

FACTSHEET

TITLE: CHANGE OF ZONE NO. 15025
R-4 Residential to R-5 Residential -
(241 North 44th Street)

BOARD/COMMITTEE: Planning Commission

APPLICANT: The Clark Enersen Partners
on behalf of Wyuka Cemetery

RECOMMENDATION: Approval: 6-0 (Cornelius, Corr,
Hove, Lust, Beecham and Harris voting 'yes'; Scheer
declared a conflict of interest; Sunderman and
Weber absent).

STAFF RECOMMENDATION:
Approval.

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: None present.

REASON FOR LEGISLATION: Request for change of zone from R-4 Residential District to R-5 Residential to allow for the development of additional residential units.

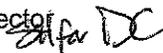
DISCUSSION / FINDINGS OF FACT:

1. This change of zone request was heard before the Planning Commission on September 2, 2015.
2. The purpose of this change of zone is to rezone the Tanglewood Apartment complex from R-4 Residential District to R-5 Residential District. The apartments were approved in a Community Unit Plan for up to 528 dwelling units. A total of 458 units have been built. The land within the Community Unit Plan includes open space to the north that is owned by Wyuka Cemetery. Wyuka would like to sell the undeveloped land for additional residential development. The change of zone is needed in order to maintain the number of units that have been built in the Tanglewood Apartment complex.
3. The staff recommendation to approve the change of zone request is based upon the "Analysis" as set forth on p.3-4, concluding that this residential property is located on the edge of a commercial area and adjacent to Wyuka Cemetery. The R-5 zoning district is consistent with the 2040 Future Land Use Plan, which shows this area as urban residential. The proposed change of zone is consistent with the zoning pattern in the area and is in conformance with the Comprehensive Plan.
4. The applicant's testimony is found on p.7-8.
5. On September 2, 2015, the Planning Commission also voted 6-0 to recommend approval.

FACTSHEET PREPARED BY: Geri Rorabaugh, Administrative Officer

DATE: September 4, 2015

REVIEWED BY: David R. Cary, Acting Planning Director



DATE: September 4, 2015

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LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT
for September 2, 2015 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No. 15025

PROPOSAL: From R-4 Residential to R-5 Residential

LOCATION: N. 44th Street and R Street

LAND AREA: 23.72 acres, more or less

EXISTING ZONING: R-4, Residential

CONCLUSION: This residential property is located on the edge of a commercial area and adjacent to Wyuka Cemetery. The R-5 zoning district is consistent with the 2040 Future Land Use Plan which shows this area as urban residential. The proposed change of zone is consistent with the zoning pattern in the area and is in conformance with the Comprehensive Plan.

RECOMMENDATION:	Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lots 1 and 2 and Outlot B, Wyuka Subdivision, Lincoln, Lancaster County, Nebraska.

EXISTING LAND USE: Multi-Family Dwellings

SURROUNDING LAND USE AND ZONING:

North: Detention Pond/Undeveloped; R-4
South: Funeral Home; H-2
East: Offices/Retail; O-3, P and B-3
West: Wyuka Cemetery; P

ASSOCIATED APPLICATIONS:

SP15043 Special Permit for a Community Unit Plan for 193 dwelling units on Outlot A, Wyuka 2nd Addition

SP673A Special Permit amendment to relocate the broadcast radio tower

AA15066 Administrative Amendment to revise the Tanglewood Community Unit Plan boundary

HISTORY: This property was rezoned from A-2, Residential to R-4 Residential with the 1979 zoning update.

- December 1990 The City Council approved Special Permit 1382 to construct a community unit plan for a maximum of 528 dwelling units.
- August 1991 The City Council approved Special Permit 1382A to transfer 26 units from Lot 3 to Lot 2.
- December 1994 The City Council approved Special Permit 1382B to remove 7.3 acres of land from the community unit plan for office uses.

