City Council Introduction: **Monday**, April 1, 2013
Public Hearing: **Monday**, April 8, 2013, at **5:30** p.m. Bill No. 13-49

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 12028,** from R-2 Residential District to R-4 Residential District, requested by Park Ridge Apartments Too, LLC, on property generally located at West C Street and South Folsom Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 09/19/12
Administrative Action: 09/19/12

STAFF RECOMMENDATION: Approval.

RECOMMENDATION: Approval (7-0: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius voting 'yes'; Lust absent).

FINDINGS OF FACT:

1. This change of zone request from R-2 to R-4 and the associated amendment to the Muff 3rd Addition Community Unit Plan (SP1733E) were heard at the same time before the Planning Commission.

2. This is a request to change the zoning on approximately 1.4 acres from R-2 to R-4 to allow for the expansion of the existing Muff 3rd Addition Community Unit Plan by increasing the overall allowed density by 19 dwelling units so that an additional 24-unit apartment building can be constructed.

3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3-4, concluding that the change of zone allows for a logical and anticipated expansion of the existing Muff 3rd Addition CUP. The change of zone will allow for an appropriate use of the land at this location. The change of zone request complies with the Zoning Ordinance and is in conformance with the Comprehensive Plan. The staff presentation is found on p.5.

4. The applicant's testimony is found on p.5-6. The applicant indicated that he has not been successful negotiating with the owner of the remaining property needed for the street extension. Therefore, the applicant was opposed to the condition of approval in the associated amendment to the community unit plan which requires that the building permit not be issued until the Executive Order for the street extension to South Folsom is approved. The applicant had also submitted a request to the City Clerk seeking the City's assistance in that street connection being accomplished by condemnation.

5. There was no testimony in opposition.

6. On September 19, 2012, the Planning Commission agreed with the staff recommendation and voted 7-0 to recommend approval of this change of zone request.

7. On September 19, 2012, the Planning Commission also agreed with the staff recommendation and voted 7-0 to adopt Resolution No. PC-01302, approving the associated Special Permit No. 1733E (site plan attached for information purposes only, p. 14). The Planning Commission did not delete the street connection requirement.

8. On September 21, 2012, the applicant filed a letter of appeal to Special Permit No. 1733E, including a request not to be scheduled on Council agenda while the applicant continues to negotiate with the adjacent property owner regarding the street extension.

9. On March 20, 2013, the applicant submitted a letter withdrawing the appeal to Special Permit No. 1733E. The applicant has negotiated the acquisition of the adjacent property in order to dedicate the right-of-way necessary for the street extension via final plat, which is currently in process,

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: March 25, 2013
REVIEWED BY: Marvin Krout, Director of Planning **DATE**: March 25, 2013
REFERENCE NUMBER: FS\CC\2013\CZ12028

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for September 19, 2012 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 12028 - Muff 3rd Addition

PROPOSAL: From R-2 Residential to R-4 Residential

LOCATION: West C Street and South Folsom Street

LAND AREA: 1.41 acres more or less

EXISTING ZONING: R-2 Residential

PROPOSED ZONING: R-4 Residential

CONCLUSION: The change of zone from R-2 Residential to R-4 Residential allows for a logical and anticipated expansion of the existing Muff 3rd Addition community unit plan. This request complies with the Zoning Ordinance and is in conformance with the Comprehensive Plan and will allow for an appropriate use of the land at this location.

RECOMMENDATION: Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 72 located in the SW 1/4 of Section 27, T10N, R6E, Lancaster County, Nebraska.

EXISTING LAND USE: Single-family residential

SURROUNDING LAND USE AND ZONING:

North:	I-1 Industrial	Seacrest Range open space
South:	R-2 Residential	Single and two family dwellings
East:	R-2 Residential	Single and two family dwellings
West:	R-3 Residential	Townhouses and apartments

ASSOCIATED APPLICATION: SP#1733E, an amendment to the Muff 3rd Addition Community Unit Plan to incorporate the area of the change of zone and to increase the allowed density by 19 dwelling units.

HISTORY: This area was converted from A-2 Single Family Dwelling to R-2 Residential in the 1979 Zoning Update.

COMPREHENSIVE PLAN SPECIFICATIONS:

Pg 19 - The Lincoln Area Future Land Use Map shows this area as Urban Residential.

