

**IN THE BOARD OF ZONING APPEALS
CITY OF LINCOLN, NEBRASKA**

INDIAN CENTER INC., KEVIN ABOUREZK, ERIN POOR, RENEE SANS SOUCI, and KATHLEEN DANKER, Appellants.)))))))	CASE NO: NOTICE OF APPEAL & REQUEST FOR STAY OF DEVELOPMENT
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NOW COMES Indian Center Inc., Kevin Abourezk, Erin Poor, and Renee Sans Souci, joined by Landowner Kathleen A. Danker (“Appellants”), by and through Counsel, appealing the May 4, 2022 approval by Mayor Leirion Gaylor Baird—an administrative official charged with the enforcement of Lincoln’s Municipal Zoning Title—of Comprehensive Plan Amendment 22001, Annexation 21013, ordinance number 21262, Zoning Change 21057, ordinance number 21263, and the Annexation and Change of Zone Agreement for Wilderness Crossing, LLC (hereinafter referred to collectively as “Amendments, Zoning Changes, and Annexations”), allowing for development of property located at 4575 South 1st Street, Highway 77 and West Pioneers Boulevard, pursuant to LINCOLN, NEB., MUNICIPAL CODE ch. 27, §§ 75.020(a) and 75.030(a).

JURISDICTION

This appeal is brought pursuant to LINCOLN, NEB., MUNICIPAL CODE ch. 27, §§ 75.020(a), which provides that “[t]he Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, decision, or determination made by an administrative official in the enforcement of this title.” Mayor Leirion Gaylor Baird is an administrative official according to the plain language of LINCOLN, NEB., CITY CHARTER art. IV, § 12, which provides that the mayor is “fully responsible for the proper conduct of the executive and administrative

work and affairs of the city.”

BACKGROUND

On January 5, 2022, the Lincoln-Lancaster County Planning Department (“Planning Department”) submitted an application to amend the Lincoln-Lancaster County 2050 Comprehensive Plan (“Comprehensive Plan”). *See Exhibit A.* The application requested revisions to the Comprehensive Plan’s Future Land-Use Map, Growth Tiers Map, and Future Service Limit to include a new commercial area to the east of Highway 77 near Pioneers Boulevard and to change the existing Commercial area on the west side of Highway 77 to Urban Residential, thereby allowing for the Wilderness Crossing Planned Unit Development (“Wilderness Crossing”).

Simultaneously with and reliant upon the request for the Comprehensive Plan Amendment, the Planning Department requested the annexation of 140 acres, including Appellant Kathleen Danker’s property, into the City of Lincoln, as well as a change of zone for those 140 acres from AG (Agricultural District) to R-3 (Residential District) Planned Unit Development for Wilderness Crossing. Wilderness Crossing is set to include up to 575 residential units, including approximately 162 single-family homes, 134 townhomes, and 205 apartment units.

THE PARTIES

Appellant Kathleen Danker is the owner of real property located at 4700 South 1st Street in Lincoln, Nebraska. Her property is commonly referred to as “Fish Farm.”

In 1979, the Fish Farm was established as sacred land for members of Lincoln’s Native American¹ communities when Chief Leonard Crow Dog constructed two Sweat Lodges on the property. Chief Crow Dog’s visit to and consecration of this lodge is historically significant

¹ The terms “Native” and “Native American” are used interchangeably to refer to any indigenous person or group of the Americas.

because it occurred shortly after the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996, was codified, essentially decriminalizing Indigenous spirituality, and bringing Native American ceremony back "above ground."

Native American religious practitioners currently hold at least two Sweat Lodge ceremonies per week on the Fish Farm property. The Fish Farm property directly abuts and will be adversely affected by the Wilderness Crossing. There are no other sweat lodges or sacred lands of this type for members of Lincoln's Native communities in the City of Lincoln or surrounding geographic areas.

Appellant Indian Center Inc. is a community organization located in Lincoln, Nebraska, that promotes the interests and values of the region's Native American community and works to empower Native individuals and families. Appellants Kevin Abourezk, Erin Poor, and Renee Sans Souci (collectively "Niskithe Prayer Camp") are Native American religious practitioners and members of the Rosebud Sioux, Cherokee, and Omaha tribal nations, respectively, and residents of the City of Lincoln, Nebraska. Appellants regularly attend spiritual ceremonies at the Fish Farm Sweat Lodges. Despite the Niskithe Prayer Camp's efforts to reach a compromise, City of Lincoln officials and Wilderness Crossing developers actively ignored their concerns. Mayor Gaylor Baird approved the Amendments, Zoning Changes, and Annexations on May 4, 2022 without regard for the cultural violence Wilderness Crossing will enact on and adversely affect Lincoln's Native American community and religious practitioners, including the Niskithe Prayer Camp.

APPELLANTS' GRIEVANCES

The Mayor's order, decision, and determination enforcing part of the Municipal Zoning title was in error on the following grounds:

I. City of Lincoln Mayor Gaylor Baird's Approval of the Amendments, Zoning Changes, and Annexations May Be Properly Appealed to the Board of Zoning Appeals.