COMPREHENSIVE PLAN SPECIFICATIONS:

P. 1.6 - Approximately 16% of new dwelling units will be built within the existing City, with about 3,000 in the Downtown and Antelope Valley areas, 1,000 in existing neighborhoods, and 4,000 in mixed use redevelopment nodes and corridors.

P. 7.6 - Encourage apartments and special needs housing near commercial areas and along arterials.

P. 7.8 - Develop new design standards that encourage density, optimize infrastructure costs, and help lower the overall cost of property development.

P. 7.11 - Encourage additional density of apartment complexes and special needs housing on open adjacent land areas.

ANALYSIS:

1. This is a request to rezone the Tanglewood Apartment complex from R-4 Residential to R-5 Residential. The apartments were approved in a community unit plan for up to 528 dwelling units. A total of 458 units have been built. The land within the Community Unit Plan (CUP) includes open space to the north that is owned by Wyuka Cemetery. Wyuka would like to sell the undeveloped land for additional residential development.
2. The original Tanglewood CUP boundary was approximately 45 acres including the vacant land and the detention pond to the north. Reducing the size of the Tanglewood CUP and maintaining R-4 zoning would only allow for 330 dwelling units. Since 458 units are built, the change of zone is necessary to maintain zoning compliance.

Rezoning the property to R-5 would allow for a maximum of 688 dwelling units. The applicant is not asking for additional dwelling units with this application. The previously approved number of dwelling units (528) will remain in effect. This development is still approved for 70 additional dwelling units.

3. R-5 zoning is appropriate at this location. This property is located between O-3 Office Park District and B-3 Commercial District on the east and the Wyuka Cemetery on the west. This zoning and land use pattern is similar to the Lion's Gate

Apartments located east of N. 48th Street. The Lion's Gate Apartment complex is located between commercial zoning and a school, and it is zoned R-5.

4. The Comprehensive Plan supports additional density of apartment complexes and states that apartments are appropriate near commercial areas and along arterial streets. Rezoning the Tanglewood Apartments to R-5 will allow additional residential development to occur to the north which is supported by the Comprehensive Plan. This rezoning does not change the number of approved dwellings units in the Tanglewood CUP and should not have a negative impact on surrounding properties.

Prepared by:

Paul Barnes, Planner
402-441-6372
pbarnes@lincoln.ne.gov

DATE: August 20, 2015

APPLICANT: The Clark Enersen Partners
1010 Lincoln Mall, Suite 200
Lincoln, NE 68508

OWNER: The Slosburg Company
10040 Regency Circle, Suite 200
Omaha, NE 68114

CONTACT: Tim Gergen
1010 Lincoln Mall, Suite 200
Lincoln, NE 68508

Corr asked for clarification that the developer still could not go beyond the 528 units previously approved, even though the zone is changing to R-5. Barnes said that is correct. They would have to amend the CUP and specifically ask for an increase in density.

Lust asked if they had already exceeded the density of the R-4. Barnes said if the boundary of the CUP were decreased without a change of zone, 480 units would exceed the R-4 density.

Corr clarified that a piece of the land is being removed from the equation. Barnes said they used an unbuilt piece of land to calculate the original density. By decreasing the land area, it decreases the number of units allowed.

Beecham asked and they are decreasing the land area to allow for the separate CUP. Barnes said that is correct. Beecham went on to ask if there is a parking lot along the west boundary, adjacent to the cemetery. Barnes said yes, there are garages and drive aisles. The apartment and the cemetery share the western boundary. She asked if there are roads and trails connected to the cemetery. Corr stated she also thought there was a trail along 42nd Street. Barnes said there is a walkway contained within the CUP.

Henrichsen approached to clarify location of boundaries and existing buildings and features.

Beech asked if there has been any discussion of having a link between the two, since Wyuka was historically designed to be a park and is a beautiful green space. Barnes said that he is not aware of discussions of that nature.

