

City Council Introduction: **Monday**, August 30, 2004
Public Hearing: **Monday**, September 13, 2004, at **1:30 p.m.**

Bill No. 04-159

FACTSHEET

TITLE: CHANGE OF ZONE NO. 04040, from I-1 Industrial District to R-5 Residential District, requested by Joyce Hinkley Limited Partnership, on property generally located at 58th Street and Colfax Avenue.

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUEST: Street & Alley Vacation No. 04009 (04-160).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/07/04
Administrative Action: 07/07/04

RECOMMENDATION: Approval (8-0: Sunderman, Larson, Krieser, Taylor, Marvin, Pearson, Carroll and Carlson voting 'yes'; Bills-Strand absent).

FINDINGS OF FACT:

1. This change of zone request and the associated Street & Alley Vacation No. 04009 were heard at the same time before the Planning Commission.
2. This change of zone request is to support Special Permit No. 04032 for a domiciliary care facility.
3. The staff recommendation to approve this change of zone request is based upon the "Analysis" as set forth on p.3-4, concluding that the change of zone generally conforms to the Comprehensive Plan.
4. The applicant's testimony is found on p.5-6. The bonding issue discussed by the applicant, Planning Commission and staff dealt with the associated Special Permit No. 04032.
5. There was no testimony in opposition.
6. On July 7, 2004, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend approval of this change of zone request.
7. The Planning Commission also adopted Resolution No. PC-00882, approving the associated Special Permit No. 04032 for the domiciliary care facility, and found Street & Alley Vacation No. 04009 to be in conformance with the Comprehensive Plan. The special permit approval was a final action, but is only effective if the change of zone and vacation application are approved by City Council.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: August 23, 2004

REVIEWED BY: _____

DATE: August 23, 2004

REFERENCE NUMBER: FS\CC\2004\CZ.04040

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for July 7, 2004 PLANNING COMMISSION MEETING

P.A.S.: Change of Zone #04040
I-1 Industrial to R-5 Residential

PROPOSAL: Change the zoning from I-1 Industrial to R-5 Residential to support a special permit for a domiciliary care facility.

LOCATION: 58th Street and Colfax Avenue

LAND AREA: 2.88 acres, more or less.

CONCLUSION: This change of zone generally conforms to the Comprehensive Plan.

<u>RECOMMENDATION:</u>	Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 7-12, Block 116, Havelock, along with the E ½ of vacated N. 57th Street, the north 50' of vacated Colfax Avenue, and the S ½ of the vacated east-west alley adjacent thereto; Lots 1-6, Block 141, Havelock, along with the N ½ of the vacated east-west alley, the south 30' of vacated Colfax Avenue, and the E ½ of vacated N. 57th Street adjacent thereto; all located in Section 9 T10N R7E, Lancaster County, Nebraska.

EXISTING ZONING: I-1 Industrial

EXISTING LAND USE: Vacant warehouse and office.

SURROUNDING LAND USE AND ZONING:

North:	Warehouse and distribution facility	I-1 Industrial
South:	Legacy Gardens domiciliary care facility	R-5 Residential
East:	Commercial	I-1 Industrial
West:	Warehouse and commercial	I-1 Industrial

ASSOCIATED APPLICATIONS: Special Permit #04032 domiciliary care facility
Street Vacation #04009 58th Street; Colfax to bike trail

HISTORY:

May 1979 The update changed the zoning on this property from K Light Industrial to I-1 Industrial.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan shows this area as Industrial.
(F 25)

Overall Population Growth Projections indicate a significant demographic trend is the continuing growth in the area's senior population. Issues relating to an aging population will increase in importance as more and more individuals reach the age of 65 and above. Over the next twenty five years, this segment of the community will similarly grow in number and as a percent of the overall population base. This will place greater emphasis on the unique transportation, housing, economic, and recreational needs of this expanding demographic segment. (F 6)

Construction and renovation within the existing urban area should be compatible with the character of the surrounding neighborhood. (F 18)

The land use plan displays the generalized location of each land use. It is not intended to be used to determine the exact boundaries of each designation. The area of transition from one land use is often gradual. The Comprehensive Plan also encourages the integration of compatible land uses, rather than a strict segregation of different land uses. (F 27)

Create housing opportunities for residents with special needs throughout the city that are compatible with residential neighborhoods. (F 66)

Plan for sufficient and varied choices for the location of elderly housing. Encourage elderly housing to locate in areas designated for mixed-uses where the elderly housing would serve as a transitional use to less intensive residential development. (F 72)

TRAFFIC ANALYSIS: The Comprehensive Plan identifies Colfax Avenue and North 58th Street as Local Streets, both now and in the future. (E 49, F 103)

ALTERNATIVE USES: This site could be used for any permitted use in the I-1 Industrial zoning district.