Pg 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

-New residential development is generally discouraged in areas of environmental resources such as endangered species, saline wetlands, native prairies and in floodplain corridors. It is also strongly encouraged that adequate spacing be provided from pipelines and areas where hazardous chemicals could be used and stored. Property owners and residents along the pipeline should be notified about hazards and emergency actions.

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

Pg 68 - Guiding Principles for Existing Neighborhoods

-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.

-Preserve the mix of housing types in older neighborhoods.

-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.

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

-Encourage retention of single family uses in order to maintain mix of housing.

-Maintain existing pattern of streets.

ANALYSIS:

1. This change of zone is associated with SP#1733E to amend the Muff 3rd Addition CUP. By adding 1.41 acres of land and using existing excess density, it proposes to increase the overall allowed density by 19 dwelling units so an additional 24-unit apartment building can be constructed.

2. The Health Department previously noted the proximity of both an industrial plating company northeast of the subject property, and that the site is adjacent to Industrially-zoned tract directly to the north. The plating company is located more than 300 feet away, which is the Health Department's minimum recommended separation. The tract to the north is undeveloped open space owned by the City, where industrial development is unlikely given the development constraints which include floodplain, floodway, and wetlands. City staff has discussed changing the zoning to P Public, which would preclude private development.

3. The Overall Guiding Principles of the Residential Chapter of the 2030 Comprehensive Plan stresses the importance of providing different housing choices throughout each neighborhood for an increasingly diverse population. It also stresses the importance of not developing in environmentally sensitive areas including floodplains and wetlands. This

change of zone meets both of these principles. It allows for additional development utilizing the land to its highest and best use without disturbing the surrounding environmental features.

4. This request allows for an expansion of the existing CUP which was anticipated and expected. It complies with the Zoning Ordinance and is consistent with the Comprehensive Plan.

Prepared by

Brian Will, 441-6362, bwill@lincoln.ne.gov
August 9, 2012

OWNER
APPLICANT: Park Ridge Apartments Too LLC
1524 S. 1st Street
Lincoln, NE 68502

CONTACT: Erin Bright
Olsson Associates
1111 Lincoln Mall, Suite 111
Lincoln, NE 68501

CHANGE OF ZONE NO. 12028
and
SPECIAL PERMIT NO. 1733E,
AN AMENDMENT TO THE MUFF 3RD ADDITION
COMMUNITY UNIT PLAN

PUBLIC HEARING BEFORE PLANNING COMMISSION: September 19, 2012

Members present: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius; Lust absent.

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

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** presented the two requests for change of zone from R-2 to R-4 and an amendment to the existing special permit for the Muff 3rd Addition community unit plan (CUP) located northwest of West C Street and S. Folsom Street. This represents about a 1.4 acre addition to the community unit plan, for the purpose of including an additional building as part of the CUP. The prior addition allowed three apartment buildings (72 units) to be constructed. The additional 24-unit building requires an additional parcel to be brought into the CUP. Staff is recommending approval.

Will advised that there are no issues of controversy; however, there is an issue related to the street extension to South Folsom. Staff is suggesting that that street extension has been part of the plan. It was a temporary condition for that street to dead-end with the three existing buildings, but with the fourth building being constructed now, the concern is that there may not be enough incentive to acquire the separate parcel to insure that the street connection is made. There are two conditions of approval dealing with this issue, one being that the building permit for this additional building not be approved until such time as the Executive Order for the construction of that street extension has been approved. With that many dwelling units adjacent to the street, the concern would be that a permanent dead-end condition would exceed what code otherwise would require relative to health, safety and fire rescue.

Will advised the Commission that the staff has been copied on a request from the applicant submitted to the City Clerk seeking the City's assistance in that street connection being accomplished by condemnation.

Proponents

1. Bob Stephens, 2829 Van Dorn, developer of record for the applicant, Park Ridge Apartments Too, agreed with the recommendation, short of the condition which does not allow the building permit until the Executive Order for the street extension is approved. He has submitted the request

for the City's assistance in condemnation, following several months of trying to work something out with the owner of the property needed for the street extension.

Stephens suggested that the 24 units would have a lot less affect on the neighborhood even if the traffic did have to go back to SW 8th and C Street. He agrees that in the long run, however, it would be a positive effect to have the street connection. He is willing to pay for improvement for the street to be extended.

