choose Entry>	<Choose Entry>	

Building & Safety:	Terry Kathe (tkathe@lincoln.ne.gov)	☐ Remove Agency Reviewer
County Health:	Chris Schroeder (cschroeder@lincoln.ne.gov)	☐ Remove Agency Reviewer
Development Review Manager:	Steve Henrichsen (shenrichsen@lincoln.ne.gov)	☐ Remove Agency Reviewer
Public Works:	Buff Baker (cbaker@lincoln.ne.gov)	☐ Remove Agency Reviewer
Public Works:	Dennis Bartels (dbartels@lincoln.ne.gov)	☐ Remove Agency Reviewer

021

Review Comments		
Planning	◉ Corrections Needed for Review ○ Insufficient Information for Review ○ Recommend Denial ○ Recommend Approval with Conditions ○ Recommend Approval ○ No Review Required Review 1:	
Building & Safety (Terry Kathe)	○ Corrections Needed for Review ○ Insufficient Information for Review ○ Recommend Denial ○ Recommend Approval with Conditions ○ Recommend Approval ○ No Review Required Review 1:	
County Health (Chris Schroeder)	○ Corrections Needed for Review ○ Insufficient Information for Review ○ Recommend Denial ○ Recommend Approval with Conditions ◉ Recommend Approval ○ No Review Required Review 1: see misc. docs folder.	
Development Review Manager (Steve Henrichsen)	○ Corrections Needed for Review ○ Insufficient Information for Review ○ Recommend Denial ○ Recommend Approval with Conditions ◉ Recommend Approval ○ No Review Required Review 1: see markups	
Public Works (Buff Baker)	○ Corrections Needed for Review ○ Insufficient Information for Review ○ Recommend Denial ○ Recommend Approval with Conditions ○ Recommend Approval ○ No Review Required Review 1: See Dennis' comments on water service, drainage and vehicle access issues.	
Public Works (Dennis Bartels)	○ Corrections Needed for Review ◉ Insufficient Information for Review ○ Recommend Denial ○ Recommend Approval with Conditions ○ Recommend Approval ○ No Review Required Review 1: Show construction necessary to provide abutting tappable water service. Show a grading and drainage plan. The size of this building and parking area greatly increases the impermeable area for the development. With no information about the grading and grading and no drainage study I can not determine the affect of building this project on the abutting residential properties. The original subdivision was a rural development with open drainage and no storm sewer. Public works will not approve a commercial driveway as is needed for this project without provisions for a right turn lane in 84th Street. This may require relocation of the proposed driveway and redesign of the site to enable the dedication of the required right of way. The drive location shown would require right of way from the property owner to the north. Any driveway to this property from 84th Street will be right in and out only. Potential exists for combining the existing driveway to the north with the driveway for this project and thus providing a right turn lane for access to both properties, but Public Works does not want both driveways taking access to the same turn lane.	022

Lincoln-Lancaster County Health Department (LLCHD) comments:

Developers are responsible for all mosquito control issues during the building process and all outlots, green-spaces, and/or natural corridors subsequently controlled by the owner, tenant, occupant, lessee, or otherwise, for that subdivision would be responsible for vectors of zoonotic disease in those areas.

All wind and water erosion must be controlled during construction. The Lower Platte South Natural Resources District should be contacted for guidance in this matter.

During the construction process, the land owner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but not limited to application of water to roads, driveways, parking lots on site, site frontage and any adjacent business or residential frontage. Planting and maintenance of ground cover will also be incorporated as necessary.

The LLCHD notes that residential uses are located directly west and south of this proposed facility. The LLCHD advises that applicant become familiar with Lincoln Municipal Code (LMC) 8.24 Noise Control Ordinance that addresses noise pollution by regulating source sound levels based upon the receiving land-use category or zoning. Creative site design should be utilized to minimize the potential impacts of noise pollution to the adjacent residential uses.