

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 13029**, from AGR Agricultural Residential District to H-3 Highway Commercial District, requested by US Properties, on property generally located at Eiger Drive and Nebraska Highway 2.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 01/08/14
Administrative Action: 01/08/14

STAFF RECOMMENDATION: Denial.

RECOMMENDATION: Denial (5-4: Weber, Beecham, Scheer, Corr and Lust voting 'yes'; Cornelius, Sunderman, Hove and Harris voting 'no').

FINDINGS OF FACT:

1. This change of zone and Special Permit No. 13060 are not associated requests but an either/or situation on the same tract of land. Therefore, the Planning Commission held public hearing on both applications at the same time. Likewise, the applicant has requested that both items be called at the same time for public hearing at the City Council.
2. This is a request for change of zone from AGR to H-3 on approximately 3 acres, more or less, generally located at Eiger Drive and Nebraska Highway 2, for the purpose of a mini-storage facility. Mini-storage units and warehouses are both permitted uses in the H-3 zoning district.
3. The staff recommendation of denial is based upon the "Analysis" as set forth on p.4-6, concluding that the change of zone to H-3 would create incompatibility among land uses, would pose the threat of an increased traffic hazard on Highway 2, and is otherwise wholly inconsistent with the purpose of the Zoning Ordinance and the intent of the Comprehensive Plan. The staff presentation is found on p.7-8.
4. The applicant's testimony is found on p.8-11, pointing out that the unrestricted access to Highway 2 was granted by the Nebraska Department of Roads during condemnation proceedings and that the owner has a clear and legal right to develop the property with access to Highway 2. The applicant submitted that there is a demand and need for mini-warehouses and storage facilities in southeast Lincoln; that the traffic for such use is minimal; and that it is very unlikely that this property will ever be developed as residential uses. The applicant suggested that a conditional zoning agreement could be reached to address any legitimate concerns about using the property for a mini-warehouse.
5. Testimony in opposition is found on p.11-12, and the record consists of one letter in opposition (p.25). The issues of the opposition include increased traffic, access and noise, whether it be a mini-warehouse use or campground; property values of existing residential properties; and the creation of an "eye-sore" at an entrance to the city.
6. On January 8, 2014, the majority of the Planning Commission agreed with the staff recommendation and voted 5-4 to recommend denial (See Minutes, p.14).

FACTSHEET PREPARED BY: Jean L. Preister

DATE: January 27, 2014

REVIEW ED BY: Marvin Krout, Director of Planning

DATE: January 27, 2014

REFERENCE NUMBER: FS\CC\2014\CZ13029

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for January 8, 2013 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 13029

PROPOSAL: From AGR Agricultural Residential to H-3 Highway Commercial

LOCATION: Eiger Drive and Nebraska Highway 2

LAND AREA: 2.99 acres more or less

EXISTING ZONING: AGR Agricultural Residential

CONCLUSION: If approved, staff finds that this request would create incompatibility among land uses, would pose the threat of an increased traffic hazard on Highway 2, and is otherwise wholly inconsistent with the purpose of the Zoning Ordinance and the intent of the Comprehensive Plan.

RECOMMENDATION:	Denial
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1, Block 1, Portsche Heights 3rd Addition

EXISTING LAND USE: Vacant

SURROUNDING LAND USE AND ZONING:

North:	Residential, Southeast Rural Fire Station, Vacant	AGR, O-3
South:	Residential	AGR
East:	Vacant	O-3
West:	Residential	AGR

ASSOCIATED APPLICATIONS:

Special Permit #13060 - A request for a 13-space campground for the same tract of land.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page 1.2 - Vision Statements - The Comprehensive Plan is the basis for zoning and land development decisions. It guides decisions that will maintain the quality and character of the community's new and established neighborhoods.

Page 1.8 - Future Land Use Map - This tract is designated for Residential - Low Density land uses.

Page 5.5 - Commercial and Industrial Development Strategies - It is the policy that Commercial and Industrial Centers in Lancaster County be located:

- Within the City of Lincoln or incorporated villages.
- In sites supported by adequate road capacity - commercial development should be linked to the implementation of the transportation plan.
- In areas compatible with existing or planned residential uses.
- So that they enhance entryways or public way corridors, when developing adjacent to these corridors.
- In a manner that supports the creation and maintenance of green space as indicated in the environmental resources section of this Plan.

Page 7.9 - Strategies for Redevelopment in Existing Neighborhoods - Preserve, protect and promote the character and unique features of urban neighborhoods, including their historical and architectural elements.

UTILITIES: Municipal water and sewer services are in the area and can be extended to serve this property.

TRAFFIC ANALYSIS: The only access for the subject lot to a public street is an approved driveway access onto Highway 2. The lot otherwise does not front onto a public street or private roadway.

AESTHETIC CONSIDERATIONS: The existing uses surrounding the subject lot (on the south side of Highway 2) are all single-family, acreage lots. Any development needs to consider the adjacent residential uses and be done in a manner that provides an adequate transition from commercial to residential, including appropriate screening and separation. The H-3 zoning district allows a wide range of uses including many commercial uses that may not be appropriate immediately adjacent to single-family dwellings.

Further, Section 27.01.010 of the Zoning Ordinance states “This title has been made in accordance with a comprehensive plan and to promote health and the general welfare of the community. It is designed to lessen congestion in the streets; to secure safety from fire, flood, and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements. These regulations have been made with reasonable consideration, among other things, to the character of the district and its suitability for particular uses, and with a view to conserving the value of property and encouraging the most appropriate use of land throughout the City of Lincoln and the area within three miles thereof.”

ALTERNATIVE USES: Re-zoning the tract to R-1 and subdividing the tract into three, one- acre lots would provide economic value to the owner, while maintaining compatibility with adjacent land uses. Instead of access to Highway 2, such a development would be required (if feasible) to take access to Pine Lake Road northwest of the property. A driveway could be located on either the adjacent residential lot to the west (with the owner’s consent), or perhaps within the Highway 2 right-of-way with permission from the City of Lincoln and the Nebraska Department of Roads.

The lot is deep enough to allow an adequate setback for dwellings from Highway 2 similar to other residential development located along Highway 2. The most recently approved example is the residential component of the Apples Way PUD located near South 66th Street and Highway 2. An adjustment to the front setback along Highway 2, in conjunction with an adjustment to the Building Line District in Highway 2, allow for the front setback along Highway to effectively be reduced to 30’.

ANALYSIS:

1. This is a request to re-zone Lot 1, Block 1, Portsche Heights 3rd Addition from AGR to H-3 to allow storage units. Mini-storage units and warehouses are both permitted uses in the H-3 zoning district.
2. The site plan shows a mini-storage facility and has a note which indicates that is the only allowed use. However, the H-3 zoning district is not a use permit district where uses could potentially be limited by the applicant voluntarily adding notes and other limitations to the site plan. With this type of change of zone application, a site plan is neither required to be reviewed or approved by the City as part of the zoning action.