Hove sought clarification from the applicant as to whether he does not want to extend the street or wants to be able to proceed with the building permit without the street extension. Stephens stated that he wants to put the street in and he is willing to pay for it, but he does not believe it is fair to hold that up through the building permit process. Hove then inquired of the applicant as to what the appropriate triggering event might be for the street extension. Stephens did not know. He believes this development would function okay without the street extension; however, it would be a large improvement to the neighborhood with the street extension. He is willing to escrow the funds or whatever it takes to make sure the street is extended in time. He pointed out that the street extension would be beneficial to the entire neighborhood – not just his development.

It was clarified that the new building will allow 96 total units in the development.

There was no testimony in opposition.

Staff questions

Cornelius inquired whether there are other ways to facilitate this without holding up the project moving forward, such as escrow. Will explained that the real dilemma is getting the right-of-way. Even if the applicant were to give adequate security to guarantee construction, it does not get the city closer to getting that street connection built. The hold-up or dilemma is acquiring the right-of-way to build the street. One way would be for the developer to buy the property and dedicate the right-of-way or the city could acquire the right-of-way by eminent domain. Will does not see that the option of posting surety gets us much closer to acquiring the right-of-way. Without the connection, there are 72 units on the dead-end street and there will be 96 with the new building. The standard is no more than 40 units off of a permanent dead-end street. Without some provision to get that right-of-way to get that street connection, it could be an indefinite period of time. There is not another way in and out of the development in the event of an emergency such as water main break, etc.

Weber inquired whether eminent domain can be utilized for a private development project. **Dennis Bartels of Public Works** advised that acquiring the right-of-way is not an administrative decision. The City Council has the right to determine whether it is in the public benefit to acquire that street right-of-way. Condemnation isn't the first step if the City Council would authorize the City's Real Estate Division to acquire the property. They would have to go through good faith negotiations with the owner, with the ultimate step being condemnation. It is a Council decision. The City Council has the discretion to determine whether it is or is not in the public interest to extend that street.

Bartels acknowledged that such a request has been made by the developer. Public Works will send that request forward to the City Council and they will have to make the decision whether or

not it is in the public benefit. Someone could make the argument it is for private development, but that is a determination the City Council would have to make.

Francis inquired whether there is a structure on the parcel that is needed for the street extension. Bartels explained that it is a large lot. There is at least one outbuilding that is close to it; however, it may not need to be removed. The existing house will be able to stay in place with more than adequate yards if the right-of-way is purchased from that property.

Francis inquired how much land is needed to be purchased to complete the road. Bartels stated that the standard right-of-way for the local street would be 60' wide by 100' deep, plus or minus. The City Council may have to approve the acquisition of some easements so that the grading could be done properly. Bartels agreed that 6,000 sq. ft. would be the size of a typical R-2 lot. The north side of the right-of-way would be in the floodplain. The new proposed building is not in the floodplain, and the existing buildings received the appropriate floodplain permits. The building on the south side of the existing street is on the fringe of the floodplain.

Rick Peo, City Law Department, suggested that the Planning Commission could delay action so that the condition of approval on the special permit regarding the street extension could be revised in some way. Typically, the City Council needs to grant authority to condemn right-of-way. We also want to consider that the developer of the site agrees as part of the street construction to pay the cost of any proceeding or damages that might be imposed. The last thing you want is an apartment complex built and then the cost of condemnation is too high to go through with the street. The condition for the street extension needs to be approved as is, or deferred to the next meeting so that the applicant and staff can come up with some type of alternative language that might satisfy everyone.

Response by the Applicant:

Stephens believes he has exhausted his efforts with the owner of the property needed for the street extension at this point, so he is seeking this method as an alternative.

Cornelius asked Stephens whether he would be open to a delay for two weeks. Stephens did not object, but he is not sure what they might come up with. Stephens agreed that it could be approved as is.

CHANGE OF ZONE NO. 12028
ACTION BY PLANNING COMMISSION: September 19, 2012

Gaylor Baird moved approval, seconded by Sunderman.

Francis stated that she is uncomfortable approving this without the acquisition for the right-of-way because that bottlenecks 96 residents in with one way out of the subdivision.

Gaylor Baird suggested that to be why it is important to approve it with the condition in place, given the applicant does not object to moving forward with that condition in place.
Rick Peo of Law Department re-approached to advise that the Executive Order would require that the right-of-way be acquired before the Executive Order could be issued.