Barnes went on to discuss the relocation of the radio broadcast tower. There is currently a 500-foot tower that impacts a much larger area than its footprint due to the guide wires and fall zone. The intent is to relocate the tower closer to the detention pond where it will be approximately 330 feet in height, less obtrusive, and have less impact to the site and surrounding areas. This was discussed by the Historic Preservation Commission who agreed that the new tower location provided separation and had minimal impact to the historic elements of the nearby cemetery.

Barnes explained the memorandum that revises the staff report to remove the requirement for surety for removal of the tower. He explained that all types of towers are lumped into the regulations for cellular towers. Those requirements are different when applied to a radio broadcast tower, which are less frequent. Due to the tower size, the long term nature of it, and the impact to otherwise developable land, staff is willing to support waiving the surety.

Lust asked how the salvage value of the tower differs from that of a cellular tower. Brian Will of Planning Staff came forward. He said that salvage value does not factor in here. This particular tower encumbers so much of this site, compared to a cell tower that can be relatively more tucked away. The likelihood of the tower remaining on the site unused is remote.

Lust asked for clarification about the “incentives” that prevent a tower from remaining abandoned on a site and how that plays into waiving the requirement for surety. Will replied that there are numerous factors that come together and one is the potential salvage value.

Will stated that cellular towers are relatively new and are treated somewhat differently from other towers. They are usually on leased property and there are many of them, so the requirement to consider ways to guarantee removal is important. Radio broadcast towers are reviewed under the same guidelines as cell towers, but not all of the same requirements are not necessarily applicable. In this case, this is a very long-term tower and the chance that it would not be salvaged is remote, so for a bond to be carried for such a long period of time does not seem like a reasonable requirement in this case.

Lust stated that the cell tower people could make the same argument. Harris asked for clarity if posting a surety for a broadcast tower is not a requirement. Will referenced Chapter 27.68 for Personal Wireless Facilities, stating that it is a requirement. He further explained that this is a special permit for a broadcast tower, which is reviewed under the same provisions, but not all aspects of it apply. There is a distinction between the towers.

Hove asked if other broadcast towers in Lincoln have a surety. Will said no. They are so rare and he is not aware of one that has been adopted since the new regulations were adopted in 2000. Harris asked if this was setting a precedent. Will said he does not believe that. Each one is reviewed case by case and stands on its own merits and has its own rationale for approval or denial. What we laid out in this case may not apply for the next one that comes before this body.

Lust asked if since 27.68 was adopted, if this is the first broadcast tower that has been reviewed under the new regulations. Will said yes. Lust went on to say that this is the first time anyone would have even been asked to put up a surety. Will agreed, with a qualification that it applies to the large towers.

Corr asked for an example of another tower similar to this one in town. Will said there is one north of 29th and Cornhusker Highway. There are not that many of them around.

Harris wondered what the requirement for screening would have been if there was a recommendation for that. Barnes said that for smaller towers, there is screening around the base of the tower to conceal other associated equipment near the base. The scale of this tower is so much larger so that requirement was waived because screening would have minimal impact.

Corr asked for clarification on Page 16, #2 of the staff report in terms of the development being approved for 70 additional dwelling units. Barnes said 458 units are existing today and they were approved for 528, so the 70 is the difference. Corr said she was using the 688 figure, which is the maximum under the R-5 zoning.

Tim Gergen of Clark Enersen Partners came forward on behalf of the applicant. Gergen stated that in two weeks more details will be presented as the site plan for the CUP comes forward. The change of zone is really a mathematical equation to work through since the

land area is being reduced. Without the change of zone, the development is just about at the allowed density even with the land taken out of the equation. The land owner of Tanglewood is very much in support of the proposal and enjoys great success with the existing apartments.

Mark Hunzeker of Baylor Evnen came forward on behalf of the tower owners. Hunzeker indicated that the tower height is being reduced by about 40% and they are moving it farther away from streets and neighbors. This tower has been on this location for almost 60 years. The original permit was approved in 1956. This is a long-term facility, and AM broadcast facilities do not have much flexibility to move around because they are susceptible to interference and signal overlap, so the locations are relatively permanent. AM broadcast signals have also not changed dramatically in terms of technology. If this ever becomes obsolete, the lease provisions take care of it. Even in the event of some unforeseen situation, the land owner will have lots of incentive to remove it. The waiver of the surety is justified.

