City Council Introduction: **Monday**, November 14, 2011
Public Hearing: **Monday**, November 21, 2011, at **5:30** p.m. Bill No. 11-172

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 11036,** from R-2 Residential District to R-5 Residential District, requested by Robert and Sally Schmieding, on property generally located at North 40th Street and Frederick Circle.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 11/02/11
Administrative Action: 11/02/11

STAFF RECOMMENDATION: Approval.

RECOMMENDATION: Approval (9-0: Cornelius, Esseks, Francis, Gaylor Baird, Larson, Lust, Partington, Taylor and Sunderman voting 'yes').

FINDINGS:

1. This proposed change of zone and the associated Special Permit No. 11025, Beautiful Day Acres Community Unit Plan, were heard at the same time before the Planning Commission.

2. This change of zone request from R-2 to R-5 includes a portion (3,709 sq. ft., more or less) of Outlot B in Beautiful Day Acres Addition. The majority of the Outlot is zoned R-5. This change of zone area is proposed for attached single-family use in the associated Beautiful Day Acres Community Unit Plan. This change of zone will allow all of the property included in the associated community unit plan to be under one zoning district.

3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3, concluding that the proposed change of zone is in conformance with the Comprehensive Plan. The staff presentation is found on p.5-7.

4. The testimony by the applicant's representative is found on p.7.

5. There was no testimony in opposition; however, the record consists of one letter in opposition with concerns about access (p.13). The applicant's representative advised that the applicant contacted the opposition and their concerns were allayed when they were informed that there would be two street extensions out to 40th Street (See Minutes, p.7).

6. On November 2, 2011, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval of the change of zone request.

7. On November 2, 2011, the Planning Commission also voted 9-0 to adopt Resolution No. PC-01254, approving the associated Beautiful Day Acres Community Unit Plan Special Permit No. 11025. An aerial and copy of the site plan are attached for information purposes only (p.14-15). As of the date of this Factsheet, the associated community unit plan special permit has not been appealed to the City Council.

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: November 8, 2011

REVIEWED BY:_____ **DATE**: November 8, 2011

REFERENCE NUMBER: Q:\FS\CC\2011\CZ11036

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for OCTOBER 19, 2011 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No.11036

PROPOSAL: From R-2 Residential to R-5 Residential.

LOCATION: N. 40th St. and Frederick Circle

LAND AREA: 3,709 square feet, more or less

EXISTING ZONING: R-2, Residential

CONCLUSION: The change of zone is in conformance with the 2030 Comprehensive Plan.

RECOMMENDATION: Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: see attached

EXISTING LAND USE: undeveloped

SURROUNDING LAND USE AND ZONING:

North:	R-2, Residential	Single family dwellings
South:	R-2, Residential	Undeveloped
East:	R-2, Residential	Single family dwellings
West:	R-5, Residential	Undeveloped

ASSOCIATED APPLICATIONS:
Special Permit #11025 for Beautiful Day Acres Community Unit Plan

HISTORY:

September 22, 1986	Dairyland Addition final plat was approved by the City Council.
October 19, 1992	Beautiful Day Acres Administrative final plat was approved by the Planning Director.

The zoning was changed from A-2, Single family dwelling district to R-2, Residential with the 1979 zoning update.

COMPREHENSIVE PLAN SPECIFICATIONS:

Maximize the community's present infrastructure investment by planning for residential and commercial development in areas with available capacity. This can be accomplished in many ways including encouraging appropriate new development on unused land in older neighborhoods, and encouraging a greater amount of commercial space per acre and more dwelling units per acre in new neighborhoods. (p.9)

Affordable housing should be distributed throughout the region to be near job opportunities and to provide housing choices within every neighborhood. (p.10 & 65)

Encourage different housing types and choices, including affordable housing, throughout each neighborhood for an increasingly diverse population. (p.10)

Construction and renovation within the existing urban area should be compatible with the character of the surrounding neighborhood. (p.10)

Urban residential: Multi-family and single family residential uses in areas with varying densities ranging from more than fifteen dwellings per acre to less than one dwelling per acre. (p.16)

The Land Use Plan identifies this area as Residential-Urban Density. (p19)

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.(p.67)

Encourage a mix of housing types, including single family, duplex, attached single family units, apartments and elderly housing all within one area. Encourage multi-family near commercial areas. (p.68)

Require new development to be compatible with character of neighborhood

ANALYSIS:

1. This request is for a change of zone from R-2 to R-5. The R-2 is a portion of Outlot B, Beautiful Day Acres Addition. The majority of the Outlot is zoned R-5.

2. Associated with this change of zone is an application for a Community Unit Plan. The site plan(see attached) shows a residential lot, Lot 1, Block 1, where this portion of R-2 exists. If the R-2 were to remain, there would be both R-5 and R-2 zoning on the lot. Having 2 different zoning districts on one lot can lead to complications with set backs and allowed uses.

3. This change of zone should have minimal impact on the 2 single family dwellings to the east. The change of zone area is proposed for attached single-family use. That use would be established with the approval of Special permit #11025, Beautiful Day Acres Community Unit Plan.

Prepared by:
Tom Cajka
Planner

DATE: October 18, 2011

APPLICANT:	Lyle Loth ESP 601 Old Cheney Rd. Suite A Lincoln, NE 68512
OWNER:	Robert and Sally Schmieding 4101 N. 40th St. Lincoln, NE 68504
CONTACT:	Same as applicant

CHANGE OF ZONE NO. 11036
and
SPECIAL PERMIT NO. 11025,
BEAUTIFUL DAY ACRES COMMUNITY UNIT PLAN

PUBLIC HEARING BEFORE PLANNING COMMISSION: November 2, 2011

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

There were no ex parte communications.

