

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

**P.A.S.#:** Special Permit #1909

**DATE:** April 5, 2001

**PROPOSAL:** Richard L. Spangler, on behalf of Leonard G. Stolzer, is requesting a special permit to allow the temporary storage of construction equipment.

### **GENERAL INFORMATION:**

**APPLICANT:** Leonard G. Stolzer  
5400 South Folsom  
Lincoln, NE 68523

**CONTACT:** Richard L. Spangler  
301 S. 13<sup>th</sup> Street, Suite 500  
Lincoln, NE 68508  
(402) 437-8500

**LOCATION:** 5400 South Folsom

**LEGAL DESCRIPTION:** Lot 1, South Folsom Addition, located in the SE 1/4 of Section 10, T9N, R6E of the 6<sup>th</sup> P.M., Lancaster County, Nebraska.

**EXISTING ZONING:** AG Agricultural

**EXISTING LAND USE:** Acreage residence with accessory buildings. In a March 7, 2001 letter, Mel Goddard of Building and Safety indicates that the applicant is operating a plumbing business from the storage garage, which is a violation of the zoning ordinance. A March 13, 2001 letter from the applicant's attorney also identifies the use as a plumbing business.

**SURROUNDING LAND USE AND ZONING:** The parcel is surrounded by AG zoning, with acreages to the south and fields to the north, east and west.

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Land Use Map shows this land as Agricultural. The Comprehensive Plan identifies three goals for Agricultural lands:

- Identify, evaluate and prioritize agriculturally productive land for continued agricultural production.
- Preserve highly productive agricultural land for agrarian purposes, as well as allow rural, non-agricultural residences; protect ecological and historic sites in rural Lancaster County.

- Plan and coordinate the development and provision of quality transportation, public-safety, education services, health and human services, water (including quantity), and waste management for the entire rural area.

The Land Use Planning and the Community Vision section of the Comprehensive Plan discusses a continuing commitment to neighborhoods:

Neighborhoods are one of Lincoln's great strengths and their conservation is fundamental to this plan. The health of Lincoln's varied neighborhoods and districts depends on implementing appropriate and individualized policies. In addition, the land use plan is the basis for zoning and other land development decisions. It should guide decisions that will maintain the quality and character of the community's established neighborhoods. (p 36a)

## **HISTORY:**

### **1979 Zoning Update**

This land was converted from A-1 Single Family to R-1 Residential.

### **March 29, 1982**

City Council approved Change of Zone #1917, which changed the zoning in the area from R-1, R-3 and B-2 to AG Agricultural.

## **ANALYSIS:**

1. According to the special permit application, the proposed use is "to permit the temporary storage of construction equipment and materials for the conduct of the petitioner's construction business."
2. In the March 7, 2001 letter from Mel Goddard, the Department of Building and Safety informed the applicant that a plumbing business is not permitted in the AG zoning district.
3. This review will specifically evaluate the existing uses on the applicant's property: a plumbing business and a residence.
4. Plumbing businesses are mentioned in several zoning districts:
  - B-1** "Sales and showrooms for the sale at retail of plumbing, electrical, and heating and air conditioning equipment and supplies, including service facilities and rental of equipment" §27.29.030(e)

- B-3** "...plumbing and water softener service shops." §27.33.030(e)
  - H-2** "Service facilities, including but not limited to repair and maintenance of home and office equipment, electrical appliances, radio and television sets, and rental equipment; and the places of business of plumbing, electrical, and heating and air conditioning contractors." §27.41.030(c)
  - H-3** "Contractors' offices and storage yards, and lumber and coal yards." §27.43.020(gg)
  - H-4** "Contractors' offices and storage, including electrical, plumbing, heating, and air conditioning contractors." §27.45.020(m)
5. Storage of equipment is accessory to the applicant's plumbing business, which is unlawfully operating on the site. This special permit would permit the storage of construction equipment as a primary use.
  6. There is no mention of plumbing or contractors' offices in the permitted, conditional, or special uses in the AG Agricultural zoning district. The special permit for temporary storage of construction equipment does not identify plumbing contractors as a use included in the permit. If approved, this special permit would not legitimize the plumbing business.
  7. The general zoning regulations state, "Every building hereafter erected or structurally altered shall be located on a lot as herein defined and in no case shall there be more than one main building on one lot except as otherwise provided in Chapters 27.65 and 27.71." §27.81.010(d)
  8. Approval of this special permit would create an additional main building on the lot, a situation specifically forbidden by §27.81.010(d) L.M.C.