If re-zoned to H-3, the full range of uses permitted by the Zoning Ordinance would be allowed including a garden center, hotel, gas station, automobile repair, indoor and outdoor retails sales, restaurant, and contractor service to name a few. A zoning agreement approved by the City Council would be necessary to restrict uses in the manner described in the application as the site plan is non-binding.

3. The setbacks and height limit for the H-3 zoning district when abutting residential are as follows:

Front - 20' Side - 20' Rear - 30' Max. Height - 55'

4. The subject tract was part of the final plat of Porsche Heights Addition, approved in 1965 (see Exhibit A). That plat showed a cul-de-sac which served six lots, which included the area of the subject tract.
5. The entire area of Porsche Heights Addition was voluntarily replatted in 1989 with Portsche Heights 3rd Addition (Exhibit B). With that plat, the original 17 lots were reduced to 8.
6. The lot is vacant and has not been developed. The lots adjacent to the south and west have been developed with single-family dwellings.
7. The subject tract and surrounding acreages are beyond the city limit and are not annexed. Utility service is neither shown nor requested, but would require the property to be annexed if service is needed.
8. The subject tract has no access to the internal residential street network. Instead, it has an approved driveway access onto Highway 2. Public Works and Utilities noted that any use of the property more intense than single-family residential will require both a turn lane and acceleration in Highway 2.
9. The proposed site plan shows approximately 40,000 square feet of mini-storage floor area, and a 1,600 square foot office. The required 20' front setback is not delineated, but appears to be represented on the site plan.
10. Trip generation for three single-family dwellings is approximately 30 trips per day. Of the permitted uses in the H-3 zoning district, mini-storage is one of the lowest trip generators. In this case, the proposed 40,000 square foot mini-storage facility would generate

approximately 100 trips per day, where the other more intensive permitted uses would generate significantly more.

11. Screening is required for commercial adjacent to residential to buffer the impact of the different uses. The site plan does not include a landscape plan, nor does it include other mitigation (such as fencing) that is typically proposed for commercial development in proximity to residential dwellings.

Additionally, Highway 2 in this area is considered a primary entryway corridor. As a result, other non-residential development along the highway has been required to establish deep, landscaped setback areas along the highway. Some combination of trees and shrub plantings along the frontage would be appropriate in this case.

12. The Comprehensive Plan designates this lot and the surrounding acreage development for low-density residential development. That designation generally refers to large lot, acreage development where lots on average exceed at least one acre in area.
13. H-3 highway commercial zoning is not consistent with the future land use map of the Comprehensive Plan. Further, re-zoning this tract does not expand or enhance an existing area of H-3 zoning, rather it merely creates a small island of H-3. Such spot-zoning is discouraged by the Zoning Ordinance and Comprehensive Plan due to its inherent inequity, as it serves to benefit a single property owner by permitting uses not allowed on surrounding properties.
14. Direct access to Highway 2 from a single lot is rare and discouraged, but was granted to the owner of this lot by the State of Nebraska many years ago. The owner has the right to develop the lot with those uses permitted in the AGR zoning district and to take use of the driveway. However, the City is not required to approve zoning actions which intensify the land use which could serve to create traffic hazards on Highway 2.
15. It is not clear what the owner's preference is between this application and the other for a special permit for a campground, or why both were submitted simultaneously. The applicant had been advised prior to submitting the applications that City staff did not support commercial development of the property.
16. An alternate request to re-zone the tract to R-1 with the tract subdivided into three, one-acre lots would eliminate the concerns regarding compatibility with surrounding residential development. It would also address the issue of increased traffic onto Highway 2.
17. Change of Zone #12005, which was a similar application in Cheney, was approved in 2012. However, the circumstances of each case are different. City services were not available to the property associated with CZ#12005, but they are in this case and would allow the alternate, 3-lot residential development. Additionally, the land use pattern in Cheney was mixed with both residential and commercial uses in proximity to the Cheney property. In this case, the subject property is surrounded by only residential land uses. Additionally, the Cheney property had access to 1st Street, an unimproved local street and did not take access to Highway 2.

18. Staff is recommending denial of this request based upon the findings that it creates incompatibility among land uses, poses an increased traffic hazard on Highway 2, and is otherwise inconsistent with the purpose of the Zoning Ordinance and the intent of the Comprehensive Plan.

Prepared by:

Brian Will
Planner
December 19, 2013

APPLICANT: US Properties
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**CHANGE OF ZONE NO. 13029
and
SPECIAL PERMIT NO. 13060**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 8, 2014

Members present: Cornelius, Sunderman, Weber, Hove, Beecham, Harris, Scheer, Corr and Lust.

Staff recommendation: Denial.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** explained that these are not associated applications but they are different requests on the same piece of property so most of the findings in the staff reports relate to both applications.

The property is approximately a 3-acre triangular tract. Where Pine Lake Road used to extend, it is now terminated at Eiger Drive. This property is right across Highway 2 from where Eiger Drive now intersects with Highway 2. The surrounding land use is AGR zoning with the exception of O-3 to the northeast (Pine Lake Plaza office park). Otherwise, the surrounding uses include the Southeast Rural Fire Station, the horse stable for Pine Lake, and 3-acre single-family residential acreage lots.

Will submitted the comments received from the reviewing agencies which were not included in the staff report.

Will explained that there are two related issues on both applications – access and land use. Unusually, this tract has a guaranteed access to Highway 2 from the State of Nebraska. Given the existing zoning pattern of AGR, only one dwelling unit would be allowed on this property. If the zoning were to change, Will believes the State of Nebraska Department of Roads (NDOR) would view that negatively. The change of zone would mean increased traffic onto Highway 2. It is rare to find a driveway off of a single property like this along Highway 2. It is a goal to eliminate driveway access onto Highway 2. As is, one single family dwelling would have right to get access on Highway 2; otherwise, the access will be restricted.

With regard to the issue of land use, Will pointed out that H-3 Highway Commercial zoning allows a range of uses, as compared to the surrounding residential zoning, that would be described as fairly intense, including garden center, motel, gas station, auto repair, retail sales, restaurant, contractor services, etc. NDOR noted that any change of zoning on the property of more intense land use could result in a traffic study being requested by NDOR, and we would assume that there would be some recommendation in that traffic study including requirements for improvements to Highway 2.

Will further pointed out that Public Works is not supportive of the change of zone given the access onto Highway 2. Any increase in traffic makes a driveway on Highway 2 not acceptable. The Health Department noted the potential for nuisances, off-site impacts, etc., and they are not supportive.

Will clarified that the special permit request for the campground does not require a change of zone. It would be allowed by special permit in the AGR zoning district. The facts of both cases are similar but we need to distinguish that the AGR zoning as it exists would allow this special permit. The same issues come to bear with the campground, i.e. Public Works is suggesting that a campground use would require likely improvements in Highway 2 with turn lanes into the property for slower moving vehicles exiting the property as well as perhaps a left turn lane for westbound traffic to get into the property off Highway 2.