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

Staff presentation: **Tom Cajka of Planning staff** explained that the change of zone includes a small portion of R-2 zoned property with the remainder being zoned R-5. The change of zone will allow all of the property included in the community unit plan to be under one zoning district. If that small portion of the property remained R-2, there would be two different zoning districts on one lot.

The community unit plan special permit requests 16 single-family attached lots (townhomes) and one large lot for a future apartment complex for 266 units and a conceptual layout for 12 single-family lots. There will be two new street extensions out to 40th Street. With the R-5 zoning, the development could have been done by right as a preliminary plat; however, staff had requested the applicant to do a CUP so that building envelopes could be shown on the plan because the entire area is within the 100-year floodplain. The property owner previously received a letter of map revision to bring the pad sites above the floodplain. The building envelopes are outside of the floodplain. The staff requested the CUP in order to be specific on the plan so that there would be no question about where the house could be built to be outside of the 100-year floodplain and be in compliance with the letter of map revision.

Cajka then explained the waiver requests. One is for the reduction of the right-of-way width for Frederick Street from 60' to 58'. The reason staff and Public Works have agreed to this waiver is because houses were built after this outlot was platted. A regular width street would make those houses nonstandard because they would no longer meet the front yard setback. To avoid that, staff agreed with the 58' right-of-way width with 1' outlots on either side of the street, which would retain the side yard setback for those houses and would be in conformance with the zoning code.

The stormwater detention waiver is not an issue because the property is so close to Salt Creek. The sanitary sewer opposite street grades is acceptable.

With regard to the centerline grade of more than 1' below the 50-year flood elevation, staff is recommending conditional approval whereby the developer and Public Works have to come to agreement. Public Works has requested more information to support that waiver.

Taylor inquired about the floodplain. Cajka explained that the building envelopes are being shown outside of the floodplain. They previously brought in fill to bring it above the 100-year flood elevation.

Gaylor Baird noted that there is a letter in opposition with concerns about there only being one entrance road. Cajka confirmed that there will be two new entrances to the development. A traffic study was not required because the zoning is already R-5 and R-5 allows this much density.

Gaylor Baird inquired about Frederick Street and whether that road had been planned prior to the houses being built on either side. Cajka explained that when this was final platted, it was not shown as right-of-way but one could have been lead you to believe it was set up for a future street. Gaylor Baird wondered if something should have been done differently or what should be done in the future to avoid this issue. Cajka suggested that it would have been better had the right-of-way been shown as a street on the final plat. It was not required at the time of the final plat and that final plat did not include a preliminary plat. Cajka was not sure why there was not a preliminary plat. Today, they would probably be required to submit a preliminary plat to show the streets.

Lust noted that Public Works seemed to have several concerns with this particular development, but as she understands it, the condition of approval requires satisfaction of Public Works before the project can go forward. Cajka concurred. Public Works' main concern was the street. **Buff Baker of Public Works** acknowledged that Dennis Bartels did also have comments on the drainage system. Public Works has had conversations with the developer's engineer and Baker believes they will reach agreement as to what is needed in accordance with the condition of approval.

Esseks confirmed that the building pads are at least 1' or more above the 100-year floodplain elevation. Cajka agreed. Esseks then commented that the homes themselves will not be flooded, but other parts of the property could be flooded, such as the sidewalks, driveways, parking lots, etc. Cajka agreed. Esseks stated that he can see the point of infill development in this area – convenient to shopping and employment opportunities – but do we as a city have plans for dealing with a situation whereby a large number of people could be surrounded by water? What kind of plans do we have from Health or other agencies to deal with such a situation? Cajka was not aware of any plans, such as evacuation plans, emergency access, etc., but in general, the Comprehensive Plan talks about trying not to develop in the floodplain unless the issues can be worked out. There are a lot of places in the city where houses are already in the floodplain. But, Esseks pointed out that here, the Planning Commission is deliberately approving something in the floodplain.

Steve Henrichsen of Planning staff suggested that it is not necessarily up to the Health Department to create their own emergency management plan for the city. There is a separate agency dealing with those emergencies and that plan is for the city as a whole. There is certainly a concern by the city and county with evacuation plans and ways to notify people when there is concern about floods. In this case, the rules allow them to at least get the house above the flood elevation and you would hope people would follow the emergency evacuation plan that is called out for a particular area. In terms of emergency management preparedness, there has been a whole Salt Creek Floodplain Study done that is part of the floodplain regulations to try to preserve the flood storage in these areas as much as possible.

Esseks noted that there is a condition that all purchasers and users of land within the floodplain will be informed about these risks. How will they find out? Henrichsen indicated that there are lots of ways, such as on-line mapping, etc. In addition, our process does require with the final plat, and as part of this CUP, that the developer notify the lot owners and there is a subdivision agreement that would be filed against each of the lots identifying the floodplain. A deed search or title search should discover this information.

Proponents

1. Lyle Loth of ESP Engineers appeared on behalf of the **Bob and Sally Schmieding,** the applicants. The letter in opposition was received from the Keifer family, who live in the area. Their biggest concern was the single access. The developer contacted the Keifer family and when it was pointed out that there would be two accesses, their concerns appeared to be mostly resolved.

Another concern on this project has been drainage. A floodplain fill permit was issued and the pad sites were raised above the base flood elevation such that all of the structures that will be built will be at least one foot above the base flood elevation. The building restriction agreement approved by the city prohibits building basements or any floor elevations lower than that grade. That agreement would be provided to any future lot owners.