Proponents:

Leon Kilmer, 1531 Kingston Road and Owner of neighboring business, Paws for Fun, came forward in support for the change of zone. There is no issue with the expansion of pet friendly apartments so nearby.

ACTION BY PLANNING COMMISSION:

September 2, 2015

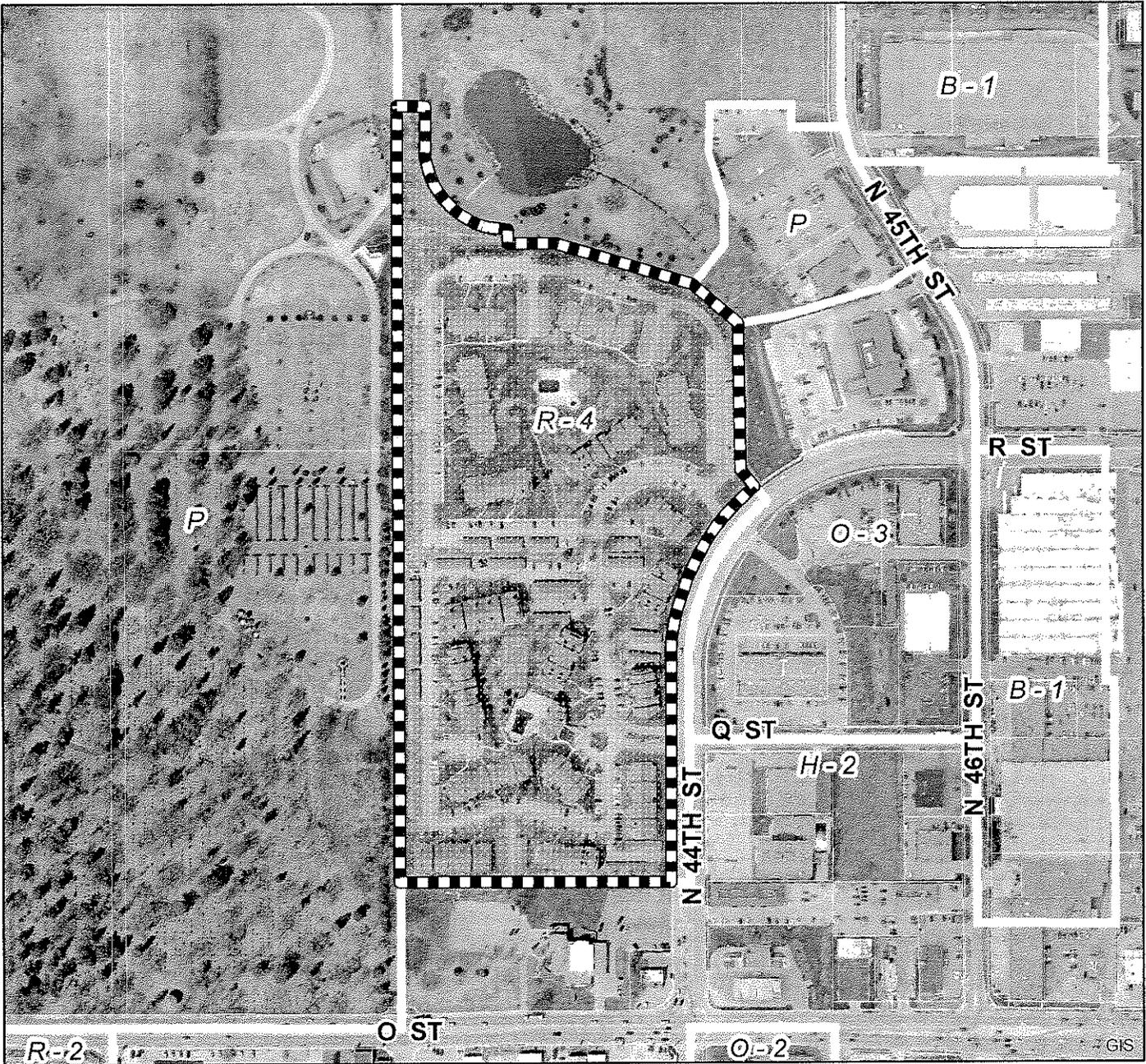
**CHANGE OF ZONE NO. 15025
FROM R-4 RESIDENTIAL TO R-5 RESIDENTIAL,
ON PROPERTY GENERALLY LOCATED AT
241 NORTH 44TH STREET.**