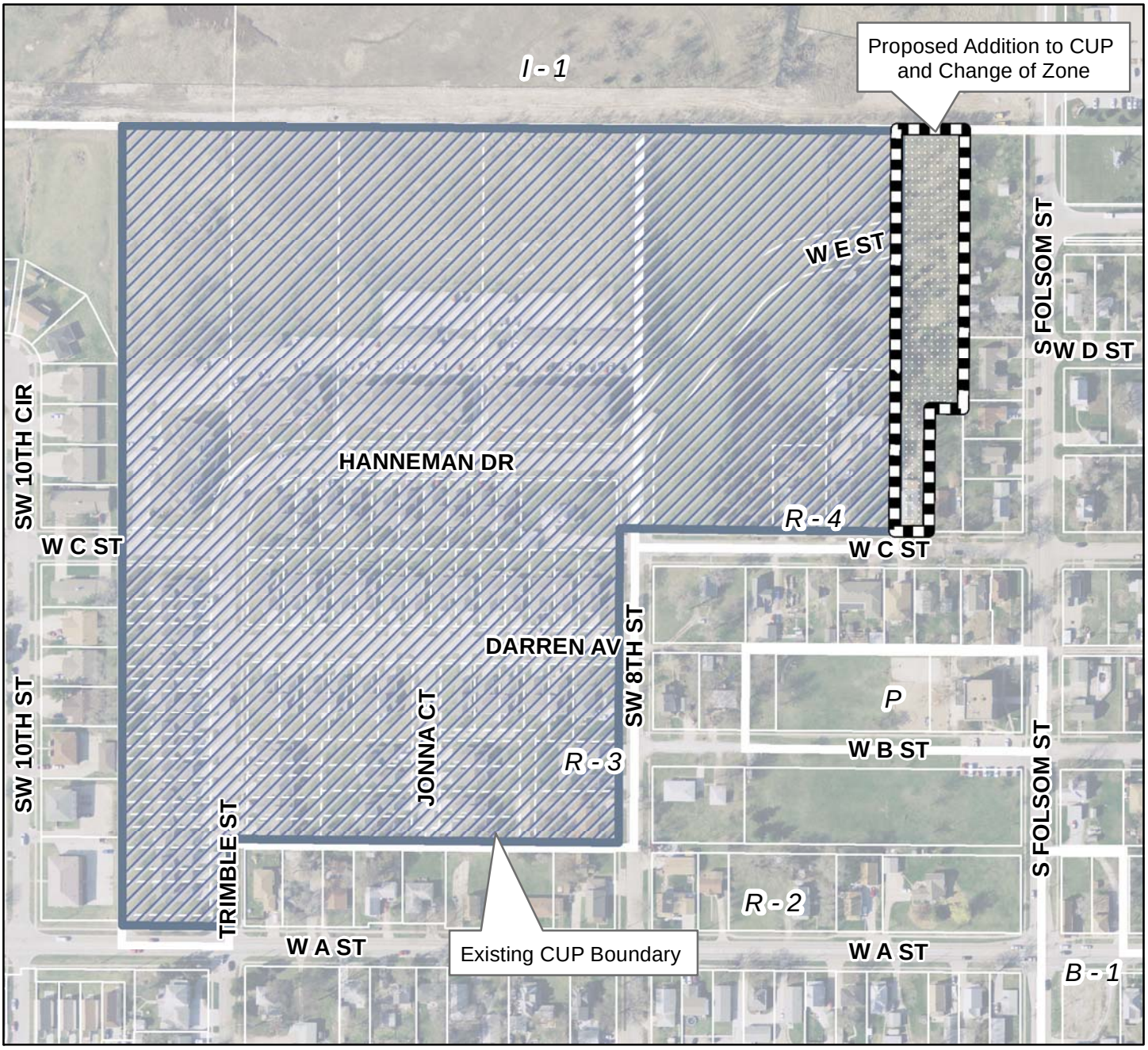
Weber thinks this puts the cart before the horse. There is no guarantee of an agreement with the landowner; the costs of condemnation could be high; and it might be difficult because the right-of-way is for a private development. He believes it would be easier to have some sort of deal where that ground is purchased or some other alternative before a decision is made.

Hove pointed out that the Commission is voting on this with the understanding that they have to have the right-of-way before they can get a building permit for the associated special permit.