**STAFF CONCLUSION:** The plumbing business is not acceptable for two reasons: the use is not allowable under the special permit and, if approved, would create two uses on a single lot.

**STAFF RECOMMENDATION:**

Denial

If, after holding a public hearing, the Planning Commission decides to grant this special permit, the following conditions should apply:

CONDITIONS:

Site Specific:

1. This approval permits the temporary storage of construction equipment and materials.

General:

2. Before receiving building permits:
  - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department office for review and approval.
    - 2.1.1 A revised site plan showing the following revisions:
      - 2.1.1.1 Replace Scotch Pine with a species less susceptible to Pine Wilt Disease.
      - 2.1.1.2 Identify new landscape materials by common name, botanical name, planting size, and planting method.
      - 2.1.1.3 Identify the outdoor storage area and show a fence around it, or add a note indicating that there will be no outdoor storage of construction equipment or materials.
      - 2.1.1.4 Add a note to the site plan indicating that the premises shall be used only for storage of construction equipment and materials. There shall be no offices or residences on the premises.
      - 2.1.1.5 Provide information regarding the storage of hazardous materials and/or chemicals and fuel on the site, as requested by the Health Department.
    - 2.1.5 A final site plan with 5 copies as approved.

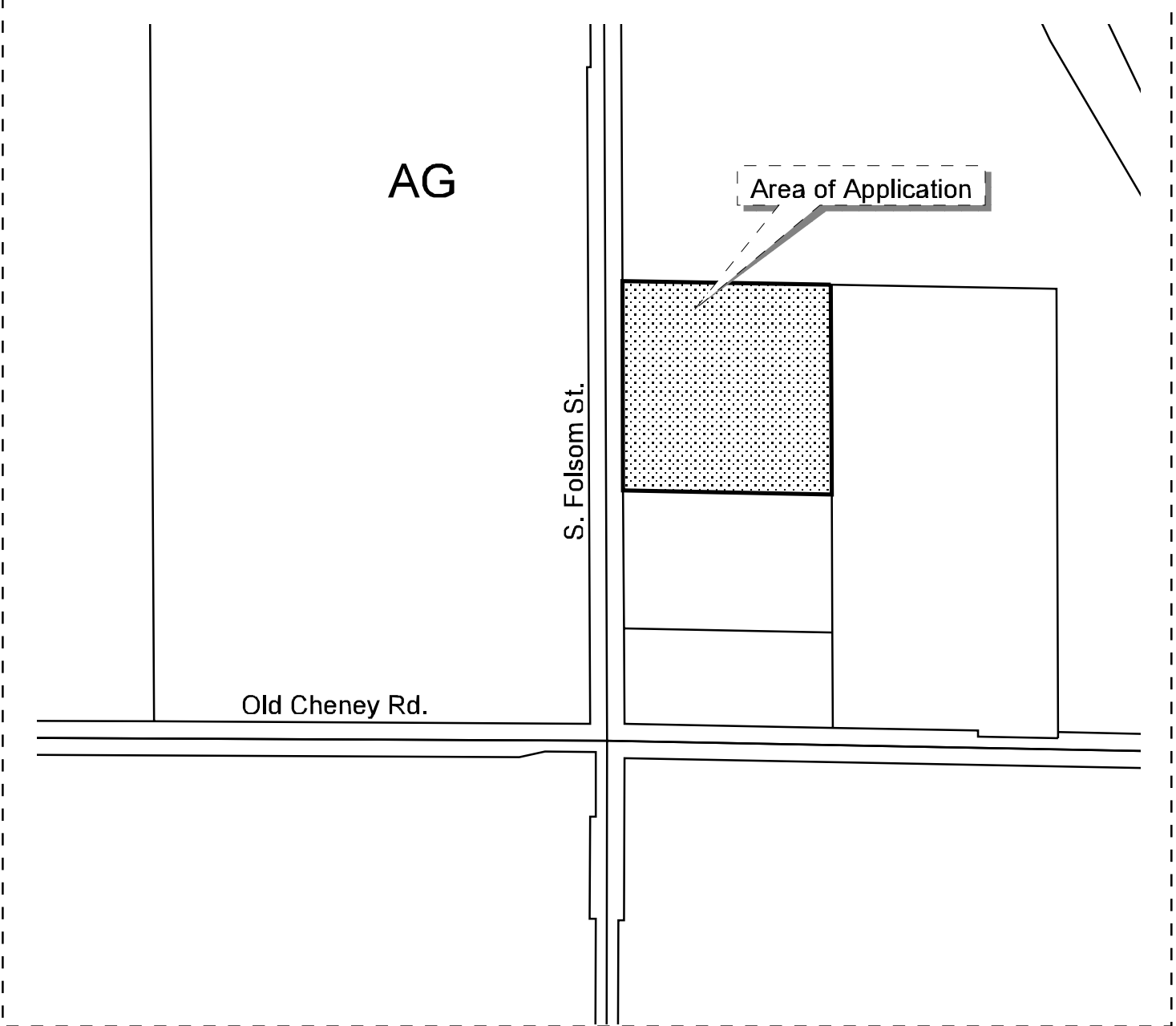
- 2.2 The construction plans comply with the approved plans.
  - 2.3 The required easements as shown on the site plan are recorded with the Register of Deeds.
9. This use shall cease 15 years following the approval of this special permit unless the Director of Planning approves an administrative amendment for its extension.