Loth also discussed the waiver request to have the streets lower than one foot below the 50 year flood elevation. That requirement has been that in the case of a severe flood, if the water was no more than two feet deep, then emergency vehicles could get into the neighborhood and could evacuate. Because of the low lying neighborhood areas immediately adjacent, the developer has been having difficulty getting low enough to adequately drain the property during the normal events. It was suggested by Public Works that maybe we could consider going below that a little bit more in a fairly short area to provide a little bit of additional fill to adequately drain the properties. When we do that, along with the storm sewer system, the water level in the Turner ditch will impact how the storm sewer system works. Public Works has requested that we obtain the various water level information for certain storm events as it will be flowing in the Turner ditch. Turner ditch is immediately along the north side of the property. At this point in time, we only have the 100-year flood elevation information, so we are now trying to get the flood levels or water levels in Turner ditch for the 5, 10, 25 and 50-year storm events from Watershed Management to see how well the storm drainage system will work. Loth stated that he is confident that no properties will be jeopardized. He is also confident that the Public Works' concerns on the drainage can be satisfied. Therefore, the applicant is in agreement with all conditions of approval.

There was no testimony in opposition.

CHANGE OF ZONE NO. 11036
ACTION BY PLANNING COMMISSION: November 2, 2011

Taylor moved approval, seconded by Lust.

Cornelius believes this to be a fairly minor change and small strip of land where the intent is essentially administrative.

Motion for approval carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Taylor and Sunderman voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 11025
ACTION BY PLANNING COMMISSION: November 2, 2011

Taylor made a motion to approve the staff recommendation of conditional approval, seconded by Lust.

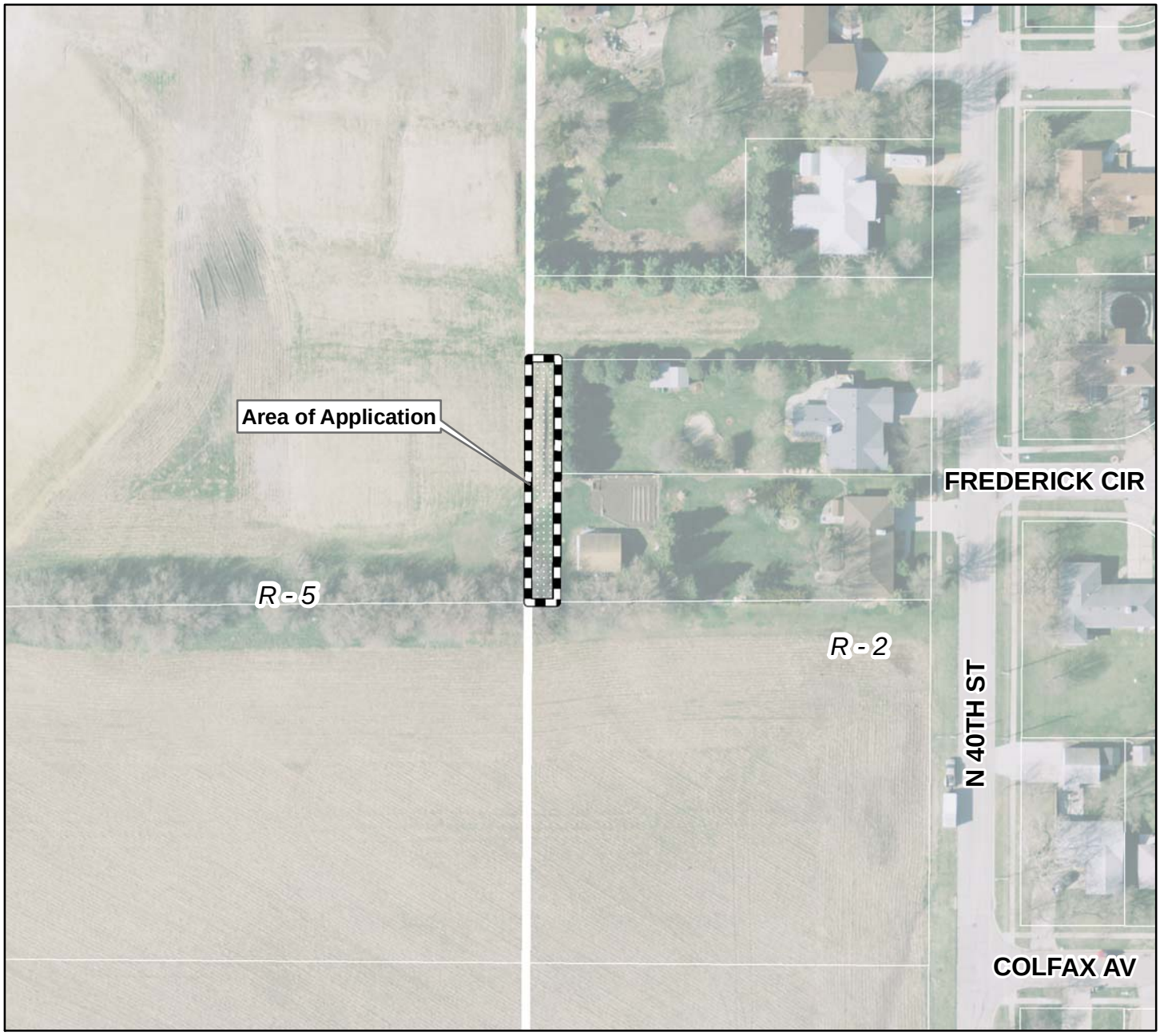
Francis thinks this is a good layout and she is pleased to see a second entrance into this subdivision.