Motion for approval carried 7-0: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius voting 'yes'; Lust absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1733E
ACTION BY PLANNING COMMISSION: September 19, 2012

Hove moved to approve the staff recommendation of conditional approval, seconded by Sunderman and carried 7-0: Francis, Hove, Gaylor Baird, Butcher, Sunderman, Weber and Cornelius voting 'yes'; Lust absent. This is final action unless appealed to the City Council within 14 days.



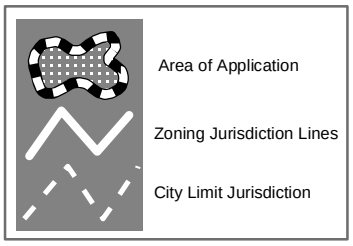
2010 aerial

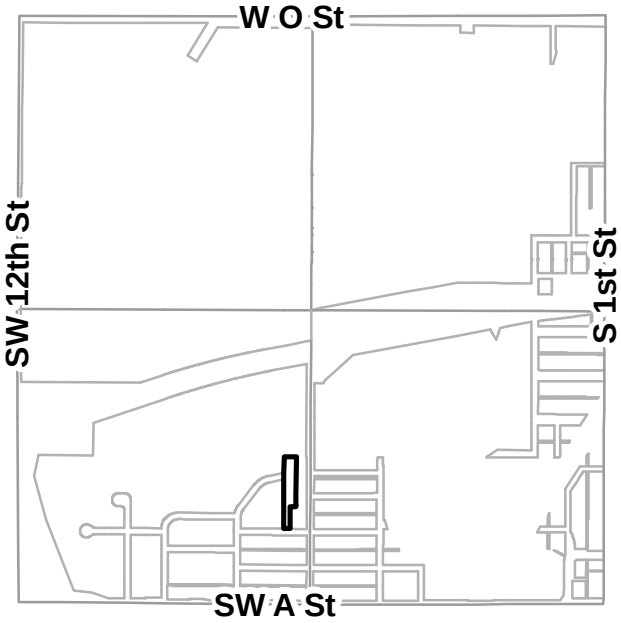
Special Permit #1733E & Change of Zone # 12028 (R-2 to R-4) Muff 3rd Addition CUP 720 W. C St.

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

One Square Mile
Sec. 27 T10N R06E





m:\plan\arcview\Agendadrawings.mxd (SP1733E & CZ12028)

LEGAL DESCRIPTION
CHANGE OF ZONE

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOT 72 I.T., LOCATED IN THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 72 I.T., SAID POINT BEING THE NORTHEAST CORNER OF LOT 1, BLOCK 1, MUFF 8TH ADDITION, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 72 I.T. ON AN ASSUMED BEARING OF S89°14'59"E, A DISTANCE OF 109.32' TO THE NORTHEAST CORNER OF SAID LOT 72 I.T., SAID POINT BEING THE NORTHWEST CORNER OF 62 I.T.; THENCE S00°18'11"W ALONG A EAST LINE OF SAID LOT 72 I.T., SAID LINE BEING THE WEST LINE OF SAID LOT 62 I.T., AND THE WEST LINE OF LOTS 1 AND 2, SHELDON 1ST ADDITION, A DISTANCE OF 468.26' TO A EAST CORNER OF SAID LOT 72 I.T., SAID POINT BEING THE NORTHEAST CORNER OF LOT 73 I.T.; THENCE N89°32'56"W ALONG A SOUTH LINE OF SAID LOT 72 I.T., SAID LINE BEING THE NORTH LINE OF SAID LOT 73 I.T., A DISTANCE OF 54.88' TO A EAST CORNER OF SAID LOT 72 I.T., SAID POINT BEING THE NORTHWEST CORNER OF SAID LOT 73 I.T.; THENCE S00°19'27"W ALONG A EAST LINE OF SAID LOT 72 I.T., SAID LINE BEING THE WEST LINE OF SAID LOT 73 I.T., A DISTANCE OF 182.21' TO THE SOUTHEAST CORNER OF SAID LOT 72 I.T., SAID POINT BEING THE SOUTHWEST CORNER OF SAID LOT 73 I.T., SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF WEST "C" STREET; THENCE N89°41'03"W ALONG THE SOUTH LINE OF SAID LOT 72 I.T., SAID LINE BEING THE NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 55.67' TO THE SOUTHWEST CORNER OF SAID LOT 72 I.T., SAID POINT BEING THE SOUTHEAST CORNER OF LOT 3, BLOCK 2, MUFF 8TH ADDITION; THENCE N00°25'02"E ALONG THE WEST LINE OF SAID LOT 72 I.T., SAID LINE BEING THE EAST LINE OF SAID LOT 3, THE EAST LINE OF LOT 2, BLOCK 2, MUFF 8TH ADDITION, THE EAST RIGHT-OF-WAY LINE OF WEST "E" STREET, AND THE EAST LINE OF LOT 1, BLOCK 1, MUFF 8TH ADDITION, A DISTANCE OF 651.78' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 61,576.10 SQUARE FEET OR 1.41 ACRES, MORE OR LESS.