ANALYSIS:

1. This is a request to change the zoning from I-1 Industrial to R-5 Residential to support a special permit for a domiciliary care facility.
2. A review process for change of zone proposals is not defined within the Zoning Ordinance nor Comprehensive Plan. However, Neb. Rev. Stat. §15-902 provides a list of considerations traditionally utilized for such reviews.
 - a. **Safety from fire, flood and other dangers.**
Due to the I-1 Industrial zoning that will border this property on three sides, there is a concern over potential exposure to hazardous materials, especially since the proposed use of the property is a domiciliary care facility for Alzheimer's patients and an assisted living facility.
 - b. **Promotion of the public health, safety, and general welfare.**
Same concern as raised above.
 - c. **Consideration of the character of the various parts of the area, and their particular suitability for particular uses, and types of development.**
The property immediately south is used as a domiciliary care facility. The industrial zoning in the vicinity is generally a narrow band that followed the uses existing at the time of the zoning update. The larger area is predominantly zoned residential.

d. Conservation of property values.

It is difficult to determine the effect a change of zoning will have on property values. In this case, there is nearby property zoned either industrial or residential. The impact on property values between these zoning designations will likely be indirectly proportional; that is, if industrial values drop residential values may rise, and vice versa.

e. Encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan.

The Comprehensive Plan identifies this area as Industrial. However, this designation generally followed existing development patterns at the time. This property appears to have been undeveloped or vacant for some time. Changing the zoning to residential is consistent with zoning in the larger area around this site.

3. The Health Department does not support locating susceptible populations adjacent to industrial zoning due to the potential for exposure to hazardous materials. They recommend if this change is approved, a 300 foot buffer should be required to separate the residents and the industrial zoning, and an evacuation plan should be developed. These concerns have been addressed in the special permit application.
4. This change of zone is necessary for the proposed domiciliary care facility.

Prepared by:

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Planner

Date: June 23, 2004

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476.7621

**CHANGE OF ZONE NO. 04040
SPECIAL PERMIT NO. 04032
and
STREET & ALLEY VACATION NO. 04009**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 7, 2004

Members present: Sunderman, Larson, Krieser, Taylor, Marvin, Pearson, Carroll and Carlson; Bills-Strand absent.

Staff recommendation: Approval of the change of zone; conditional approval of the special permit; and a finding of conformance with the Comprehensive Plan on the street vacation.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted revisions to the conditions of approval in response to the concerns raised by the Health Department regarding hazardous materials. The conditions would require that hazardous materials would not be stored within 300' of the domiciliary care facility. There is no code requirement for this separation. Therefore, the developer and the Health Department have proposed new conditions that require two emergency shut-off switches for the HVAC system and additional conditions requiring that the permittee and the Health Department communicate if the storage of hazardous materials within 300' becomes known by either party. In that event, they agree to develop some type of evacuation plan. Czaplewski stated that the staff and the developer are in agreement with these changes.

Proponents

1. Mark Hunzeker appeared on behalf of the **Joyce Hinkley Partnership**. This is an expansion of Legacy Terrace, an existing domiciliary care facility at 58th & Fremont. This proposal adds 32 Alzheimer care units (in cooperation with Madonna), and nine assisted living units in eight townhomes and one single family unit.

Hunzeker acknowledged that they worked out the issues with the Health Department which deal with their concerns relative to the industrial zoning which abuts this property. In fact, this "downzones" a portion of the existing industrial property. Hunzeker believes this is an area where the higher and better use of some of the property is residential, and to the extent this property is successful, it will probably change the neighborhood toward residential. Hunzeker agreed with the proposed amended conditions and additional conditions of approval. There is no standard that exists in the ordinance as we apply it today, and the applicant wanted to be cooperative but didn't believe it was fair to impose a 300' setback when there is not any sort of hazardous materials or any likelihood that there will be.