Gaylor Baird commented that this proposal falls in line with the Comprehensive Plan goals about increasing density and encouraging infill development in the existing developed environment. We live in a community where floodplain is an issue almost everywhere, so she is pleased to see that the engineer has been working carefully with Public Works to address the floodplain issues.

Esseks observed that this development appears to follow the recommendations of the Mayor's Floodplain Task Force and there cannot be excessive fill brought in, which could increase the possibility of flooding downstream. This appears to be a responsibly designed development.

Taylor stated that he appreciates the developer's efforts to make sure they are following the regulations and the contact with the individual who wrote the letter in opposition.

Motion for conditional approval carried 9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Taylor and Sunderman voting 'yes'. This is a final action, unless appealed to the City Council within 14 days.



2010 aerial

Change of Zone #11036
R-2 to R-5
N 40th & Turner St

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

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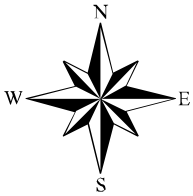
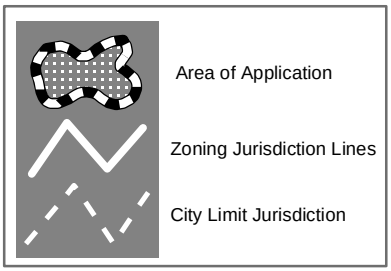
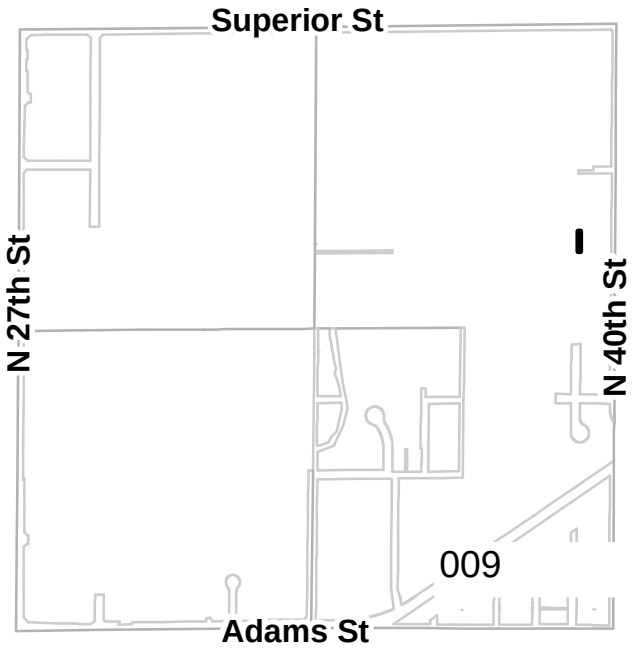
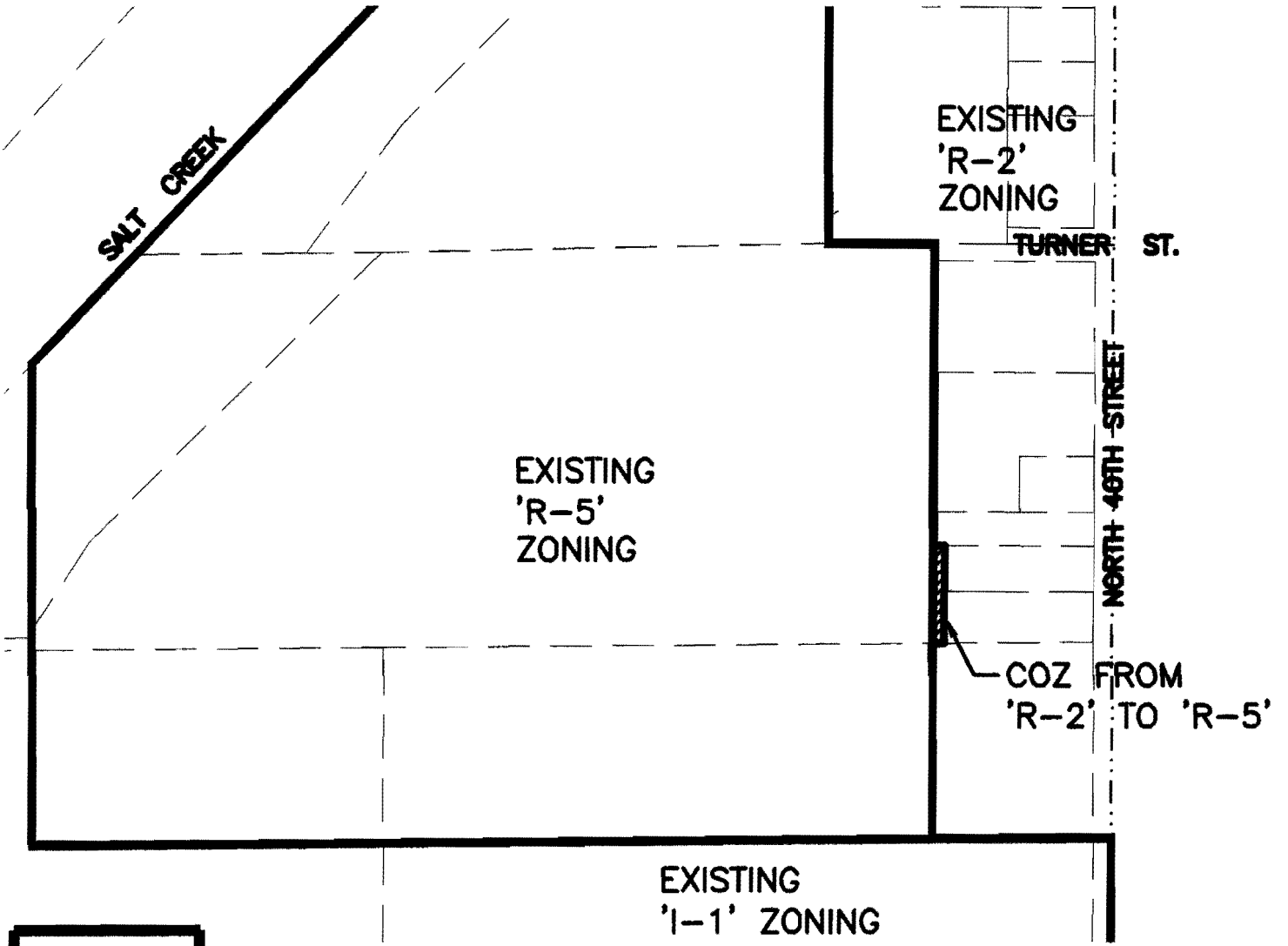


