

City Council Introduction: September 14, 2015
Public Hearing: September 21, 2015

Bill No. 15-121

FACTSHEET

TITLE: CHANGE OF ZONE NO. 15024
R-4 Residential to H-3 Highway Commercial -
(Southwest 1st Street and West L Street)

BOARD/COMMITTEE: Planning Commission

APPLICANT: Derek Zimmerman on behalf
of William Schwartzkopf/Edward
Schwartzkopf Qtip Marital Deduction Trust

RECOMMENDATION: Approval, Subject to a Zoning
Agreement: 6-1, (Cornelius, Corr, Hove, Lust, Scheer,
Harris voting 'yes'; Beecham dissenting; Sunderman and
Weber absent).

STAFF RECOMMENDATION:
Approval, subject to a Zoning Agreement.

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: 2.

REASON FOR LEGISLATION: Request for change of zone from R-4 Residential District to H-3 Highway Commercial District on property located southeast of Southwest 1st Street and West L Street.

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 from R-4 Residential District to H-3 Highway Commercial District to allow use of the property by TCW Construction Inc. for outdoor storage of construction vehicles and equipment.
3. The staff recommendation to approve the change of zone request is based upon the "Analysis" as set forth on p.4-5, concluding that the existing property, though zoned residentially, is already permitted to have a commercial storage garage by a previous approval of a special permit for a nonconforming use. The entire block is dominated by the existing concrete business and industrial zoning, except for the small Schwartzkopf Park. It is difficult to consider this property redeveloping into any residential use given the character of S.W. 1st Street. The change of zone to H-3 commercial zoning, with certain conditions, is in keeping with the industrial character of S.W. 1st Street and should address some of the impacts on adjacent uses to the east and the City park. It does not address significant issues regarding transportation and land use conflicts in this area that need to be resolved in the future. Staff is recommending approval, subject to a Zoning Agreement, See Exhibit A, p.14-17.
4. The applicant's testimony is found on p.9-10, and the applicant's response to the opposition is found on p.12.
5. Testimony in opposition is found on p.10-11.
6. On September 2, 2015, the Planning Commission also voted 6-1 to recommend approval, subject to a Zoning Agreement.

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 2nd, 2015 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone #15024

PROPOSAL: From R-4 Residential H-3 Highway Commercial

LOCATION: Generally east of S. W. 1st Street and south of West L Street.

LAND AREA: 0.76 acres more or less

EXISTING ZONING: R-4 Residential

CONCLUSION: The existing property, though zoned residentially, is permitted to have a commercial storage garage. The entire block is dominated by the existing concrete business and industrial zoning, except for the small Schwartzkopf Park. It is difficult to consider this property redeveloping into any residential use given the character of S. W. 1st Street. The change of zone to H-3 commercial zoning, with certain conditions, is in keeping with the industrial character of S. W. 1st Street and should address some of the impacts on adjacent uses to the east and the City park. It does not address significant issues regarding transportation and land use conflicts in this area that need to be resolved in the future.

<u>RECOMMENDATION:</u>	Approval, subject to a zoning agreement.
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 36- 46, Block 1, Boyer and Davis Subdivision and the north 8 feet of vacated alley adjacent to Lot 36, located in the NE 1/4 of Section 27-10-6, Lincoln, Lancaster County, Nebraska.

EXISTING LAND USE: Storage garage allowed by special permit and vacant undeveloped land.

SURROUNDING LAND USE AND ZONING:

There is I-1 Industrial zoning and commercial/industrial uses to the west and south. The Burlington Northern railroad is also to the south and Salt Creek is to the west. To the east is R-4 Residential zoning and single family uses with R-4 zoning of Schwartzkopf Park to the north.

HISTORY: The 1979 Zoning update re-zoned properties along S. W. 1st Street from Two Family Dwelling District, Light Industrial district, Heavy Industrial District to I-1 Industrial and R-4 Residential.

In August 1984 the City Council approved Special Permit #1100. It allowed for Lots 40-46, Block 1, Boyers & Davis subdivision (the northern two-thirds of this change of zone) to be used to “reconstruct and enlarge a nonconforming storage garage. The resolution stated the permit was “limited to the storage garage and no outdoor storage of vehicles, materials, or rubbish shall be permitted.”

In 2012 land on the west side of S. W. 1st Street was rezoned from R-4 Residential to I-1 Industrial along with rezoning land owned by the Lower Platte South NRD to ‘P’ Public.

COMPREHENSIVE PLAN SPECIFICATIONS:

This area proposed for P zoning is currently shown as Industrial on the future land use plan. (Page 1.8)

Industrial zoning districts should be primarily for industrial uses.(Page 5.18)

Risk Reduction: *In areas where industrial and residential uses are already close, efforts should focus on changes in the quantity and type of hazardous materials used and on increasing the distance between where hazardous materials are stored and residential districts.*

Notification: *Persons living in close proximity to businesses with hazardous materials should be notified of the hazards. Emergency Planning: Businesses and government agencies should continue to work together on developing and updating Emergency Management Plans for dealing with accidents and emergencies.*

Joint Planning: *Joint planning and health efforts should continue between the Board of Health and Planning Commission. The specific objectives and recommendations already developed should be further reviewed and implemented.(Page 5.18)*

UTILITIES: Existing

TRAFFIC ANALYSIS: S. W. 1st Street is a local street and is unpaved. The adjacent alley is also unpaved and is not in use adjacent to the southern portion of this change of zone. The alley has been used in the past to access the storage garage which has two garage doors facing the alley.