STANDARD CONDITIONS:

4. The following conditions are applicable to all requests:
- 4.1 Before commencing operations, all development and construction is to comply with the approved plans.
  - 4.2 Before commencing operations, City/County Health Department is to approve the water and waste water systems.
  - 4.4 All privately-owned improvements, including landscaping, are to be permanently maintained by the owner.
  - 4.7 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 4.8 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 4.9 The City Clerk is to file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee is to pay the recording fee.

Prepared by

Jason Reynolds  
Planner



**Special Permit #1909**  
**5400 S. Folsom**

**Zoning:**

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

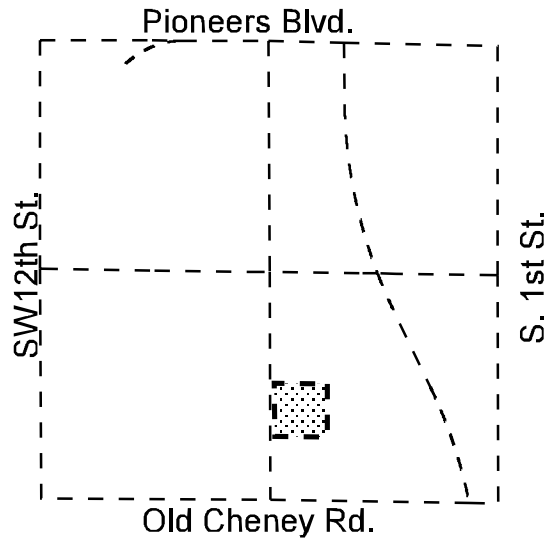
One Square Mile  
 Sec. 10 T9N R6E



Zoning Jurisdiction Lines



City Limit Jurisdiction



Sheet \_\_\_ of \_\_\_

Date:



Area of Application

S. Folsom St.

Old Cheney Rd.

**Special Permit #1909**  
**5400 S. Folsom**



Sheet \_\_\_\_\_ of \_\_\_\_\_

Date: \_\_\_\_\_

Photograph Date: 1997

Lincoln City - Lancaster County Planning Dept.