One Square Mile
Sec. 07 T10N R07E





CHANGE OF ZONE
FROM 'R-2' TO 'R-5'



E.S.P.
CONSULTING
ENGINEERS

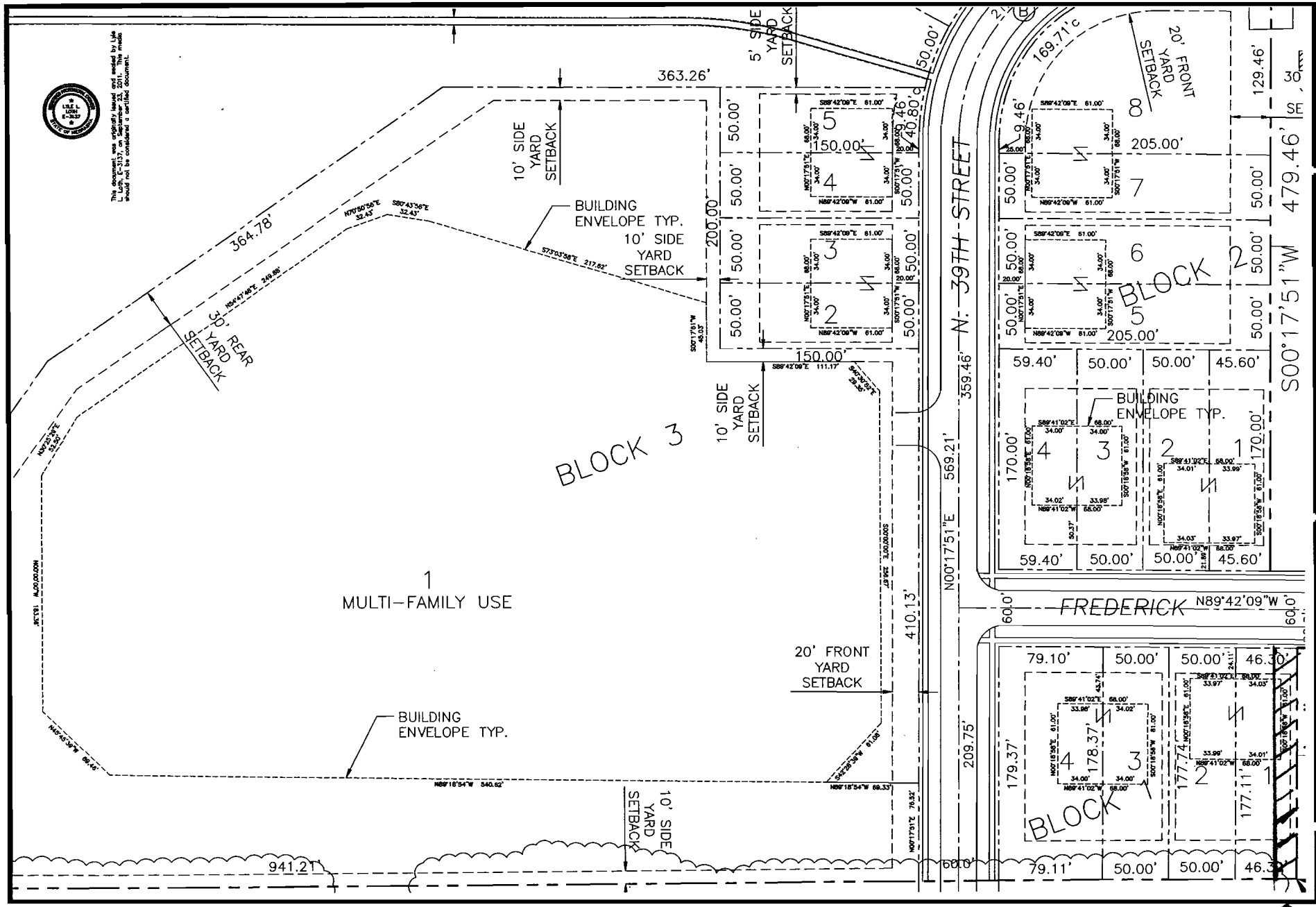
601 OLD
CHENEY RD.
SUITE 'A'
LINCOLN
NEBRASKA
68512

A portion of Outlot 'B', Beautiful Day Acres Addition, located in the Northeast Quarter of Section 7, Township 10 North, Range 7 East of the Sixth Principal Meridian, Lancaster County, Nebraska, more particularly described as follows.