REGIONAL ISSUES:

This property is within the boundaries of the South Bottoms Historic District. It has been listed on the National Register since 1986. At that time this property and a few other residences on this block formed the northwest corner of the historic district. All but one of residences on S. W. 1st Street, north of Rosa Parks Way, have since been removed and causing this street to lose its ability to contribute to the understanding of the historic residential area. This property has had a storage garage on it for over 30 years.

This area is within the Outer Approach zone to Runway 32. Any structures proposed for this area must meet the requirements of Chapter 27.59 Airport Zoning Regulations regarding height.

ENVIRONMENTAL CONCERNS: The property is entirely in the 100 year floodplain.

ANALYSIS:

1. This request is to allow use of the property by TCW Construction Inc. for outdoor storage of construction vehicles and equipment. The existing storage building on the site could be used for indoor storage, but the applicant also wants outdoor storage.
2. The northern portion of this change of zone is occupied by a storage garage that was permitted by Special Permit #1100 in 1984. The landowner at that time was a legal nonconforming use which was storing garbage trucks in an older building and had considerable scrap metal and lumber stored outdoors. The special permit allowed for the demolition of the old building and construction of the new garage on the condition that all the outdoor storage be removed and only indoor storage was allowed. The applicant in 1984 sold the property to the current owner in 1992. It appears this building has been used for storage since it was purchased in 1992. It appears it may have been used for many years as personal storage with minimal trips in and out of the property.
3. Recently the applicant began to use the property for outdoor storage, which is not allowed. Thus, the applicant is requesting to change the zoning to allow the outdoor storage.
4. The applicant set up a neighborhood meeting for August 26th to review the proposal with the adjacent property owners and neighborhood association. This meeting is after the completion of this staff report.
5. There is I-1 industrial zoning to the west and south of this property. To the north is Schwartzkopf Park. On S. W. 1st Street from West L to West J Street, there aren't any residential uses in residential zoning left on the block. There is one house, zoned I-1, on the west side of the street. It was rezoned from R-4 to I-1 Industrial in 2012 with the intent that it would be eventually purchased and used by the concrete and construction business once the occupant moved out.
6. Since the construction company uses and owns most of land on this block and since the street is not paved, the construction use is the predominate use of the entire block, except for the small neighborhood park.
7. The Lincoln-Lancaster County Health Department does not object to the approval of this application. The proposal doesn't expand the I-1 zoning closer to the residential uses to the east.
8. The area from S. W. 1st to S. 2nd Street from J to L Street includes approximately two and half blocks of residential uses. It is surrounded on all side by I-1 Industrial zoning and industrial uses. There are busy railroad tracks to the south and Salt Creek to the west. The entire area is in the floodplain and a significant portion of the site was flooded in May 2015.
9. The access to this area is primarily from O Street to the north, due to the railroad tracks to the east and south and Salt Creek to the west. Thus, commercial traffic to S. W. 1st Street has limited options to reach the site. While 2nd Street and J Street area options to reach the commercial area, the shortest route is down S. 1st Street and West L Street. The construction company today uses West L Street and S. 1st Street to access their operations along S. W. 1st Street. The also enter and exit at J Street and proceed along S. 1st Street past several houses on the way to O Street. This brings the heavy commercial and industrial traffic past residential uses and the park.

10. West L Street has only 32 feet of right-of-way and is an unpaved street. The edge of the "road" is within several feet of the house to the north and the park land to the south. Thus, there is impact on the adjacent park and residence from dust from the commercial traffic using the narrow roadway. The street is public, thus it is legal for the commercial traffic to use this street.
11. This change of zone will potentially add to the traffic on West L Street. While the intended use of the site is indoor and outdoor storage, it does allow other parts of the concrete business zoned I-1 Industrial to be used more intensively which could increase traffic on the unpaved West L Street.
12. The change of zone to H-3 will facilitate the eventual conversion of the property to commercial use which is similar to the land use pattern on this block. However, the H-3 zoning doesn't address a few items in regards to the use of the property. Thus, the City and applicant have worked on a zoning agreement to accompany the change of zone. The draft agreement (see Exhibit A) requires the following:
 - a. Provide a 20 foot wide green space buffer on the entire east side of the property. The buffer must include at least a 60% screen to 10 feet in height. The existing tree mass within the 20 foot wide area is to be preserved and may be counted as part of the required screen. The screen is to be installed by June 1, 2016.
 - b. Agree the site will be used only for outdoor storage or for contractor services storage.
 - c. Agree to not take access from the alley.
 - d. Provide an 8 foot black vinyl clad chain link fence with slats on the north property line adjacent to the park. Applicant will also address drainage concerns on the property adjoining the park to the satisfaction of the Director of the Parks and Recreation Department. The fence is to be installed by June 1, 2016.
 - e. Conditions a, b and c shall remain in effect as long as the properties to the east, adjacent to the alley, are in the R-1 to R-8 zoning districts.
13. The applicant has expressed interest in eventually vacating S. W. 1st Street from West L Street to West J Street so that their various commercial properties could function as one lot. This would require a street vacation and platting the various lots into one larger lot.
14. The applicant has agreed to address the paving of West L Street from S. W. 1st to S. 1st Street at the time S. W. 1st Street is vacated. The paving of West L Street will help address the dust impact onto the adjacent park and residences. However, paving West L Street will not address the impact of traffic noise and vibration on the adjacent properties. It will also not address concerns about commercial traffic going through the residential neighborhood.