With regard to Condition #2.7, which requires a bond in the amount of \$27,300 to guarantee construction of paving and sidewalk on North 58th Street, Hunzeker pointed out that the portion of North

58th Street which is unpaved is about ½ block which runs along the east side of this project. The property immediately east of that unpaved portion of 58th is the library, and to the west is a single family home and the Legacy Terrace. Legacy Terrace has a small portion of the frontage along that unpaved section of road; the single family house which is carved out of the corner of the block has the balance of the frontage on the west side; and the city owns all of the property on the east side of that area which is unpaved. The applicant is willing to pay for paving the Legacy Terrace frontage, and volunteers to avoid any imposition on their residential neighbor and will pay their portion of the cost of that paving. But Hunzeker believes it is only fair that the city pick up its half of that gap in paving of 58th Street. This is not a decision to be made by the Planning Commission and he requested that Condition #2.7 be deleted. If this condition is included, the applicant will appeal it to the City Council because there is a line item in the city budget every year for this type of thing. The applicant will then request a gap paving district to get this piece of unpaved local street paved in accordance with the city's long-standing policy of finishing up the paving of residential streets in the city limits.

Pearson asked Hunzeker whether he is certain that the bond amount is for the entire frontage. Hunzeker believes that it is.

Pearson asked Hunzeker whether the applicant thought there might be a hazardous occupancy in the adjacent perimeter of this property. Hunzeker stated that they did not know of any. However, he agreed that when it is an area zoned industrial there is always a possibility of some user that would have some use for hazardous chemicals. But there are a variety of uses in other zoning districts that allow for the use of hazardous chemicals. It is speculative to say just exactly how much one ought to impose in the way of cost to avoid that possibility. The proposed language is the same that has been used in other similar circumstances.

Carlson referred to the street vacation and wondered whether there is an attempt being made to put sidewalks and paving in the portion being vacated. Hunzeker responded, "no". The vacation portion is to the north, running from the north right-of-way line of Colfax up to the Murdock Trail. We're talking about the area between Fremont and vacated Benton Street.

There was no testimony in opposition.

Staff questions

Carlson asked staff to explain the bond amount in Condition #2.7. Dennis Bartels of Public Works stated that the bond amount is for all of the paving and the west sidewalk. This was based on the plan that was submitted. The plan that was submitted showed that it would be paved, so a bond amount was provided to guarantee that it would be paved as shown on the application. They do have the opportunity to request a district or request that the city subsidize, but without Council action we cannot guarantee that a district would be created. Bartels is not opposed to working with the applicant to get it paved.

Carroll wondered about waiving the bond. Bartels suggested that the Commission could waive the bond amount and say it has to be paved, and if they couldn't create a district, it would require them to post a bond in the future.

Marvin believes the issue is to create the district, but one of the other parties is the city, and this body is not capable of binding the city to a paving district. Bartels agreed, and he could not say whether the city would or would not create a district. Marvin suggested that if the City Council ordered the paving, then the gap financing dollars of the city would go to help pay for that district.

Czaplewski clarified that the applicant's submittal stated that they would do the paving. The note on the site plan says that the unpaved portion will be paved as part of this project. That is why the staff assumed that the applicant was going to pay for the entire improvement.

Response by the Applicant

Hunzeker stated that it is no secret that the applicant wants that street paved. We think that it is fair for the city to contribute its share of the cost of paving that street. If necessary, the applicant will submit a district request, but he believes it is appropriate to creating gap paving. Hunzeker does not know why the city didn't pave that street when the library was built. He just thinks it's one of those where the city's long-standing policy has been to get local streets within the city limits paved, and to use whatever means are necessary to do that, including but not limited to gap paving districts, which were invented to cover this kind of situation.

Carlson asked for Hunzeker's response to the city's contention that the site plan showed the paving. Hunzeker agreed that it shows the paving, but it does not say this applicant will pave it. The intent was that the applicant would request the creation of a district, if necessary, in order to get that done.