Commencing at the Southeast Corner of the Northeast Quarter of said Section 7, and extending thence N00°17'52"E along the East line of said Northeast Quarter, a distance of 660.05 feet; Thence S89°34'27"W, a distance of 303.03 feet to the POINT OF BEGINNING;

Thence S89°34'27"W, a distance of 21.00 feet;
Thence N00°17'51"E, a distance of 176.79 feet;
Thence S89°42'09"E, a distance of 21.00 feet;
Thence S00°17'51"W, a distance of 176.52 feet to the POINT OF BEGINNING, and containing a calculated area of 3,709.79 square feet or 0.085 acres.

SCALE: NONE



This document was originally issued and sealed by Lyle L. Loth, E-3137, on September 23, 2011. This media should not be considered a certified document.

E.S.P.
CONSULTING ENGINEERS

601 OLD CHENEY RD.
SUITE 'A'
LINCOLN
NEBRASKA
68512
421-2500
421-7096 FAX

BEAUTIFUL DAY ACRES COMMUNITY UNIT PLAN

NORTH 40TH & TURNER STREETS

ENLARGED SITE PLAN

SCALE: 1" = 30'
E:\Schmieding\Beautiful Day Acres\dwg\Prelim2011.dwg
DATE: 9/23/11

REVISIONS:

1A OF 4

CHANGE OF ZONE
R-2 to R-5

011

ESP INC.
ENGINEERING PLANNING
SURVEYING

Suite A - 601 Old Cheney Road
Lincoln, NE 68512

Phone (402) 421-2500
Fax (402) 421-7096

File No. 11-0100

August 31, 2011

Mr. Marvin Krout
Director of Planning
Tom Cajka, Planner
City of Lincoln/ Lancaster County
555 South 10th Street
Lincoln, NE 68508

RE: BEAUTIFUL DAY ACRES
CHANGE OF ZONE FROM 'R-2' TO 'R-5'
North 40th Street & Turner Street

Dear Marvin,

On behalf of Robert and Sally Schmieding, we submit the above mentioned change of zone application for your review. Concurrently, a preliminary plat application has been submitted to the Planning Department.

The change of zone includes 0.085 acres to be zoned 'R-5' to reflect the current zoning directly west of the area. The property is being shown as part of a single family attached lot in the submitted preliminary plat. This change of zone will allow the setbacks to match the other proposed single family lots and eliminate having two different zones within one lot.

Please notify me if you have any questions or concerns.

Sincerely,

Marcia L. Kinning

Cc: Robert & Sally Schmieding
Enclosures: Change of Zone Application
Application Fee of $440.00

012

LYLE L. LOTH, P.E./L.S.
lyle@espeng.com

JOHN FINKNER, E.I.
john@espeng.com

DALE SMITH, P.E.
dale@espeng.com

OPPOSITION

ITEM NO. 4.1a&b: CHANGE OF ZONE NO. 11036
SPECIAL PERMIT NO. 11025
(p.33 - Public Hearing - 11/02/11)

VIRGINIA & DENNIS KEIFER
4025 NO. 40TH STREET
LINCOLN NE 68504

LINCOLN NE
CITY PLANNING COMMISION

RE:CHANGE OF ZONE NO. 11036 AND
SPECIAL PERMIT NO 11025
BEAUTIFUL DAY ACRES
COMMUNITY UNIT PLAN
NORTH 40TH ST & TURNER STREET

RECEIVED
OCT 28 2011
Lincoln/Lancaster Co.
Planning Department

CAUSE FOR APPEAL

WE AS THE OWNERS OF THE HOUSE AT 4025 NO 40TH WOULD LIKE TO APPEAL YOU FINAL APPROVAL ON THIS ACTION

FIRST THIS IS MY HOUSE THAT THE ONY ACCESS TO THE DEVELOPMENT WILL BE BUILT NEXT TO. THIS IS A 50 FOOT LOT. IF YOU PUT A ROAD THERE. IT WILL INTRUDE ON MY PEACE AND QUITE. NOT ONLY CAUSING A HUGE TRAFFIC PROBLEM. WITH MORE THAN 296 UNITS YOU CAN EXPECT AT LEAST 600 CARS EXITING AND ENTERING THIS AREA AT LEAST TWICE A DAY. NO 40TH CANNOT HANDLE THE ADDITIONAL TRAFFIC. ITS ALREADY BUSY WITH THE TRAFFIC THAT'S ON IT NONE. LET ALONE THE PROBLEMS THAT ALREADY EXIST GETTING ONTO CORNHUSKER AND SUPERIOR STS.