Thursday, August 16, 2012
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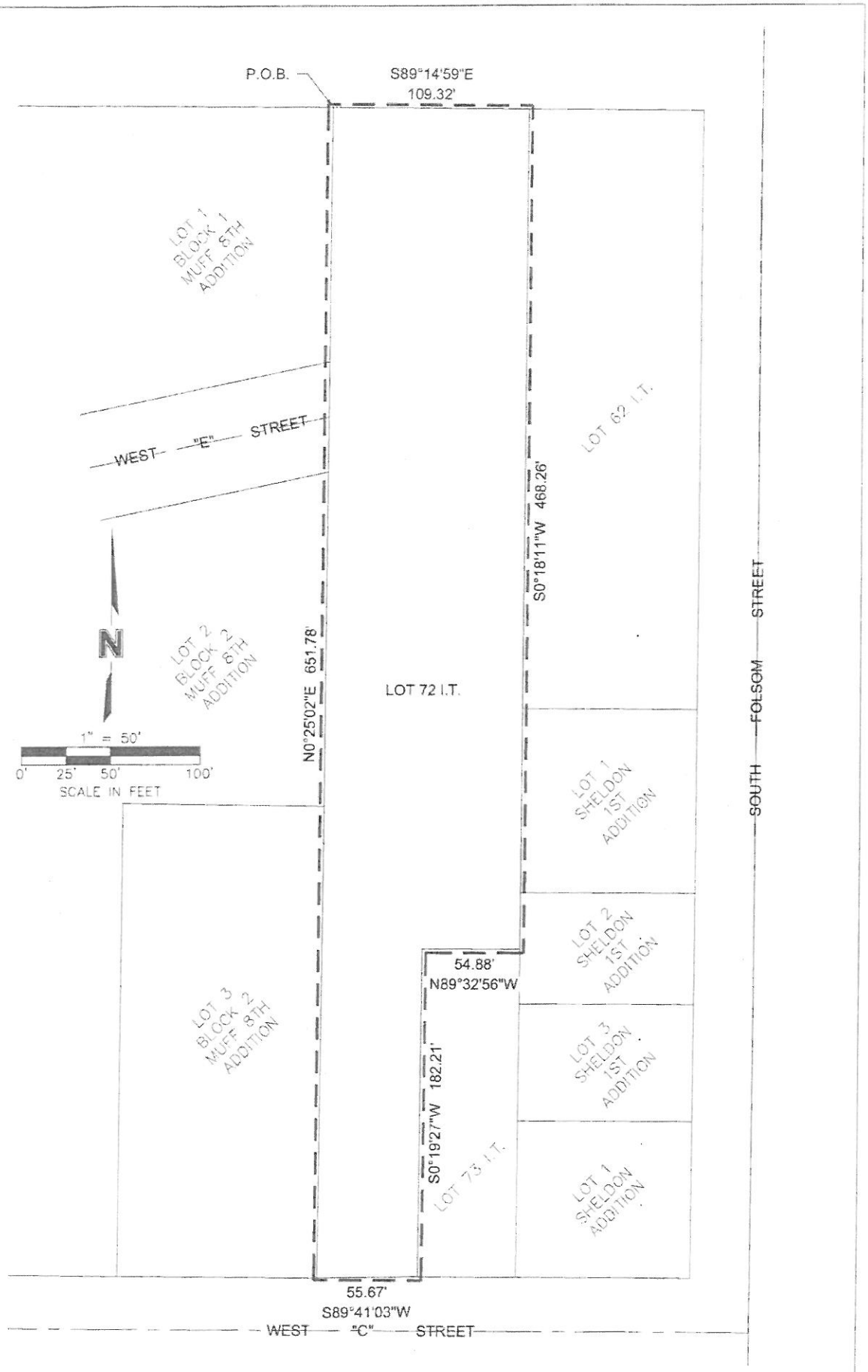