Prepared by: Stephen Henrichsen, Development Review Manager
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DATE: August 24, 2015

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OWNER: Edward Schwartzkopf Qtip Martial Deduction Trust
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P. O. Box 81667
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CHANGE OF ZONE NO. 15024

CHANGE OF ZONE NO. 15024

FROM R-4 RESIDENTIAL TO H-3 HIGHWAY COMMERCIAL,

ON PROPERTY GENERALLY LOCATED

SE OF SW 1ST STREET AND WEST L STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 2, 2015

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

Staff recommendation: Approval, Subject to a Zoning Agreement.

There were no ex parte communications disclosed.

Staff Presentation: **Steve Henrichsen of Planning Staff** reviewed the boundaries of this change of zone which include Salt Creek to the west, a very active Burlington Northern railroad line to the south and southeast, and Cook Foods to the east. In this area, there is a pocket of R-4 Residential that is surrounded by I-1 zoning. This is not a typical zoning pattern, but it has historically been in place for decades. Husker Concrete is to the north. On the west side of SW 1st, there are general contractor and construction company yard uses. There is one existing house on the west side that was previously zoned R-4, and is now I-1, at the request of the property owner. On the east of SW 1st is existing I-1 zoning there are also construction uses and Schwartzkopf Park is also nearby. This request is to remove an existing storage building from the site and to rezone to Highway-Commercial.

In 1984, a special permit for the existing nonconforming storage garage was approved with the condition that there be no outdoor storage. It was used for the storage of garbage service trucks. Though the property is currently R-4, there are no residences in use. The building is accessed via a platted alley at the northern end of the property and two garage doors that face to the east. The southern end has trees and is not in use.

Immediately to the east of this area is a row of houses that are zoned R-4. SW 1st and W. L Streets are not paved but are a combination of dirt and rock. Because SW 1st can only be accessed through West J Street or L Street, much of the commercial traffic has to come down S. 1st Street and turn on to L Street to enter the area because there are only two ways in and the route to the south is often blocked by trains.

Given the character of the SW 1st Street, the Planning staff recommendation is that this area be rezoned to the requested H-3, subject to a zoning agreement which eliminates most of the more intensive uses that might have been allowed in this zoning district. It also requires an appropriate buffer to the residences to the east. Parks Department asked for an 8-foot black chainlink fence with slats to discourage climbing and because, while it will be the applicant's fence, Parks may be the ones who would have to deal with graffiti.

Another condition is for a 20-foot green buffer on the east and for the alley to remain for use by the residents. The applicant would have to create their own access to the west. This is to avoid a mix of commercial and residential traffic on the alley. The indoor storage use is legally allowed to use the alley now.

Planning Department received a call from Steve Larrick, South Salt Creek Community Organization, requesting this item be delayed two more weeks so that their association can have additional time to review the application and present more information to Commissioners in the future. It was asked to make his request via email so there is a written record, but as of this meeting, that was not received.

Beecham asked if there are other areas in town where highway zoning abuts residential zoning. Henrichsen said the City tries to limit residential zoning against the I-1 zone, but there are historical areas where that has taken place. There are many residential areas against highway zones. For example, much of O Street is zoned H-2 or H-3 and there is residential just south of those areas.

Beecham asked why a change of zone was pursued rather than an amendment to the existing special permit. Henrichsen indicated that the existing special permit was for particular uses. This new application requests a change in uses to outdoor storage and contractor yard. It is cleaner to do a change of zone than to amend the existing permit, but that could have been an option to consider. Beecham wondered if the change of zone opens up the property to other uses besides outdoor storage that it currently does not have under the current zoning. Henrichsen said that would be true if not for the zoning agreement. The second condition of the agreement limits the use to only outdoor storage or contractor services. Beecham asked about the process for making any change to the zoning agreement. Henrichsen said it would come back through the process, with final approval by the City Council. That is the process for changing any zoning agreement.