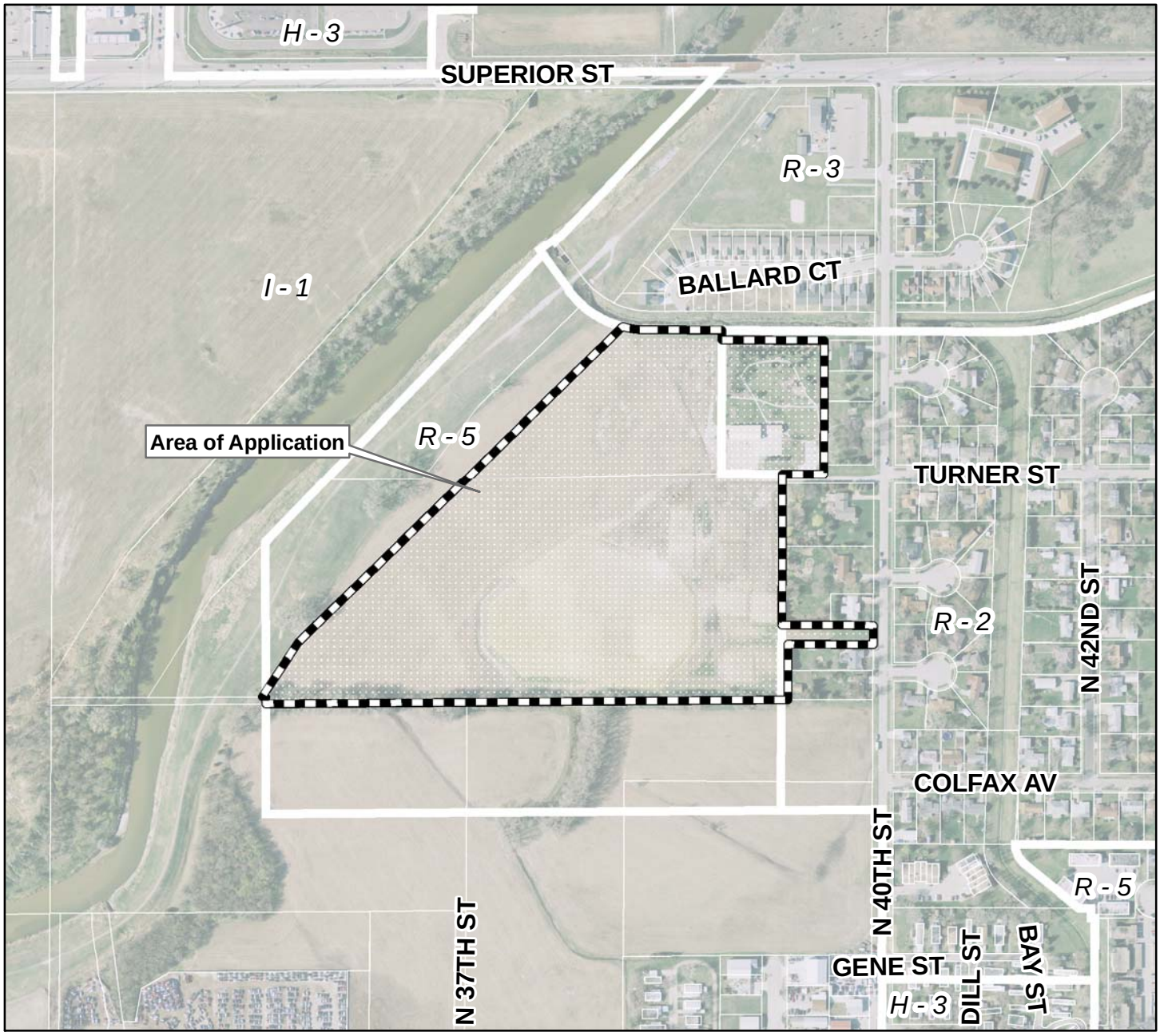
I CAN SEE THE SCHMIEDINGS WANTING TO DEVELOP THIS PROPERTY, BUT I FEEL HAVING ONLY ONE ENTRANCE TO IT BETWEEN THE TWO HOMES THAT ARE ON EITHER SIDE OF THE PROPOSED ROAD, IS NOT IN THE BETTER INTEREST OF THE NEIGHBORHOOD

IN FACT ON BOTH SIDES THE LAND HAS BEEN LANDSCAPED INTO A PARKLIKE SURROUNDINGS, WHICH IF ALLOWED TO BUILD A ROAD TO THEIR PROPERTY BEHIND THAT WOULD ONLY DISTROY OUR PROPERTIES AND REDUCE OUR VALUES.

IF THEY WANT TO DEVELOP WHY DON'T THEY MOVE THE ENTRANCE NEXT TO THERE HOUSE? AT TURNER. THEY ALREADY HAVE A ROAD THERE AND IT WONT DESTROY OUR PROPERTY. OR BUY THE PROPERTY ACROSS FROM COLFAX WHERE THERE ARE NO HOUSES. WHY DO WE WANT A ROAD TO 40TH THAT YOU MUST TURN LEFT OR RIGHT. THERE IS GOING STRAIGHT THAT'S A CIRCLE. WHERE AS TURNER AND COLFAX ARE THRU STREETS.

WITH ALL DUE RESPECT DONOT ALLOW THIS ZONING TO GO THROUGH.

VIRGINIA & DENNIS KEIFER



Special Permit #11025
Beautiful Day Acres CUP
N 40th & Turner St

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
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B-3	Commercial District
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H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

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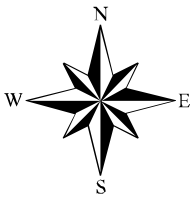
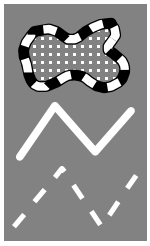