With regard to land use, Will suggested that a campground is not necessarily a high intensity or obnoxious land use, but it is in close proximity to residences and the staff is recommending denial. Typically, there are no limited hours of operation allowing people to be out recreating into late hours of the evening perhaps. Health Department also expressed concern that campfires would present a nuisance to surrounding properties. Therefore, staff does not find the campground proposal to be an appropriate land use at this location.

Will acknowledged that staff is not in the position of recommending denial very often. Staff did attempt to come up with alternatives. One suggestion included in the staff report was perhaps a change of zone to R-1 for three residential lots. Maybe that would be more suitable in the market.

Will concluded that staff is recommending denial of both applications.

Hove inquired about the elevation of the property and whether it is higher than Highway 2. Will believes that it is rising to the south, not significantly but a little higher than Highway 2. Hove then asked if it would be "up the hill" to get there with the one access from Highway 2. Will suggested that as you move across the site, it goes uphill. The driveway access point is not specifically set in place at this time. That is indeterminate at this point. LES commented that there are power lines and facilities in the right-of-way which need to be considered in any grading of the site. There is no access to any other public street or private roadway. Staff has offered to cooperate in this effort for perhaps either some sort of an access easement in Highway 2 back to the Pine Lake Road right-of-way, or even perhaps across the adjacent residential lot to the west, somehow coming back to Pine Lake Road, for something other than a commercial use.

Hove confirmed that Pine Lake Road does not connect to Highway 2. Will concurred.

Proponents

1. Peter Katt appeared on behalf of the applicant, **US Property Management**. Katt suggested that this is a blighted property. The owners of US Property Management are Monte and Lisa Froehlich who have worked in the Downtown Lincoln area, i.e. Grand Manse improvements; recently completed rehab of the old Spaghetti Works into some student housing units; they have acquired and had a little setback on the Christian Book Store on O Street, but they are committed to doing that kind of work and making communities better. One of their mission statements includes a goal to fix broken, vacant property business and bring it new life, i.e. "blight busters." They are committed to making Lincoln and other communities better. Mr. Froehlich has experience not only in Lincoln but also in national projects.

Katt suggested that the subject property is probably best considered the blighted Bermuda Triangle. He referred to the history in the staff report and showed the 1965 plat of the property. Had that happened, Katt agreed that it might have been realistic to have acreage houses develop without

access to the highway. However, in 1989, the city approved an administrative final plat creating the “Bermuda Triangle” and for the past 24 years it has been blighted – nothing has happened – it remains the same. It is unique. As noted by staff, as part of the approval of that plat, the NDOR gave them unrestricted right of access as part of a condemnation proceeding and it is located opposite Eiger Drive. Katt submitted that the owners have a clear legal right to develop the property with access to Highway 2.

The staff notes that the tract has no access to an internal residential street network. Because of the existing land use with AGR zoning, Katt agrees that the number of lawful uses is quite limited. And for 24 years, no one has been willing to invest or develop anything on this property. What do you do? Staff suggests we triple the problem by taking it from one home to three homes. That hasn’t happened for 24 years. His client believes that the staff solution simply compounds the problem. So, if that is not the solution, what is? The answer should be based on what is needed in our community in this location, and what are the impacts of that use. And, if creating negative impacts, can they be mitigated?

Katt then stated that the applicant’s proposal is for a mini-warehouse which requires the H-3 zoning, generating approximately 100 trips a day. The community needs mini-warehouse space. There are apartments going up at 84th and Highway 2; also north of the shopping center at 84th Street; and there is a new project just west of 70th and Highway 2. There is a demand for mini-warehouse storage space and there are no available sites in southeast Lincoln to meet that market demand.

Katt then pointed out that to the extent there are any issues, NDOR has standards for safe access. Katt also suggested that entryway corridor aesthetics is a relative question. Does it mean you cannot build along the corridor? No, but the neighbors do not want it to look like Cornhusker Highway and his client agrees. The applicant is willing to sit down with the neighbors and talk about the design of the mini-warehouse and will do it at a high level, making it attractive and appropriately landscaped.

In addition to the staff issues, Katt advised that one of the neighbors to the east raised the issues in terms of protecting their view to the east, hours of operation and lighting. Katt submitted that all of those can be managed through a sensitive site plan, and his client is willing to meet those concerns.

Katt then observed that the staff report noted that there was a change of zone done for mini-warehouses at Old Cheney Road and Highway 2 which had a conditional zoning and development agreement. Katt had anticipated that this applicant might have that opportunity but staff chose not to provide any conditions of approval in the event the Planning Commission chose to recommend approval. If the Planning Commission wants standards, Katt suggested that the Planning Commission put these applications on pending and send the change of zone back and come forward with some specific requirements to address the legitimate concerns about using this property for a mini-warehouse. This would be his request. This is kind of an either/or situation, but Katt believes the mini-warehouse is the best use.

With regard to the special permit for the campground, Katt referred to the questions: what does the community need and what are the impacts? There are no private campgrounds in the City, and there is limited or no locations at which they can be developed. This campground would meet all of the special permit requirements for a campground to operate at this location. No change of zone is needed.

Katt acknowledged that the proximity to residential dwellings is a staff concern. The special permit requires a 50' separation, which Katt believes the site buffers. The special permit provisions indicate that campgrounds be located near a highway, and this application meets that requirement.

Katt believes the reality is that none of the suggested staff uses for a single-family dwelling are going to work on this site. The owner has some right for an economically viable use of the property, and under the Whitehead Oil Nebraska Supreme Court case, there is a requirement that says through all of the city's restrictions, the city cannot arbitrarily and unreasonably say that you get no use of your property. Therefore, at a minimum, the special permit for the campground should be approved as the only viable economic use of the property that is consistent with the city zoning requirements.

Katt does not believe the Planning Commission can negotiate the conditions that would make a mini-warehouse appropriate. Katt agreed that a blanket change of zone to H-3 is inappropriate. He suggested that if a mini-warehouse is determined to be a reasonable land use, and if the protections of adverse issues can be mitigated, the best course of action today would be to place the change of zone on pending with directions to the applicant and staff to bring forward a conditional zoning agreement to narrow the number of issues that need to be weighed in.

With regard to the campground, Katt believes that could be placed on pending as well because his client would prefer the mini-warehouse as the best solution. Until the discretionary application of the mini-warehouse is done, we do not need to get to the campground.

Beecham asked the applicant to address the traffic issue, particularly if it were a campground with slow moving campers merging onto Highway 2, etc. Katt agreed that to be a challenge at this site, but there is a legal right to access the highway. He does not know what the conditions would be at this point. However, those decisions will be made by NDOR in consultation with Public Works. In any event, this applicant has a legal right for access. However, Katt does not know what the reasonable conditions might be for this access.

Katt then advised that when he met with staff three months ago, they discussed the possibility of some type of extension of Pine Lake Road into this site, thus eliminating the Highway 2 access. Given the number and nature of the mini-warehouse trips, that would be doable; however, his client lacks the legal ability to make that happen and asked the city to help. Katt would expect that they would try to go to that solution, but he cannot do this in a vacuum. He needs to have someone help with the conditions to make that happen.