Lust asked for clarification about the location of the fence. Henrichsen said it is along the east and north side. At the southern end of the east side, there is an option to save existing trees to be used as the required screening. Lust asked if that area may not have a fence. Henrichsen replied that the requirement is that the entire east side have a 20-foot green space not used for storage and a 60% screen up to 10-feet high. In other words, that can be accomplished with landscaping or a fence. On the northern side, it probably needs the fence to accomplish that. Lust asked if the area to the north that borders that park requires a fence. Henrichsen said that was a specific requirement of Parks Department.

Corr asked if the fence on the northeast corner will prohibit the applicant from driving in and using it as access. Henrichsen said that is correct. There are two conditions: the screening and that they cannot take access through the alley.

Corr wondered why the park is not zoned P-Public. Henrichsen said that public areas are usually zoned P. That came into effect in 1979. The City does not necessarily have to rezone properties so some that came into existence after 1979 retained their old zoning.

Corr asked if it was public zoning would make any difference with this application. Henrichsen indicated no, the screening is requested because it is a park, not because of the zoning of the property.

Corr asked if the H-3 zoning was selected because it is more restrictive and it doesn't allow heavy uses as the I-1. Henrichsen said that while the zoning agreement is getting this property down to just two uses, it was also appropriate to have H-3 adjacent to the I-1. The intent is that it can be used for some commercial uses like the surrounding area, but not heavier industrial uses so close to the houses to the east. It is a difficult area because already in existence, there are two very different uses from one block to the next. Corr asked if the R-T zone could have worked. Henrichsen said that is mainly for office type uses and the contractor uses requested would not have been allowed.

Beecham asked Henrichsen to address the traffic and if there would be an increase. Henrichsen stated that the existing company is asking for more storage space, so from their viewpoint today, they don't anticipate adding much traffic. Staff looks at the bigger picture. When a company has more space to store equipment, there could be more potential to add employees, or the company could be sold in the future and that could change traffic. That said, having limited the uses to contractor services and storage, that is not as intensive as other uses. This is not a high visibility location where you would expect a lot of customers. The main concern is that the primary way to access this is past the houses and the park, to get to SW 1st. It is a goal of the City to get West L Street paved so there is less dust. It is also appropriate not to have alley access because sometimes the residences to the east use that alley. Beecham said that there is no plan now for access other than along S. 1st Street. Henrichsen said the access for this property is SW 1st Street and West L Street. The concrete plant to the north takes its access much farther north of their own property.

Derek Zimmerman of Baylor Evnen Law Firm appeared on behalf of the applicant. He stated that the character of this area is not residential. The property is significantly within the flood plain. If one were to file for a building permit now, it would not be suitable for a residential structure. This property has been used for storage for many years. The applicant is committed to making improvements to the property that would otherwise never be made. They also agree to all of the many conditions. This is for storage which is a low impact, low traffic use. The alley serves as an additional buffer and the residences to the east have fences. The significant trees within the 20-foot green space buffer will also be preserved. The existing fence associated with the park to the north is so old there are trees growing into it. This will also be improved. The property will be regraded to flow away from the park, improving concerns about ponding in the park. These items are not requirements of the agreement but are extra steps being taken to improve the property which has not been maintained well up to this point. There will be disagreement about the traffic, but the applicant feels these are existing cars accessing the property. The plant is not expanding, just the contractor uses.

Lust asked why they declined the request by the neighborhood for the 2-week deferral. Zimmerman said for two reasons. First, one 2-week delay already took place for the purpose of coming up with the seven conditions of the zoning agreement. That is a fair

step by the applicant. Second, the property is under contract with deadlines to meet. Pushing it off will not be productive. A neighborhood meeting was held. Zimmerman stated he has yet to hear of anything more regarding this specific property or further conditions to add. A further delay is not justified.

Beecham asked who was invited to the neighborhood meeting. Zimmerman said the list was provided by Planning and included neighborhood representation. There was attendance at that meeting. Beecham asked for more information about the existing trees. Zimmerman clarified that the farther south you go along the east edge is where the trees are. Practically speaking, fencing will not be added where the trees are.

Corr asked what kind of modification will be made in order to access the garage from the west. Zimmerman said there is a list of priorities and the immediate concerns were how to create the buffer areas and the conditions of the zoning agreement. In the long term, the entrance will be shifted to the west but there is not a set time line for that yet. It will make it a more efficient use since it does not make sense to drive around from SW 1st Street, pull around, and access the building from the east. Corr noted the existing garage doors on the east may be lost. Zimmerman agreed that the doors will probably be moved to the west. The access is currently through the alley.

OPPONENTS:

Teri Pope-Gonzalez, 349 S. 1st Street, came forward to show the location of her house which is on the southeast corner of the block just north of the property in question. She stated that at the start of this business 16 years ago, she was not disabled, but since that time, she has suffered from the industrial uses in the area, ongoing stress, and environmental poisons. Commercial vehicles drive right by her home only seven feet away. In one day, she counted 87 commercial vehicles accessing surrounding properties, which are all the same company. Other neighbors also suffer stress and health problems and feel constantly harassed. She stated that City and County officials will go on doing these activities until these situations are in their backyards. The activities of the surrounding businesses are not only during business hours, but all day, every day of the year. She stated that her brother respectfully requests a 2-week delay so that he can appear with an attorney.