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DATE: Aug 16, 2012 10:09am XREFS: 010-2673_DIP-BASE

PROJECT NO: 010-2673	CHANGE OF ZONE EXHIBIT	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: MRJ		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	2
DATE: AUG. 15TH, 2012			

OLSSON
ASSOCIATES

August 22, 2012

Mr. Brian Will
Planning Department
555 South 10th St., Suite 213
Lincoln, NE 68508

Re: Muff 3rd Addition
Amendment to Special Permit #1733D & Change of Zone

Dear Mr. Will:

On behalf of the owner, Park Ridge Apartments Too LLC, Olsson Associates is submitting to amend Special Permit #1733D to include the property located at 720 W. C Street and to change the property zoning.

The purpose of the amendment is to include 1.41 acres of additional property into the Muff 3rd Addition Community Unit Plan (CUP). The additional property will allow for the construction of the 24-unit apartment complex which was originally shown as a conceptual layout on Special Permit #1733D. Our application is also requesting a change of zone for this property to meet the density requirements of R-4 zoning. The apartment building will be constructed in a similar style as to that of the existing apartment buildings approved under Special Permit #1733D.

The 1.41 acre parcel will be final platted in accordance with the proposed layout as shown on the attached CUP site plan. There is an existing residence located on the property which will be platted into a new lot; the remainder of the lot will be re-platted and will include a 60' public right-of-way for the extension of West E Street. Public pavement will be extended to the eastern edge of the proposed right-of-way on the parcel.

A portion of the lots north of West E Street is located within the 100-year flood plain. The proposed grading and building construction on these lots has been performed in accordance with the City of Lincoln's floodplain development regulations. Specifically, the proposed structures will be elevated a minimum of 1' above the base flood elevation. The property is located within Salt Creek Flood Storage Area #6. The allowable fill percentage within this flood storage area is 35%. The proposed fill material will not exceed the allowable fill, please refer to the flood storage impact summary letter, prepared by Olsson Associates, dated April 20, 2011 which was submitted for Special Permit #1733D.

1111 Lincoln Mall, Suite 111
P.O. Box 84608
Lincoln, NE 68501-4608
TEL 402.474.6311
FAX 402.474.5160
www.oaconsulting.com

Please find the enclosed submittal documents for this project:

1. Community Unit Plan, expanded legal description.
2. Change of Zone, legal description
3. Submittal Fee Check
4. Site Plan (will be submitted electronically).

Please accept this application change of zone request. Feel free to contact me with any questions which you may have.