Weber asked whether the unrestricted access goes with the change of zone. Katt's response was "absolutely". In the condemnation proceeding, there was an unrestricted right of access at a designated location and a specified width. He believes that unrestricted access means "unrestricted access not tied to a particular land use."

Cornelius inquired whether the applicant has heard anything from the residential neighbors about either of these proposals. Katt informed the Commission that he sent letters to all of the adjoining property owners inviting them to contact him if they had any concerns about the mini-warehouse or the campground. He heard from one neighbor, Ron and Kathy Hill, and he met with them yesterday. Katt believes there are ways to work with them to mitigate the things they are fearful of.

Cornelius wondered how long of a deferral the applicant is suggesting. Katt suggested that this is a significant enough change that a four-week delay would be appropriate to work through the issues.

Hove asked how long Froehlich has owned the property. Katt stated that Froehlich has had the property under contract for about nine months. He has tried to sell it as residential lots. This property was held for a long time by Stan and Grace Portsche, who tried to sell it for a long time for office use and eventually sold it to Kent Thompson two or three years ago, who is the current owner.

Lust asked if Froehlich's ownership is conditioned on getting the change of zone. Katt stated that his client is not obligated to purchase, but at a minimum, if the mini-warehouse does not go forward, he will pursue the campground as an interim land use. Katt also suggested that if the campground is denied by the policy makers, they run a legal risk. That would be an interim use until there is a long term permanent solution.

Opposition

1. Ron Hill, who owns the property just to the east, expressed his concerns of increased traffic and noise, regardless of the use. It will be more than what we are used to. Secondly, their security and privacy might be compromised by children wandering from the campground to other people wandering around unless appropriate walls are erected to help protect his property. He also has concerns about increased lighting. He moved to the dark because he has difficulty sleeping. Decreasing the value of his home is another concern because the view would be changed.

Hill stated that he does respect Mr. Katt and his kindness in visiting with he and his wife, and they will consider any compromises that need to be made for the advancement of the city in this area.

2. Steve Nickel, 7941 Portsche Lane, about 300 feet southwest of the west corner of the subject property, testified in opposition as the president of the **Family Acres Association**. The Association is concerned about the land use. Campers will be on their way to find open space. This is an undesirable mix, often referred to as friction. There does not seem to be much of a buffer between what would be transient individuals and back yards.

In the area of land use, one of the goals of this Commission is to make higher density happen in AGR areas as the city limits approach. In this case, this won't happen if it is a campground or even a storage facility. Nobody would buy a lot backing up to a campground. The use of this property should be compatible with being in someone's back yard. There is a possibility of rowdiness and just general lack of curfew on any night. There is possibility of increased crime. Traffic should be a major consideration. Nickel stated that he talked with a representative of the First District Highway Department and it was their opinion that right-in right-out is going to be the only thing that will happen. The campground would mean vehicles, self-contained campers up to the size of busses, and pickup trailers and fifth wheel trailers up to the size of semi's. Unless there were a break in the median straight across from the entrance, these things would have to make u-turns at Pine Lake Road west over 84th Street in the middle of a 55 mph 4-lane highway with heavy truck traffic. And the heaviest turning traffic will be during rush hours if it is a campground. At this point, Nickel pointed out that Pine Lake Road west of the intersection will remain uncontrolled and that would be where there would be a lot of u-turn activity. If it is a storage area, the same problem exists.

As far as the sale of the property over the years, Nickel suggested that there has been very little attempt made to sell the property as residential. It was on the market for \$400,000 and no one is going to pay that for a house, and because of the access it has not sold. There is a way to develop the property as residential land with cooperation of some of the neighbors. As build-through happens, people will be subdividing their acreages and a potential subdivision of the acreages could access a road at the south side of that property.

Staff questions

Lust inquired about the Whitehead Oil case and what it entailed. Peo explained that it was a use permit application in a different situation and he does not believe it is applicable in this case. There are three types of uses allowed on a property, i.e. permitted, conditional permitted and special permitted uses. A permitted use is a list of by-right uses with standard conditions; a conditional permitted use requires additional criteria and conditions; a special permit is a discretionary function. Just because there are conditions with a special permit does not mean that it becomes a conditional use. It still has criteria to be met as to whether it fits in with abutting properties, and the City Council has additional authority to impose additional conditions to alleviate adverse conditions.

Peo believes there is an additional factor on this property – this land was created and platted as AGR by the Portsche's. They created the lot in question, so if there were any difficulties in marketing the property, that was their own. They were holding it for O-3, which was a speculative land venture with no expectation it would be granted. It was sold to another property owner, probably for speculation. US Properties is trying to mandate a use to put themselves in a better position. The original landowner created the problem and purchasers knew what it was. The Planning Commission does have the authority to deny the change of zone request.

Lust confirmed that US Properties does not own the land, and Peo agreed.

Cornelius asked Peo's opinion about the guaranteed access on Highway 2. Peo stated that he is not familiar with the provision that was granted. That is a NDOR decision. He does not know what unrestricted means. It is vague.

Beecham wondered about the particular size for the access. Peo stated that he has not seen the document. It was stated that it was a certain width so that it would not be so narrow that it is not functional. NDOR negotiated right-of-way acquisition to Highway 2 and there were probably some guarantees back.

Beecham referred to the aerial photo and what looks to be a residence on a triangular lot on the lower right. Will did not know when the house was built. It does have access on Portsche Lane. It would not be historic.

Harris noted that the comments from LES talk about grade elevation conflict with the driveway. Would that put any constraints on the proposed alternative use? Will believes that LES is attempting to put everyone on notice that there are facilities in the right-of-way and that any work done needs to take that into consideration. If doing any grading or cutting, there are standards which require an amount of separation between the grading and the facility. The developer needs to work with LES. Any utility relocation that would be required would be upon the applicant. It is not a prohibitive statement but more of an advisory statement.

Lust posed the question to staff about deferral. Is there any possibility of coming up with conditions that would satisfy staff for a mini-warehouse facility? Or would we be deferring to accomplish nothing? **Marvin Krout, Director of Planning**, stated that it is complicated. We do not know the expectation of the Planning Commission or the neighbors. There is a 50' setback required in the AGR area. It would be very difficult to maintain that kind of setback on an irregular site. If sent back, staff would do their best to come back with a proposal that comes closest to meeting some financial return on this property that makes it a feasible use and deals with neighbors' concerns. But it is a very difficult proposition.

Lust then asked whether staff believes they have exhausted their resources on this particular application. Krout responded that this is a situation where you have acreage residential uses with the potential for more residential. Staff believes there is an obligation to try to protect the ability of this lot and other lots in that area to further subdivide into an urban neighborhood. If you take this step, it will be difficult for the other abutting lots in this area to be attractive enough to warrant that kind of subdivision. He does not foresee that this tract is large enough to create large enough buffers that the Comprehensive Plan calls for. It is going to be very difficult on a small irregular tract to do that as well as any kind of use that is going to generate four or five times more traffic than three residential lots and 10 times more traffic than one residential lot. Mini-warehouse will have semi's that are coming and going, too. He foresees lots of problems. That is why the staff did not foresee an answer that would satisfy the abutting property owners and the developer's needs on this site.