CHANGE OF ZONE NO. 04040

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 7, 2004

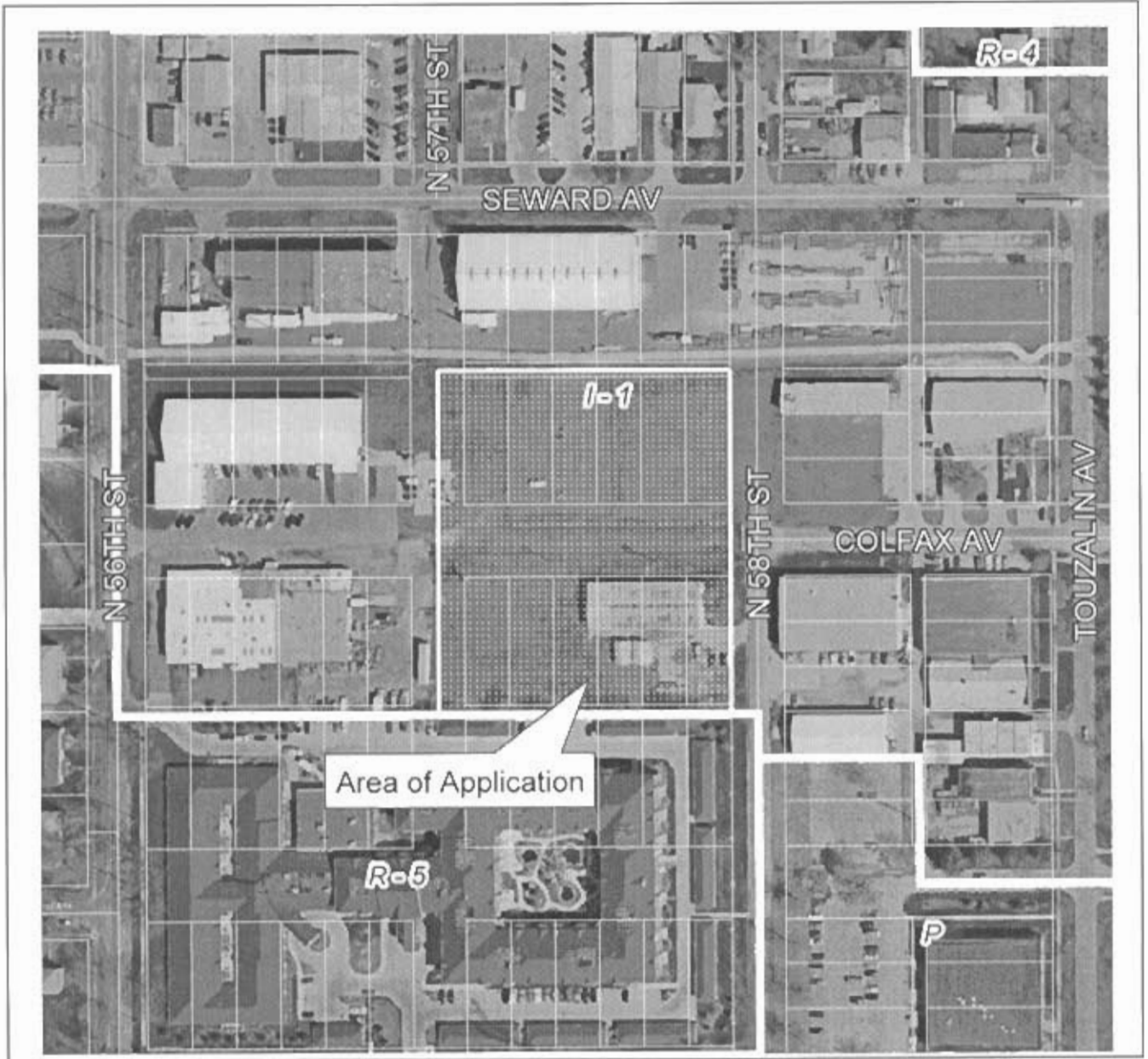
Marvin moved approval, seconded by Larson and carried 8-0: Sunderman, Larson, Krieser, Taylor, Marvin, Pearson, Carroll and Carlson voting 'yes'; Bills-Strand absent. This is a recommendation to the City Council.

STREET & ALLEY VACATION NO. 04009

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 7, 2004

Marvin moved to find the proposed street vacation to be in conformance with the Comprehensive Plan, seconded by Larson and carried 8-0: Sunderman, Larson, Krieser, Taylor, Marvin, Pearson, Carroll and Carlson voting 'yes'; Bills-Strand absent. This is a recommendation to the City Council.



2002 aerial

Change of Zone #04040 N. 58th St. & Colfax Ave.

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. 9 T10N R7E



Zoning Jurisdiction Lines
City Limit Jurisdiction