Corr moved approval, seconded by Lust.

Corr said she thinks the change of zone will have a very minimal effect considering it is bordered by the cemetery on one side and commercial on the other.

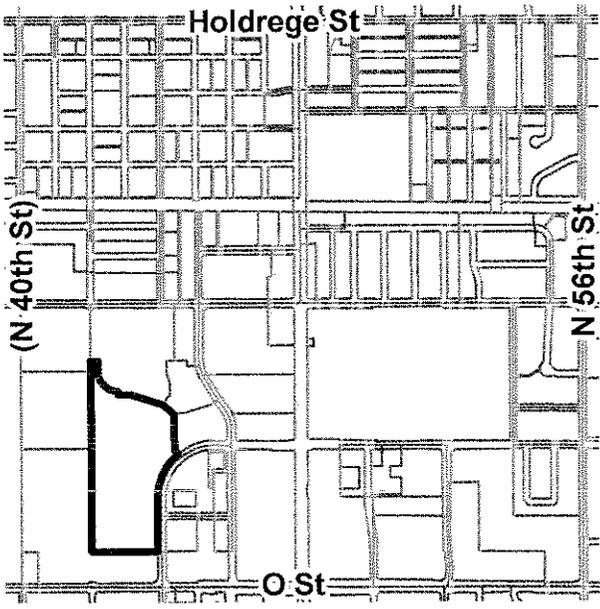
Hove agrees this is the right thing to do at this site.

Motion carried 6-0: Scheer declared a conflict of interest; Sunderman and Weber absent.



2013 aerial

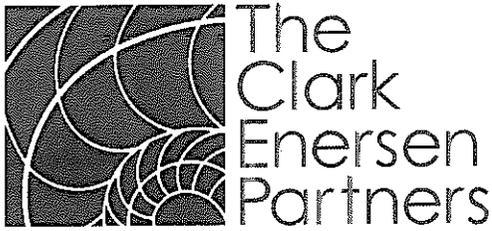
**Change of Zone #: CZ15025 (R-4 to R-5)
N 44th & R St**



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.20 T10N R07E**



July 30, 2015

Mr. David Cary
Planning Department, City of Lincoln
County-City Building
555 So. 10th Street
Lincoln, NE 68508

RE: Change of Zone and Administrative Amendment to the Tanglewood CUP

Dear Mr. Cary:

Enclosed please find the following for the above-mentioned project:

1. Change of Zone/Admin. Amendment Application
2. Change of Zone/Admin. Amendment fee (\$792.00+\$165.00 = \$957.00)
3. CUP Site Plan

We are requesting an Administrative Amendment to revise the boundary of the existing Tanglewood Apartment Community Unit Plan to remove Outlot A, Wyuka 2nd Addition as well as request a change of zone from R-4 to R-5 for the Tanglewood CUP, Lots 1-2, Outlot B, Wyuka Subdivision. The revised Site Plan has been included to show the new CUP boundary. The existing site plan and residential density will remain the same.

A concurrent application has been submitted for a new CUP on Outlot A as well as a concurrent application has been submitted to relocate the existing radio broadcast tower within Outlot A.

Please contact me if you have any questions or require additional information.

Sincerely,

Tim Gergen

cc: Wyuka Cemetery
The Slosburg Company

Architecture + Landscape Architecture + Engineering + Interiors

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