Response by the Applicant

Katt believes it is worthwhile to take the change of zone back to develop a conditional zoning agreement. He agreed that it may be difficult; however, he does not view the concerns of the neighbors that the Commission has heard to be insurmountable. If you think one of the biggest challenges to intensifying residential use is protection against the noise from Highway 2, Katt submitted that a mini-warehouse facility lining Highway 2 would do wonders to minimize the noise intrusion to the residential homes. It's not simply the use, it's the buildings, the structure, the sight sensitivity and the long term impacts. He thinks it is worth the effort to give it a try. It is a pretty important decision. The history of the dynamics of this site, irrespective of how it got to where it is today, is that we have a 3-acre undeveloped parcel on Highway 2 that should be more than it is. What should it be? No one has said they want to live on a one-acre lot on Highway 2. It is not a realistic land use for that lot. It never was and never will be with Highway 2 being the only public access.

Katt stated that he generally agrees with Rick Peo about the campground. There are levels of discretion, but not the same level of discretion as with the rezoning to H-3. There are certain uses created in the ordinance that are compatible. In the Whitehead case, the inclusion of a use in the ordinance is a per se finding that it is in harmony with the neighborhood. When you create a zoning ordinance with all of these wide varieties or requirements and conditions, the very nature of a multi-layer system of regulations increases the risk of arbitrary and unreasonable and capricious action resulting in an unreasonable requirement. Boiled down, Katt reiterated that an owner of land has the right to expect that no matter what the restrictions, there is a reasonable economic value that he can expect to put to the land. Without a change of zone or special permit, the only permitted use at this point is one house, but that does not appear to be reasonable in the marketplace. Leaving that as the only land use for the owner is unreasonable and arbitrary.

Katt reiterated his request that the Planning Commission defer for four weeks, giving the applicant and the staff a chance to come to some kind of arrangement for the mini-warehouse use.

CHANGE OF ZONE NO. 13029

ACTION BY PLANNING COMMISSION:

January 8, 2014

Lust moved to deny, seconded by Corr.

Cornelius stated that he was somewhat interested in moving to defer because the arguments that are being made about the existing residential properties are going to apply to this property. The Planning Commission has seen this property a couple of times, and we know it is problematic because of access and because of the shape and because of the marketplace. He is somewhat compelled by the argument that a thoughtful commercial development like multi-storage/mini-warehouse might provide a buffer to the noise from the highway and increase the likelihood of constructive development for this area. He is inclined to want to send this back for more consideration.

Lust stated that she will not recommend deferral because she does not think there is any possibility to reach agreement for mini-warehouse on this site. The current applicant is not even the owner of the property. They purchased knowing it has been difficult to develop. The original owners held it for a use that was contrary to the zoning. The second owner did the same thing. She believes this is zoned AGR because it is the appropriate zoning for this property, and there really has not been a concerted effort to develop it as residential property. Lust does not think deferring it will accomplish anything. She does not see the mini-warehouses working out.

Corr stated that she will support the denial. She cannot support going to H-3. She could possibly support R-1, as suggested by staff, or O-3 because it is already across Highway 2. But, she cannot support H-3 because we do not like spot zoning. Another hesitation for Corr is the incompatibility with the Comprehensive Plan – knowing it is a guide and perhaps the access issues could be worked out – but she does not believe H-3 is appropriate.

Sunderman agreed with Cornelius. This site has sat there for a long time. He is trying to decide what he wants to see there, but nothing seems to fit. He believes that the mini-warehouses as a buffer for the acreages will work. Access on Highway 2 is a concern. He is not thrilled about H-3. He would also have further questions about conditional zoning on H-3. This is a problematic site, but it deserves someone willing to do something with it. He believes a four-week deferral would be reasonable.

Beecham acknowledged that the Froehlich's have done a lot of good for the City. The heartburn for her is the H-3. She does not think deferral will bring anything in H-3 that she thinks is appropriate. She would be open to seeing other approaches to this site.

Motion to deny carried 5-4: Weber, Beecham, Scheer, Corr and Lust voting 'yes'; Cornelius, Sunderman, Hove and Harris voting 'no'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 13060

ACTION BY PLANNING COMMISSION:

January 8, 2014

Lust moved to deny, seconded by Scheer.

Corr stated that if the applicant was interested in doing an office building which would provide the buffer to the residential, she might be able to support it. She does not know what else would fit in O-3 if the applicant were interested in pursuing that. Lust suggested that the applicant can file a new application if that is something in which they are interested.

Lust does not think a campground is appropriate for this location. It is the applicant's fallback but it is not appropriate.

Motion to deny carried 7-2: Cornelius, Weber, Beecham, Harris, Scheer, Corr and Lust voting 'yes'; Sunderman and Hove voting 'no'. This is final action, unless appealed to the City Council within 14 days.

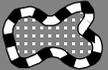


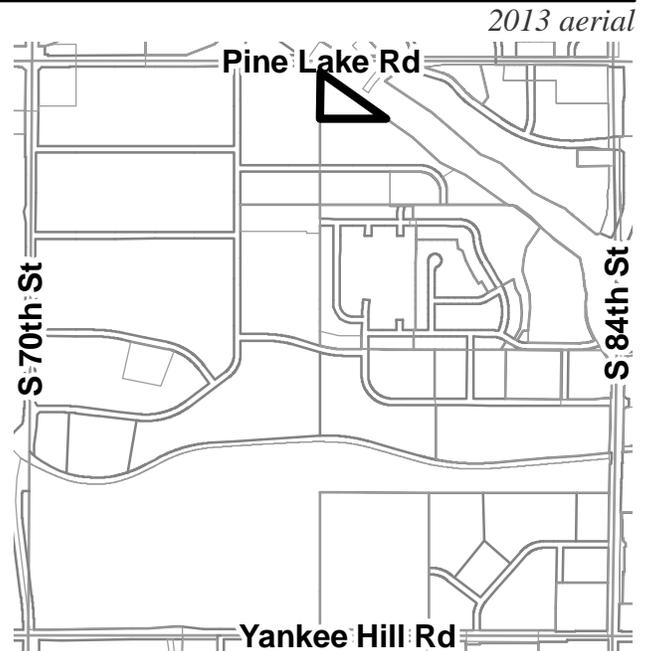
Change of Zone #: CZ13029
AGR to H-3
Highway 2 & Pine Lake Road

Zoning:

One Square Mile:
 Sec.22 T09N R07E

- 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

 Area of Application
 Zoning Jurisdiction Lines
 Lancaster County Jurisdiction



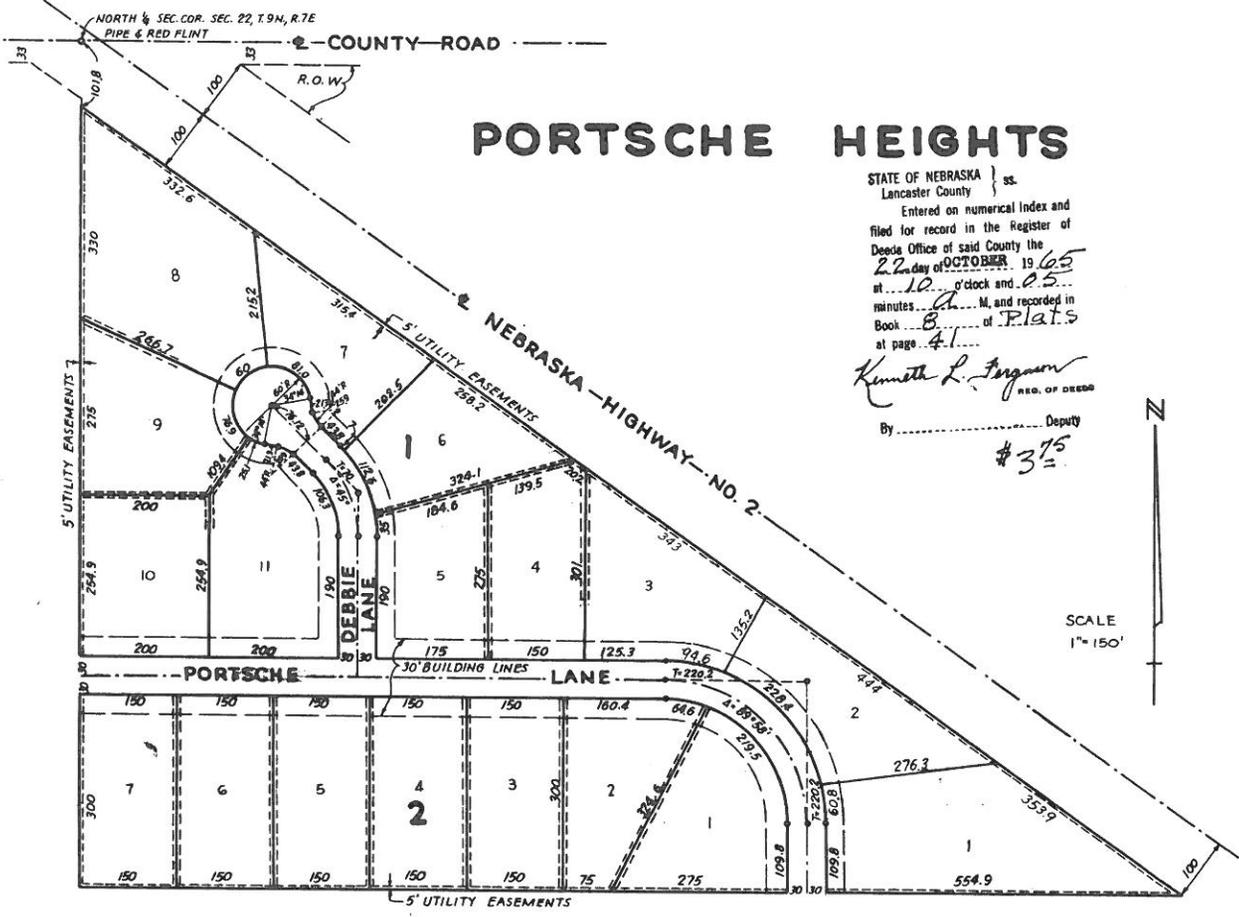
PORTSCHE HEIGHTS

STATE OF NEBRASKA } ss.
Lancaster County
Entered on numerical index and
filed for record in the Register of
Deeds Office of said County the
22 day of OCTOBER 1965
at 10 o'clock and 05
minutes A.M. and recorded in
Book B of Plats
at page 41

Kenneth L. Ferguson
REG. OF DEEDS

By _____ Deputy
\$ 375 =

SCALE
1" = 150'



SURVEYOR'S CERTIFICATE

I hereby certify that I have accurately surveyed and staked out the above plat of "Portsche Heights". Iron pipes are set at all lot corners and at other points marked thus • on the plat. All dimensions are in feet or decimals of a foot and are chord measurements unless otherwise shown.

Signed this 10 day of AUGUST, 1965.

M. S. Hagan
ENGINEER E 105, L. S. 55

DEDICATION

The foregoing plat, known as "Portsche Heights", a replat of that part of Lot 3 lying south of Highway No. 2 in the N² NE⁴ Sec. 22, T.9N., R.7E. of the 6th P.M., Lancaster County, Nebraska, is with the free consent and in accordance with the desire of the undersigned, sole owner and proprietor, and the easements shown thereon are hereby granted in perpetuity to the City of Lincoln, the Consumers Public Power District, the Lincoln Telephone and Telegraph Co., and other public utilities, their successors and assigns, to construct, operate, maintain, repair and replace storm sewers, sanitary sewers, water mains, conduits, buried cables, wires, poles and all appurtenances thereto, over, upon or under the easements as shown on the foregoing plat.

The construction and location of sewage disposal and water supply facilities shall be approved by the City-County Health Department prior to installation. The streets shown thereon are hereby dedicated to the use of the public.

Witness our hands this 15th day of April, 1965.

Stanley L. Portsche *Grace A. Portsche*

ACKNOWLEDGEMENT

STATE OF NEBRASKA } ss.
LANCASTER COUNTY

On this 15th day of April, 1965, before me, the undersigned, a Notary Public, duly commissioned, qualified for and residing in said County, personally came Stanley L. Portsche and Grace A. Portsche, husband and wife, to me personally known to be the identical persons whose names are affixed to the foregoing instrument and they each acknowledged the same to be their voluntary act and deed.

[Signature]
NOTARY PUBLIC

My commission expires the 27 day of March, 1967.

APPROVAL

The foregoing plat was approved by the Lincoln City-Lancaster County Planning Commission on this 25 day of August, 1965.

ATTEST: *E. J. [Signature]*
CHAIRMAN

ACCEPTANCE

The foregoing plat and dedication approved and accepted by the City Council of the City of Lincoln, Nebraska, by Ordinance No. 8834, passed the 4th day of Oct., 1965.