Steve Larrick, 920 S. 8th Street, came forward to state he wishes Commissioners had photos of the neighborhood before the arrival of Husker Concrete. The neighborhood has been in steady decline since their arrival and several neighbors have died of respiratory diseases. He recalled his own experience in the neighborhood and the many changes and uses that have occurred over time. There have been many issues over the years. People should be protected from industrial uses that are incompatible with residential uses. He also recommends a two week delay. There is a solid block of people living in homes. It doesn't seem appropriate to push them out.

Beecham asked Mr. Larrick if he was involved in the neighborhood meeting. He said that he was out of the country and is also battling an illness. He did not receive notification.

Corr asked if the 2-week deferral were granted, what he hoped would be accomplished in that time. Mr Larrick replied that it would be good if Ms. Pope-Gonzalez had a chance to present her case. This has been a war against the residential character part of a long term attach on the neighborhood. She has legal representation that can help her develop her testimony and collect facts and figures about what she goes through day in and day out and to speak to the concern of neighbors who are too afraid to speak.

STAFF QUESTIONS:

Beecham asked if the "H" zoning was being considered instead of "I" because there are more protections. She wondered if R-4 provided more protections. This body could decide that this area should stay residential, but overall, it is a good direction to make sure today's decision does not balloon. Henrichsen indicated that the street has I-1 zoning on the east side of street and the east third of the block. Staff was trying to find something in between the industrial and residential areas that makes it clear that a contractor type of use would be allowed. H-3 is appropriate.

Beecham asked if the part that is now industrial was originally residential and had homes been purchased and removed. She stated that her concern is what is in place to prevent the same thing from happening one block over. Henrichsen said that staff must look at this particular property and building. It has been there for quite a long time and is not a recent building like some others that were added within last five to ten years in the area. Some houses that were removed were on the northern edge and were in the I-1 Zoning. The zoning has been I-1 for quite some time, so if there were houses, it was legal to remove them.

Corr asked if the area east of 2nd Street is also I-1. Henrichsen said yes, much is owned by the railroad.

Harris asked if the zoning agreement stays with the land. Henrichsen said it was written in a general sense and not for a specific company, so if they moved or sold the property, the special permit stays with the property.

Lust asked that since this is in the floodplain, if they were to tear down the garage, if they could not get a permit to build a house. Henrichsen said that with the R-4 zoning, a home could be allowed but the builder would have to meet floodplain regulations, so you may have to lift the house several feet off the ground, even with flood insurance.

Chris Schroeder of the Health Department came forward to answer questions. Beecham asked him to address health concerns and asked if the Health Department does air and soil quality tests in this area. Schroeder said relative to Husker Concrete, they are inspected yearly. The Health Department has investigated dozens of dust and noise complaints and did not identify any violations at the time of investigations. Beecham asked him to describe how and when testing was done. Schroeder indicated that the yearly

inspection looks at the functioning of plant's ability to capture dust emissions. They also look at visible effusions of dust across the property. Beecham asked if a plant like this has different standards than other properties or residences. Schroeder said no, the health standard is the same for everyone.

APPLICANT REBUTTAL:

Zimmerman returned to the podium and stated that the Health Dept does not oppose this application and Planning recommends approval, so that shows the stance of the City with respect to the proposed use. This change of zone comes with many conditions. The property is significantly in the floodplain and has not been residential for decades. The surrounding area has been commercial for decades. This is not a new development. The property must be used and R-4 zoning is not an appropriate zone. If houses were built there, it would have the reverse effect of eliminating the transitions between the industrial and residential areas. There should not be a delay. There were several neighborhood representatives at the neighborhood meeting and letters were sent out to everyone in the required neighborhoods. Ms. Pope-Gonzalez attended the meeting and had an opportunity to speak. Another two weeks will not add any benefit to what has already been done. This application is ready to move forward.

Beecham asked for confirmation that neighborhood representation was at the neighborhood meeting. Zimmerman said that Ms. Pope Gonzalez and a few other neighbors were present.

Corr asked for clarification about the seven conditions mentioned. The staff report appears to only show five. Zimmerman stated that there are subset conditions within Item "C".

ACTION BY PLANNING COMMISSION:

September 2, 2015

Harris moved approval, seconded by Corr.

Cornelius said this proposed area is a neighborhood struggling as a residential zone in a sea of industrial zoning that has developed over a long period of time. Nothing this body does today can change that but this proposed change does make a change to how this specific property is used. There are improvements in the screening and access so the residences are more protected. Today's action is a recommendation that moves on to City Council so neighbors should organize and speak to City Council. He stated he will support the agreement due to the benefits derived from the Zoning Agreement.