One Square Mile
Sec. 07 T10N R07E

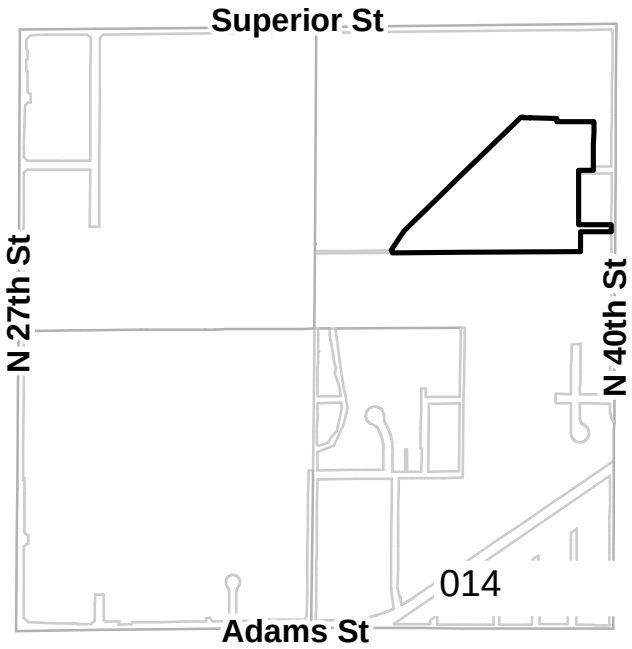


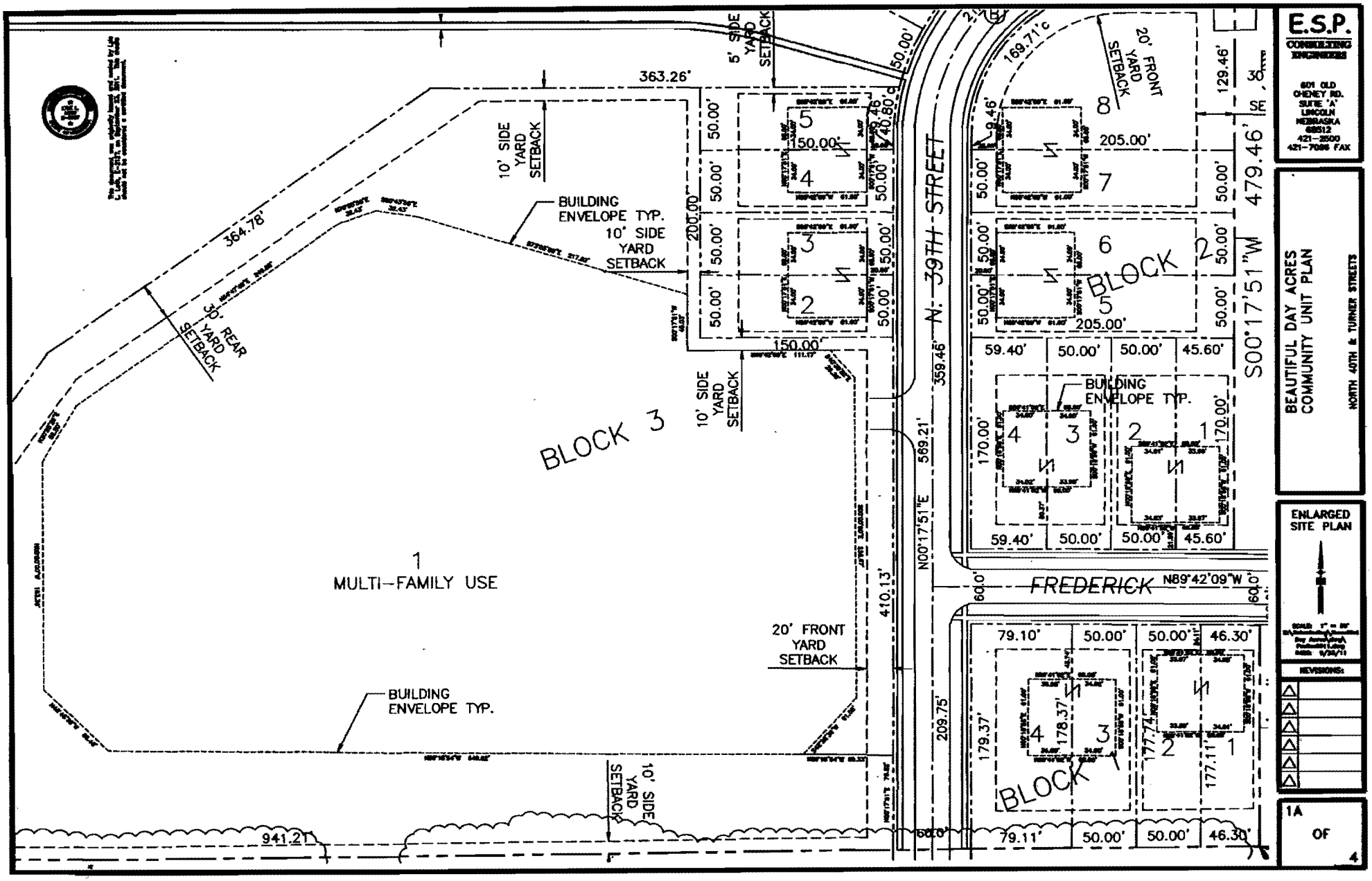
Area of Application

Zoning Jurisdiction Lines

City Limit Jurisdiction

2010 aerial




E.S.P.
CONSULTING ENGINEERS
601 OLD CHENEY RD. SUITE 'A' LINCOLN NEBRASKA 68512
421-2500
421-7096 FAX
BEAUTIFUL DAY ACRES COMMUNITY UNIT PLAN
NORTH 40TH & TURNER STREETS
ENLARGED SITE PLAN
REVISIONS:
1A OF 4
BLOCK 1
BLOCK 2
BLOCK 3
1
MULTI-FAMILY USE
N. 39TH STREET
FREDERICK
N89°42'09"W
S00°17'51"W
479.46'
N00°17'51"E
569.21'
359.46'
410.13'
209.75'
169.71'c
363.26'
364.78'
941.21'
BUILDING ENVELOPE TYP.
10' SIDE YARD SETBACK
5' SIDE YARD SETBACK
20' FRONT YARD SETBACK
30' REAR YARD SETBACK
200.00'
150.00'
205.00'
170.00'
59.40'
50.00'
45.60'
79.10'
79.11'
46.30'
179.37'
178.37'
177.74'
177.11'
129.46'
60.0'

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