ATTEST: *Harold W. Springer*
CITY CLERK

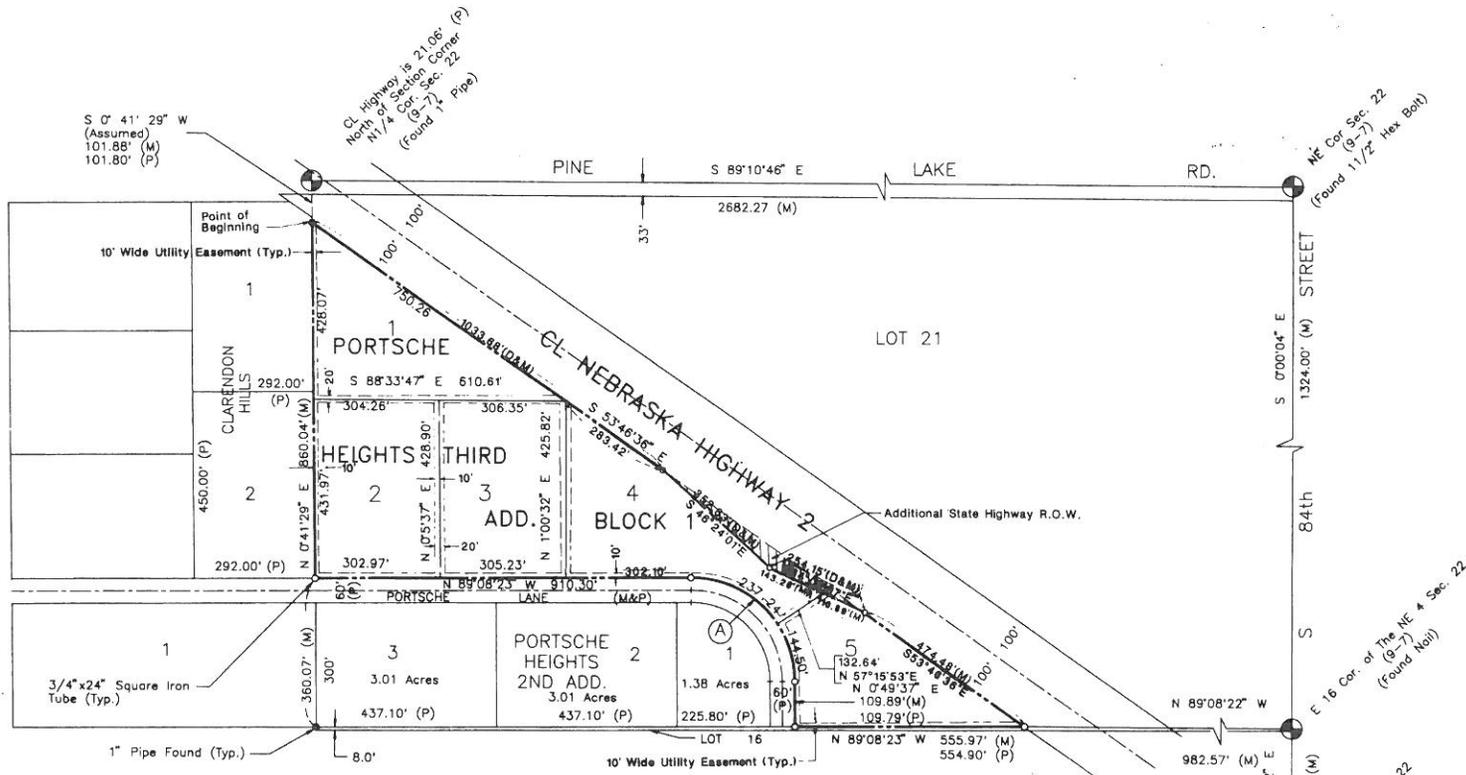
EXHIBIT A

ADMINISTRATIVE FINAL PLAT PORTSCHE HEIGHTS THIRD ADDITION

EXHIBIT B



Scale: 1"=200'



LEGEND

- = Corners Found
- = Corner Set
- (P) = Plat Distance
- (M) = Measured Distance
- (D) = Deeded Distance

CURVE DATA

(A) $\Delta = 89^{\circ}57'56"$
 $R = 250.33'$
 $L = 393.07'$
 $T = 250.18'$
 $C = 353.91'$

* All Curve Dimensions are Chord Unless Otherwise Noted.



Civil Design Group, Inc.

Consulting Engineers & Land Use Planners
Civil Design • Site Development • Planning & Zoning

www.civildg.com

December 11, 2013

Mr. Marvin Krout, Director of Planning
City of Lincoln /Lancaster County
555 South 10th Street, Room 213
Lincoln, NE 68508

**Re: Portsche Heights - Storage Units - Change of Zone AGR to H-3
CDG Project No. 2013-0178**

Dear Mr. Krout:

On behalf of US Properties, Inc., we submit an application Change of Zone AGR to H-3 on property generally located at Highway 2 and Pine Lake Road. The change of zone will allow US Properties to develop the land as storage units.

In conjunction with this submittal we submit the following information:

Application for Change of Zone
Application fee for Change of Zone - \$792.00
Site Plan will be uploaded via Project Dox.

Please contact Peter Katt at 402-458-2132 with any questions regarding this Change of Zone.