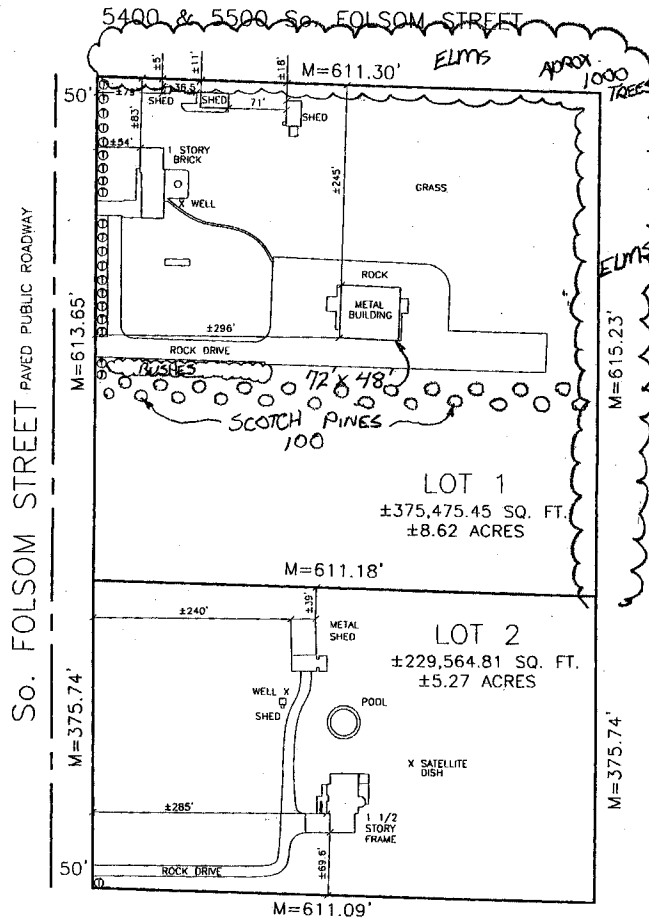
540 W. INDUSTRIAL LAKE DR.,  
 SUITE 1 - LINCOLN, NE 68528  
 (402) 476-3020  
 (402) 476-3138 FAX

**SURVEY RECORD**  
**K&M Inc.**  
 Land Surveying

PLANNING DEPARTMENT  
 PROJECT # 9911014A  
 DATE: 11-16-99 B/P: 86-117

Survey Of: LOTS 1 & 2, SOUTH FOLSOM ADDITION, ( PROPOSED ), LOCATED NE 1/4 OF

Section: 10, T 9 N, R 6 E, of the 6th P.M. LANCASTER County, Nebraska



RECEIVED  
 MAR 2  
 LINCOLN CITY/LAN  
 PLANNING D

⊕ = TREE  
 NOTE: NO SIDEWALKS ALONG SOUTH FOLSOM STREET

Subject property apparently falls within the confines of Zone " C " as determined by the FEMA-FIA  
 Flood Rate Map community 315273, panel 0040 C, revised 3-18-86

- P = Platted
- M = Measured
- = Found as noted
- = Set #5 Rebar. & L.S. #483 Cap.
- ▲ = Set Temp. Point

**SURVEYOR'S CERTIFICATE**

I hereby certify that I have accurately surveyed the property in the above plat. All dimensions are in feet and decimals of a foot.

Signed this day of \_\_\_\_\_, 19\_\_

*Billy Joe Kerr*  
 Billy Joe Kerr, L.S. #483





Lincoln



Nebraska's Capital City

CORRECTED COPY OF LETTER SENT March 6, 2001

March 7, 2001

CERTIFIED MAIL

Mr. Len Stolzer  
Mechanical Specialties, Inc.  
5400 South Folsom Street  
Lincoln, NE 68523

Dear Mr. Stolzer:

The Building & Safety Department has received a complaint regarding the use of your premises at 5400 South Folsom Street for the operation of your plumbing business from the storage garage.

The AG-zoned district in which you live does not permit a plumbing business. I ask your cooperation in relocating your business to a properly zoned location by May 1, 2001. Any further business use of the premises after that date shall cause the matter to be referred to the city attorney's office for further action.

Any questions you have may be referred to me at 441-6423.