Corr agreed that a 2-week deferral will not result in compromise or she would support that. There are four weeks between this meeting and City Council, who are the final decision-making body. That is ample time for the neighborhood to get their ducks in a row and figure details out. She stated that she feels for this neighborhood because of its use has changed and been chipped away at. That decision was made long ago and there are benefits to this application with the screening and access.

Harris also agreed with the sentiments expressed by Cornelius and Corr. She visited the site and does not believe it is suitable for residential purposes and probably will never be. She also sympathizes with the situation. The actions of the past cannot be reversed but the Zoning Agreement improves on the situation. She also likes the installation of the 8-foot fence so near to the playground. It could prevent kids from climbing. In general, this is the best this body can do with a bad situation.

Lust stated that she also does not believe a deferral will accomplish anything. The agreement with the proposed conditions is providing an improvement to the area, especially with alley access no longer in place. She will support this application.

Beecham stated she will not support this. It is a struggle because in terms of the change to the alley traffic, it is an improvement. She also does not think a deferral is going to bring opportunity for compromise. However, she is uncomfortable with the change of zone, even with the Zoning Agreement. By setting the opinion that this should be zoned Highway, in another five years, it becomes easy for someone to ask for the conditions to be lifted one by one based on the underlying zoning.

Scheer stated he will support the motion for the reasons previously stated.

Hove stated he will as well.

Motion carried 6-1: Beecham dissenting; Sunderman and Weber absent.

DEVELOPMENT AND CONDITIONAL ZONING AGREEMENT

This Development and Conditional Zoning Agreement ("Agreement") is hereby made and entered into this _____ day of _____, 2015, by and between William Schwartzkopf Co-Trustee, First Nebraska Trust Co., Co-Trustee of the Edward Schwartzkopf Qtip Marital Deduction Trust, and Schwartzkopf Edward Qtip Marital Deduction Trust, hereinafter referred to as "Developer", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City."

RECITALS

I.

Developer has petitioned the City for a change of zone from R-4 Residential District ("R-4") to H-3 Highway District ("H-3") upon property generally located east of Southwest 1st Street and south of West L Street and legally described as:

Lots 36-46, Block 1, Boyer and Davis Subdivision,
and the north 8 feet of the vacated alley adjacent
to Lot 36, Boyer and Davis Subdivision, Lincoln,
Lancaster County, Nebraska, (the "Property").

II.

Approval of this Change of Zone from R-4 to H-3 would allow the Developer to use the Property for a range of commercial and retail uses which would not be compatible with the surrounding neighborhood.

III.

The Developer has represented to the City that, in consideration of the City re-zoning the Property to H-3, the Developer will enter into an agreement with the City to restrict use on the Property to outdoor storage or for contractor services storage as long as the properties to the east adjacent to the vacated north/south alley are zoned residential.

IV.

The City desires an Agreement to be assured that Developer will develop the Property as represented should the Property be rezoned to H-3.

NOW THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

1. The City hereby agrees to grant Developer's petition to change the zoning map from R-4 to H-3 District on the Property.

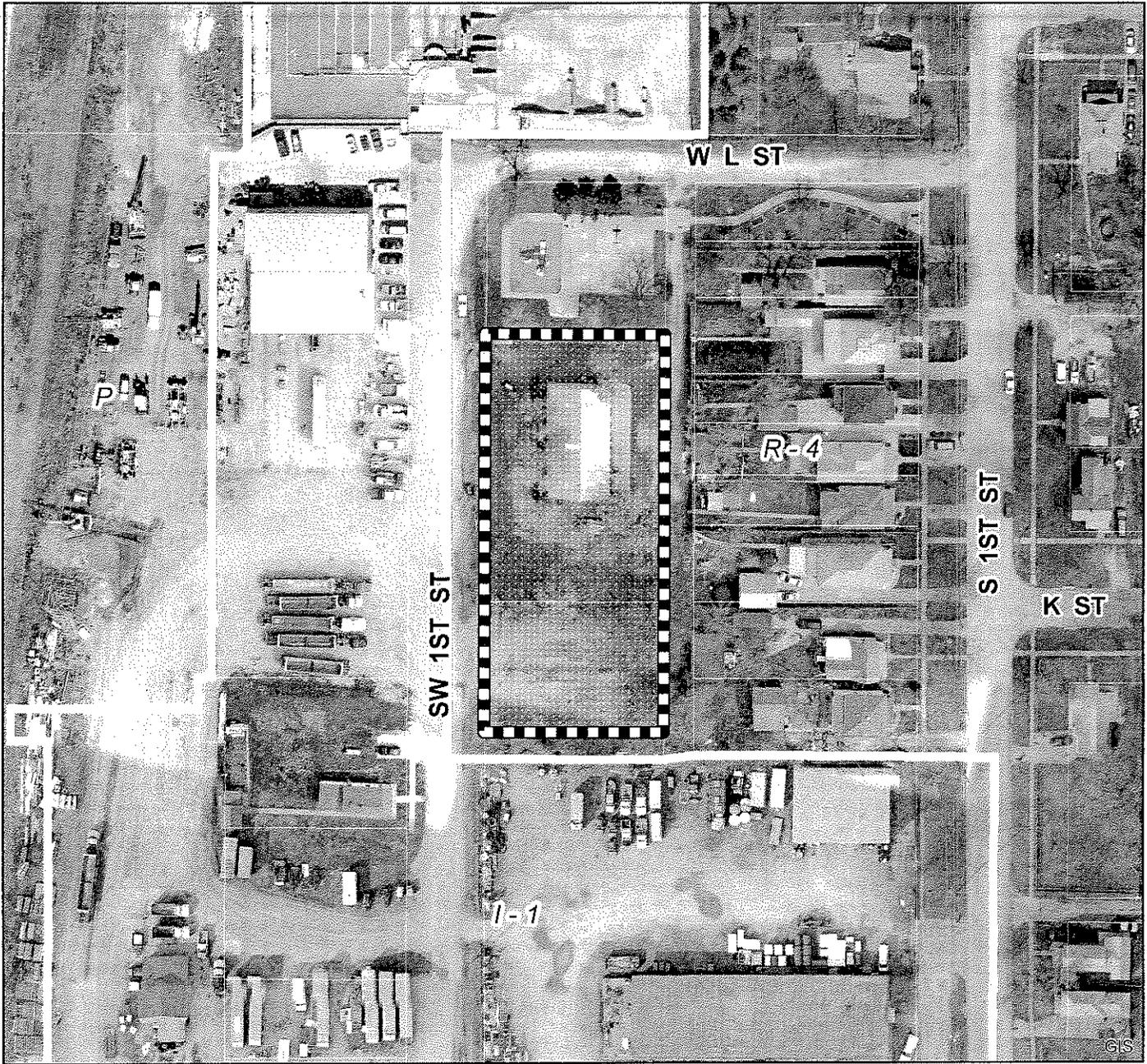
2. In consideration for the City rezoning the Property to H-3 Highway District, the Developer agrees that the development of the Property shall be subject to the following requirements:

- a. The Property shall be only used for outdoor storage or contractor services storage;
- b. There shall be no access to the Property from the abutting vacated north/south alley;
- c. The Developer shall provide a 20 foot wide green space buffer along the entire east side of the Property. The buffer must include at least a 60% screen to 10 feet in height. The existing tree mass within the 20 foot wide area is to be preserved and may be counted as part of the required screen. The screen shall be installed by June 1, 2016.
- d. The Developer shall install an 8 foot black vinyl clad chain link fence with slats along the north property line of the Property adjacent to Schwartzkopf Park. The fence is to be installed by June 1, 2016.
- e. The Developer will address drainage concerns on the Property causing water to pond on Schwartzkopf Park to the satisfaction of the Director of the Parks and Recreation Department.

3. Conditions 2.a, 2.b, and 2.c shall remain in effect so long as the properties to the east of the vacated north/south alley in said Block 1 (Lots 1-15, Block 1, Boyer and Davis Subdivision), are zoned residential (i.e. R-1 through R-8 Residential District).

4. This Agreement shall run with the Property and shall be binding upon the parties hereto and their respective successors and assigns.

5. This Agreement, when executed by the parties hereto, shall be recorded by the City in the office of the Register of Deeds of Lancaster County, Nebraska, filling fees to be paid by Developer.



2013 aerial

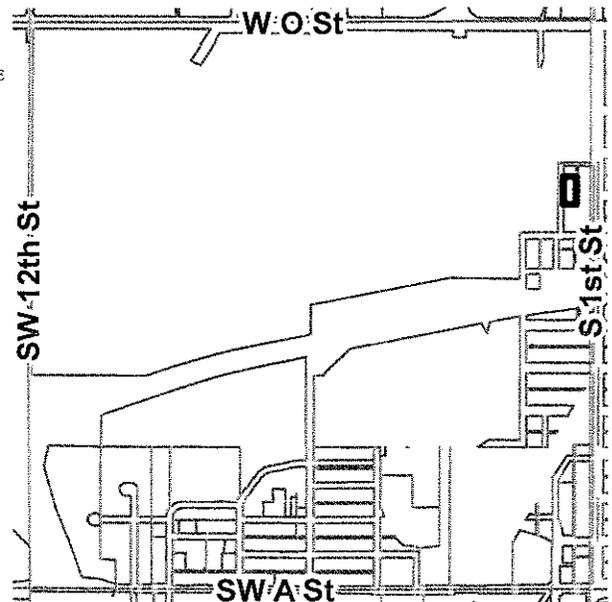
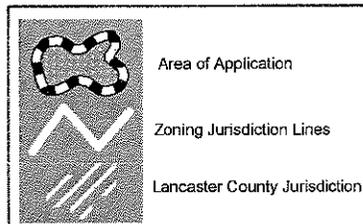
**Change of Zone #: CZ15024 (R-4 to H-3)
SW 1st St & W L St**



Zoning:

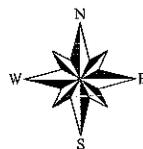
- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial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