Sincerely,

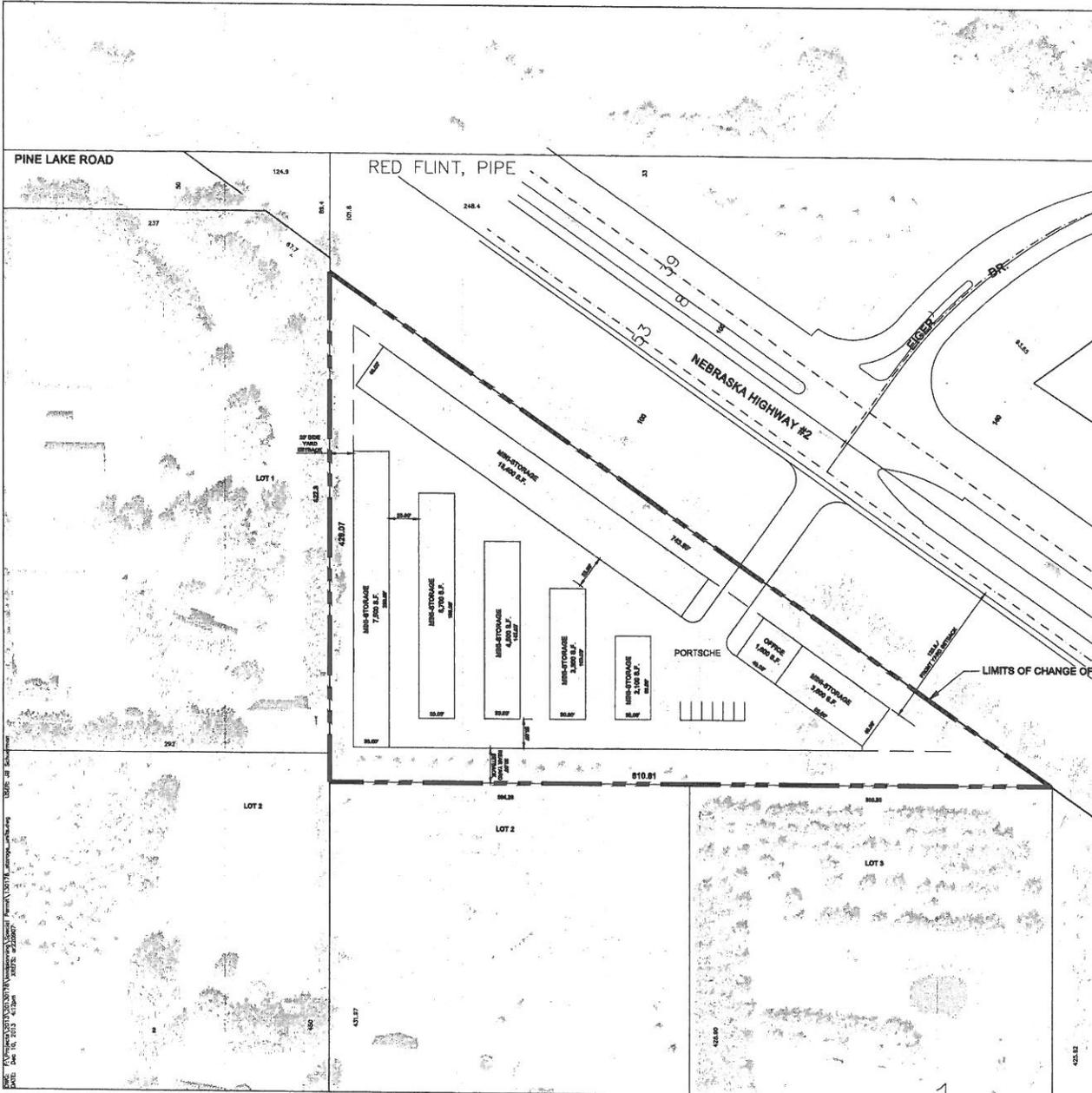
Mike Eckert, AICP

Encl

cc: US Properties, Inc.
Peter Katt
Silver Offices - Oakview, LLC

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019



LEGAL DESCRIPTION
 LOT 1, BLOCK 1, PORTSCHE HEIGHTS, LANCASTER COUNTY, NEBRASKA (2.09 ACRES)

- NOTES**
1. THE EXISTING ZONING IS AGR WITH A CHANGE OF ZONE TO H.S.
 2. PERMITTED USES ON THE PROPERTY ARE MINI-WAREHOUSES AND DWELLING FOR A CARETAKER EMPLOYED AND RESIDING ON THE PREMISES.
 3. THE FRONT YARD SETBACK ALONG HIGHWAY 2 AS MEASURED FROM THE LOT LINE SHALL BE INCREASED TO 30 FEET AND BE ENTIRELY DEDICATED TO GREEN, OPEN SPACE. NO BUILDINGS, DRIVEWAYS, PARKING OR STORAGE ARE ALLOWED IN THIS AREA. ALL TREES AND BURLIPS ALONG THE HIGHWAY 2 FRONTAGE SHALL BE PLANTED AT LEAST 12 BACK FROM THE CURRENT FRONT OF WAY.
 4. MINIMUM SCREENING SHALL BE IN ACCORDANCE WITH DESIGN STANDARDS CHAPTER 3.01, SECTION 7A. EXCEPT STREET TREES SHALL BE PLANTED IN ALL FRONT YARDS AT INTERVALS OF APPROXIMATELY EVERY 60 FEET AND INCLUDING AT LEAST THREE LARGE MINIMUM 8 FEET TALL AT MATURITY) BURLIPS BETWEEN TREES.
 5. SECURITY OR PERIMETER FENCING IS REQUIRED AND SHALL CONSIST OF WROUGHT IRON FENCE, AND/OR MASONRY WALL USING ARCHITECTURAL CONCRETE OR COLUMNS.
 6. NO STORAGE BAY DOORS SHALL FACE EITHER HIGHWAY 2 OR FIRST STREET, UNLESS THE DOORS ARE EFFECTIVELY SCREENED FROM STREET VIEW BY THE MASONRY WALL OR EVERGREEN PLANTINGS.

Civil Design Group, Inc.
 808 EXECUTIVE WOODS DRIVE, SUITE 200
 LINCOLN, NE 68505
 PH: 402-434-8484 FAX: 402-434-8747
 www.cdfg.com

NO.	DATE	DESCRIPTION

NO.	DATE	DESCRIPTION

REVISIONS

PORTSCHE STORAGE UNITS

SITE PLAN

LINCOLN, NEBRASKA

SHEET 1 OF 1

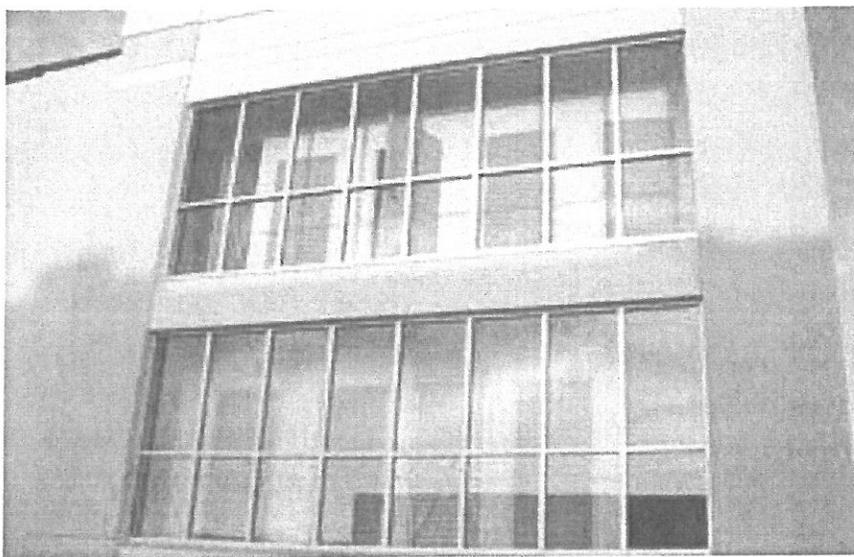
DEVELOPER
 US PROPERTY
 120 N. 16TH STREET
 LINCOLN, NE 68505
 402-400-4128

PROPERTY OWNER
 SILVER OFFICES - CARVIEW, LLC
 PO BOX 6800
 LINCOLN, NE 68505

ENGINEER
 CIVIL DESIGN GROUP, INC.
 808 EXECUTIVE WOODS DRIVE
 SUITE 200
 LINCOLN, NE 68512
 (402) 434-8484



CONCEPT



CONCEPT



CONCEPT

From: Jean Preister
Sent: Thursday, January 09, 2014 9:32 AM
To: Jean Preister
Subject: Opposition: Change of zone No. 13029 and Special Permit No. 13060

From: Laura Thelen [<mailto:laurajthelen@gmail.com>]
Sent: Wednesday, January 08, 2014 12:16 PM
To: Brian Will
Subject: Change of zone- no. 13060

My name is Laura Thelen and my husband Joedy and I live at 7900 Portsche Lane. We are extremely concerned about the proposed change of zone project in our neighborhood for a number of reasons.

1. Increased potential for crime- disturbing the peace, littering, etc.
2. Decreased value of our homes
3. Access to the proposed projects- There is already plenty of traffic on to Pine lake and either proposed option would cause a traffic problem.
4. There is so much beauty in this area and I feel that either proposed project would be a complete "eye sore" to those entering our city.

My husband and I are completely opposed to either of these projects and hope they are denied the change of zone and special permit at this location. Thank you so much for your time and consideration.

With Regards,
Laura and Joedy Thelen