Sincerely,

BUILDING & SAFETY DEPARTMENT

✓ Mel Goddard  
Chief Building Inspector

Cf: Mike Merwick, Director  
Ron Peery, Manager  
Chuck Zimmerman, Manager  
File

ebbtr-stolzer

J. TAYLOR GREER  
RICHARD L. SPANGLER, JR.  
ALLEN L. OVERCASH  
PAUL M. SCHUDEL  
EDWARD H. TRICKER  
WM. LEE MERRITT  
JOSEPH H. BADAMI  
KERRY L. KESTER  
ROBERT B. EVNEN  
JOEL D. HEUSINGER  
TERRY C. DOUGHERTY  
JENNIFER J. STRAND  
CRAIG C. DIRRIM  
BRUCE A. SMITH  
KRISTA L. KESTER  
KENT E. ENDACOTT  
SHANNON L. DOERING  
CRAIG W. STRONG  
LENA A. LUCAS

# WOODS & AITKEN

L • L • P

THOMAS C. WOODS (1895-1958)  
WILLIAM I. AITKEN (1896-1978)  
PHILIP M. AITKEN (1902-1998)

OF COUNSEL  
BERT L. OVERCASH  
RICHARD W. SMITH

March 13, 2001

SUITE 500  
301 SOUTH 13TH STREET  
LINCOLN, NEBRASKA 68508-2578  
FAX (402) 437-8558

TELEPHONE (402) 437-8500

E-Mail-RSpangler@woodsaitken.com  
Direct Dial - (402) 437-8506

Mr. Mel Goddard  
Chief Building Inspector  
Building & Safety Department  
City of Lincoln  
555 South 10<sup>th</sup> St.  
Lincoln, Nebraska 68508

RECEIVED

MAR 14 2001

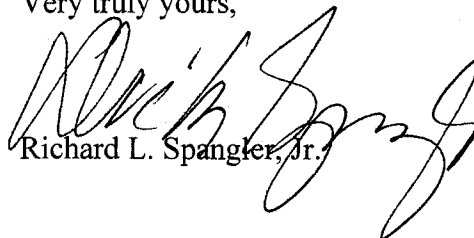
CITY BUILDING & SAFETY

Dear Mr. Goddard:

This will acknowledge receipt of your letter dated March 6, 2001, addressed to Mr. Len Stolzer regarding the use of his premises at 5400 South Folsom Street for the operation of his plumbing business from a storage garage.

Mr. Stolzer will be filing shortly an application for a special permit pursuant to the provisions of Section 27.63.590 of the Lincoln Municipal Code which permits temporary storage of construction equipment and materials in the AG Zoning District in that he complies with subparagraphs (a)-(e). Since it takes time for the application to wind its way through the various City departments, the Planning Commission and the City Council, it does not appear likely that this process can be completed by the "drop dead" date of May 1, 2001. I would request your cooperation in not enforcing such "drop dead" date since we will be pursuing this actively, otherwise, you will effectively be putting Mr. Stolzer out of business.

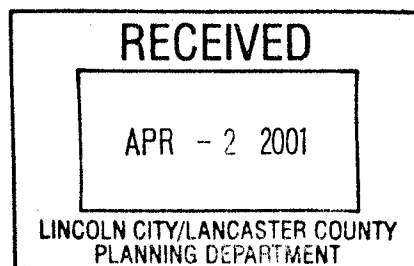
Very truly yours,

  
Richard L. Spangler, Jr.

RLS:sm

cc: Len Stolzer

#172206/1



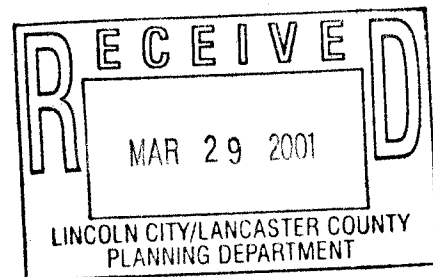
# Memorandum

**To:** Ray Hill, Planning  
**From:** Rachel Martin, Parks and Recreation  
**Date:** March 29, 2001  
**Re:** 5400 S. Folsom SP#1909

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Parks and Recreation Department staff have reviewed the above-referenced proposal and have no comments.