Sincerely,

Erin Bright, PE
Olsson Associates

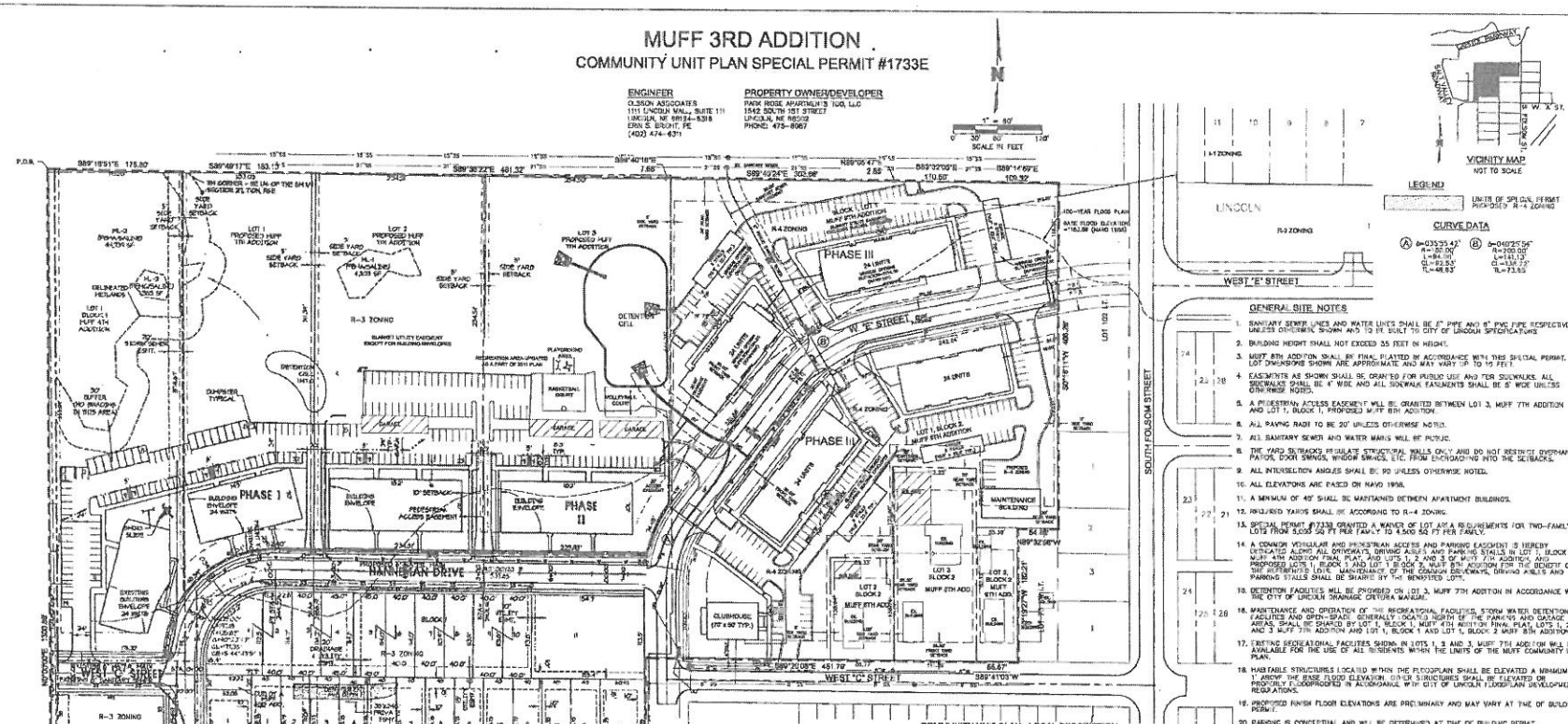
Cc Bob Stephens, Park Ridge Apartments Too LLC

MUFF 3RD ADDITION

COMMUNITY UNIT PLAN SPECIAL PERMIT #1733E

ENGINEER
OLSSON ASSOCIATES
1111 LINCOLN MALL, SUITE 111
LINCOLN, NE 68508-3915
ERIN S. BRIGHT, PE
(402) 474-6311

PROPERTY OWNER/DEVELOPER
PARK ROSE APARTMENTS 1100, LLC
1542 SOUTH 1ST STREET
LINCOLN, NE 68502
PHONE: 475-8067


N
1" = 60'
0' 30' 60' 120'
SCALE IN FEET
P.O.B.
S89°18'51"E 175.80
S89°49'17"E 183.13'
S89°36'22"E 481.32'
S89°40'18"E
S89°42'24"E 303.68'
N89°05'47"E
S89°32'05"E
S89°14'49"E
PHASE III
PHASE II
PHASE I
R-4 ZONING
R-3 ZONING
R-2 ZONING
I-1 ZONING
W "E" STREET
W "E" STREET, CDS
W "C" STREET
HANNEGAN DRIVE
DARREN AVENUE
JONNA COURT
TRIMBLE STREET
SOUTH FOLSOM STREET
RICKETTS
CONSOLIDATION
CLUBHOUSE (77' x 92' TYP.)
MAINTENANCE BUILDING
DETENTION CELL
BASKETBALL COURT
VOLLEYBALL COURT
PLAYGROUND AREA
DUMPSTER TYPICAL
BUILDING ENVELOPE
PEDESTRIAN ACCESS EASEMENT
EXISTING BUILDING ENVELOPE
DELINEATED WETLANDS
100-YEAR FLOOD PLAIN
N 90°00'00" W 175.74'
N89°20'20"W 632.08'
N89°29'13"W 175.74'
S89°20'08"E 451.79'
S89°41'03"W
S89°32'06"W
N89°32'27"W 162.21'
S89°32'27"W 162.21'
S89°32'27"W 162.21'
S