**One Square Mile:
Sec.27 T10N R06E**





Vicinity Map - Change of Zone 15024 (R-4 to H-3)



2013 aerial

	Area of Application
	Zoning Jurisdiction Lines
	Lancaster County Jurisdiction



RANDALL L. GOYETTE*
STEPHEN S. GEALY
GAIL S. PERRY
DALLAS D. JONES
JILL GRADWOHL SCHROEDER
DAVID A. DUDLEY
BRENDA S. SPILKER
MARK A. HUNZEKER
WILLIAM G. BLAKE
PETER W. KATT

WILLIAM F. AUSTIN
DARLA S. IDEUS
JARROD S. BOITNOTT
TIMOTHY E. CLARKE*
ANDREW M. LOUDON
CHRISTINA L. BALL**
JENNY L. PANKO
CAROLINE M. WESTERHOLD*
JARROD P. CROUSE
ANDREA D. SNOWDEN

DEREK C. ZIMMERMAN
PAUL T. BARTA*
COLIN A. MUES*
TORREY J. GERDES*
BRETT E. EBERT
NOAH J. HEFLIN*
STEPHEN J. SCHUTZ
THOMAS B. SHIRES*
EMILY R. MOTTO*

OF COUNSEL
W. SCOTT DAVIS
WALTER E. ZINK II
DONALD R. WITT
ROBERT T. GRIMIT

ALSO ADMITTED IN:
*IOWA
**KANSAS

July 22, 2015

Hand Delivered

Mr. David Cary
Lancaster County Planning Department
555 South 10th Street, Ste. 213
Lincoln, NE 68508

RE: Application for Change of Zone

Dear Mr. Cary:

On behalf of TCW Construction, Inc., attached with this correspondence is the application for change of zone from R-4 to H-3 for the property legally described as Lots 36 through 39 and the North 8 feet of the vacated alley adjacent to Lot 36, Block 1, Boyer and Davis Subdivision, Lincoln, Lancaster County, Nebraska; and Lots 40 through 46, Block 1, Boyer and Davis Subdivision, Lincoln, Lancaster County, Nebraska, generally located at the southeast corner of SW 1st Street and West L Street, Lincoln, Nebraska.

The purpose of this change of zone is to allow the property to be used for storage of equipment from the TCW property that is located directly adjacent to the property that is the subject of this change zone. The proposed change of zone is compatible with the surrounding properties and the proposed use is appropriate for H-3 zoning.

If you have any questions or need additional information, do not hesitate to contact me.

Sincerely,

Derek C. Zimmerman
For the Firm
dzimmerman@baylorevnen.com

Enclosures

1188807



RANDALL L. GOYETTE*
 STEPHEN S. GEALY
 GAIL S. PERRY
 DALLAS D. JONES
 JILL GRADWOHL SCHROEDER
 DAVID A. DUDLEY
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OF COUNSEL
 W. SCOTT DAVIS
 WALTER E. ZINK II
 DONALD R. WITT
 ROBERT T. GRIMIT

ALSO ADMITTED IN:
 *IOWA
 **KANSAS

August 20, 2015

RE: Application for Change of Zone

Dear Neighbors:

Recently a Change of Zone Application was filed for property located at 420 Southwest 1st Street and 500 Southwest 1st Street, Lincoln, Nebraska. Currently, the property is zoned residential, and the applicant is requesting it be changed and zoned to the H-3 Commercial District. The reason for this change is to allow the property to be used for storage.

The property is currently unsuitable for residential use because it is located within the floodplain, and the proposed use will generate very limited traffic and noise. Additionally, the applicant has worked diligently with the Planning Department and agreed to a number of conditions that will make the use compatible with the surrounding neighborhood. Specifically, the property will have a green space buffer along the eastern side of the property with fence and/or tree screening, the existing trees within the green space buffer will be preserved, the property use will be limited to storage, access to the property will not be taken from the alley which abuts residential properties, an 8 foot fence will be constructed along the northern property line adjacent to the park, and the applicant will work with the Parks Department to address drainage concerns.

To discuss this project in greater detail, a public meeting will be held in Room 113 at City Hall on Wednesday, August 26th from 5:30 p.m. to 6:30 p.m. to offer a brief presentation of the project and to answer any questions you may have. If you are unable to attend the meeting, but have questions about the proposed project, feel free to contact me at the Lincoln location below.

Sincerely,

Derek C. Zimmerman
 For the Firm
 dzimmerman@baylorevnen.com

1206912

OMAHA OFFICE
 ONE PACIFIC PLACE
 1125 S. 103RD STREET SUITE 400 OMAHA, NE 68124
 PHONE 402.934.5468

LINCOLN MAIN OFFICE
 WELLS FARGO CENTER
 1248 O STREET SUITE 600 LINCOLN, NE 68508
 PHONE 402.475.1075 · FAX 402.475.9515

SYRACUSE OFFICE
 920 12TH STREET SYRACUSE, NE 68446
 PHONE 402.269.3200