Please phone me at 441-7936 with any questions.



# City of Lincoln, Nebraska

## IMPORTANT

**All revisions to plans must include Building Permit # and Job Address.**

Return this report with two sets of corrected plans. The corrections noted below are required to be made to the plans prior to issuance of a permit. Please indicate under each item where the correction is made by plan sheet number or plan detail number.

A separate set of plans for review and final approval must be submitted by the licensed installing contractor/s if fire suppression systems, sprinklers, dry powder, fire alarm systems or underground tanks are installed.

## Plan Review Comments

Permit # **DRF01036**

Address

Job Description: 5400 S FOLSOM

Location: 5400 S FOLSOM

Special Permit: Y 1909

Preliminary Plat: N

Use Permit: N

CUP/PUD: N

Requested By: RAY HILL

Status of Review: No Rev Req

3/23/2001 12:29:30 PM

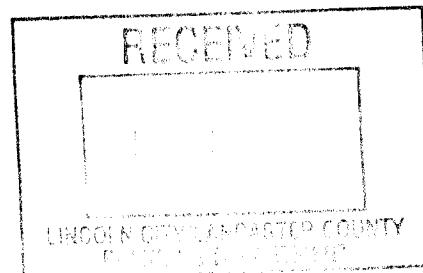
Reviewer: FIRE PREVENTION/LIFE SAFETY CODE

BOB FIEDLER

Comments: Out of city limit

### Current Codes in Use Relating to Construction Development in the City of Lincoln:

- 1997 Uniform Building Code and Local Amendments
- 1994 Nebraska Accessibility Guidelines (Patterned after and similar to ADA guidelines)
- 1989 Fair Housing Act As Amended Effective March 12, 1989
- 1979 Zoning Ordinance of the City of Lincoln as Amended including 1994 Parking Lot Lighting Standards
- 1992 Lincoln Plumbing Code (The Lincoln Plumbing Code contains basically the 1990 National Standard Plumbing Code and local community Amendments.)
- 1999 National Electrical Code and Local Amendments
- 1997 Uniform Mechanical Code and Local Amendments
- 1994 Lincoln Gas Code
- 1994 NFPA 101 Life Safety Code
- 1997 Uniform Fire Code and Local Amendments
- Applicable NFPA National Fire Code Standards

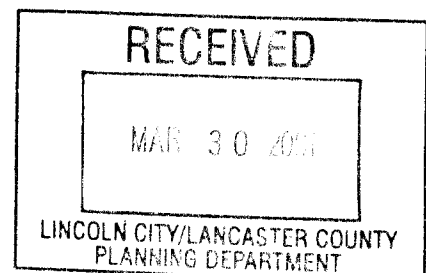


# Memorandum

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**To:** Ray Hill, Planning Department -- *JASON*  
**From:** Charles W. Baker, Public Works and Utilities *Bult*  
**Subject:** Special Permit # 1909, Temporary Storage of Construction Equipment  
**Date:** March 29, 2001  
**cc:** Roger Figard, Nicole Fleck-Tooze

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the request for Special Permit #1909, the temporary storage of construction equipment at 5400 S Folsom and has no objections.



**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT  
INTER-OFFICE COMMUNICATION**

**TO:** Ray Hill

**DATE:** 4/03/2001

**DEPARTMENT:** Planning

**FROM:** Chris Schroeder

**ATTENTION:**

**DEPARTMENT:** Health

**CARBONS TO:** Leon F. Vinci, MPH  
EH File  
EH Administration

**SUBJECT:** 5400 S. Folsom  
SP #1909

- The materials included with the application do state that, “to permit the temporary storage of construction equipment and materials for the conduct of petitioner’s construction business...”. The LLCHD does have concerns regarding the storage of fuel or the re-fueling of equipment that may take place on the project site. If these activities will occur on the project site, LLCHD requests a letter stating what methods will be utilized for secondary containment.
- The LLCHD has concerns regarding the storage of hazardous materials and/or chemicals on this site. Additional information is requested regarding the types and quantities of materials that will be stored on-site to construct more specific recommendations.