The Board of Zoning Appeals is authorized and *required* to "hear and decide upon appeals from any decision or order of the building inspector or *other officers charged with the enforcement of the zoning ordinance* in those cases where it is alleged that such decision or order is in error." LINCOLN, NEB., CITY CHARTER art. IX-B, § 10 (emphasis added); Neb. Rev. Stat. § 15-1106 (emphasis added). Furthermore, "[t]he Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, decision, or determination made by **an administrative official in the enforcement of this title.**" LINCOLN, NEB., MUNICIPAL CODE ch. 27, § 75.020(a) (emphasis added); *see also* LINCOLN, NEB., MUNICIPAL CODE ch. 27, § 75.030(a).

The Mayor is vested with the administrative power of the city, is fully responsible for the proper conduct of administrative affairs, and is required to enforce the provisions of the city charter, city ordinances, and all applicable laws. First, the "administrative power of the city shall be vested in and exercised by a mayor." LINCOLN, NEB., CITY CHARTER art. IV, § 12. Second, "the [M]ayor shall be fully responsible for the proper conduct of the executive and administrative work and affairs of the city." *Id.* Third, the Mayor is required to "[e]nforce the provisions of this charter, city ordinances, and all applicable laws." LINCOLN, NEB., CITY CHARTER art. IV, § 12(2). Thus, it is unquestionable that the Mayor is an administrative official pursuant to the plain language of the City Charter.

Clearly, Mayor Gaylor Baird is an administrative official “charged with the enforcement of the zoning ordinance” whose decisions may be appealed to the Board of Zoning Appeals. LINCOLN, NEB., CITY CHARTER art. IX-B, § 10; Neb. Rev. Stat. § 15-1106. Mayor Gaylor Baird is both “an officer charged with enforcement of the zoning ordinance” and “an administrative official”, and in this capacity and as further described below, she has made decisions regarding code enforcement in error.

II. Mayor Gaylor Baird’s Approvals of the Amendments, Zoning Changes, and Annexations Were Procedurally Defective.

Mayor Gaylor Baird’s approvals of the Comprehensive Plan Amendment 22001, Zoning Change 21057, and Annexation 21013 are ineffective because they were made outside of the required procedural timeline required for such approvals to be effective. Per the Lincoln City Charter:

Within forty-eight hours after the adjournment of any council meeting, the city clerk shall present to the mayor all ordinances and resolutions adopted at the meeting. The mayor, within seven days after the receipt of an ordinance or resolution, shall return it to the city clerk with [her] approval, or with [her] veto.

LINCOLN, NEB., CITY CHARTER art. IV, § 13. In instances where the mayor does not approve an ordinance or resolution, the matter must be reconsidered at the city council’s next regular meeting.

Id.

Here, the Lincoln City Council adopted Comprehensive Plan Amendment 22001 by and through Resolution No. A-93302 at its meeting on April 25, 2022. Lincoln Comp. Plan Amend. No. 22001, Res. No. A-93302. The Lincoln City Council similarly adopted Resolution No. A-93303 on that date, authorizing the Mayor to execute the Annexation and Change of Zone Agreement for Wilderness Crossing and to concurrently approve Annexation 21013 and Zoning Change 21057. Res. No. A-93303; *Annexation and Change of Zone Agreement for Wilderness*

Crossing.

The Lincoln City Charter provides (1) the city clerk a full forty-eight hours to present Resolutions to the Mayor and (2) the Mayor with an additional seven days to approve or veto the Resolutions. LINCOLN, NEB., CITY CHARTER art. IV, § 13. Under any calculation of time, the absolute latest date on which the Mayor could have validly approved Resolutions No. A-93302-03 was May 4, 2022, a full nine days after the City Council's decisions were made.

The Mayor undoubtedly failed to meet the required approval deadline with respect to Resolution No. A-93303, having signed and approved the Resolution on May 5, 2022. See Exhibit B. As a result, Resolution A-93303—including Annexation 21013 and Zoning Change 21057—**has not been effectively approved** pursuant to the timeline prescribed in LINCOLN, NEB., CITY CHARTER art. IV, § 13. Therefore, the Resolution must be treated as having been vetoed, and must be reconsidered by the Lincoln City Council.

Whether Resolution No. A-93302 was validly approved pursuant to the timeline prescribed in LINCOLN, NEB., CITY CHARTER art. IV, § 13 is dependent upon the date on which the Mayor received the Resolution from the city clerk. Mayor Gaylor Baird's approval of Resolution No. A-93302 is dated May 4, 2022, the last day for valid approval **only if** the City Clerk took the full forty-eight hours to present the Resolution to the Mayor. *See Exhibit C.* However, it is most likely that the City Clerk gave the Mayor the Resolution prior to the expiration of those forty-eight hours. If the City Clerk presented the Resolution No. A-93302 immediately after the meeting or on April 26, this approval also falls outside the seven-day period required by the Lincoln City Charter. As a result, the Mayor's approval of the Comprehensive Plan Amendment 22001 is invalid and its authorizing Resolution has been rendered ineffective.

III. The Amendments, Zoning Changes, and Annexations Approved by Mayor Gaylor Baird Are Substantively Invalid Due to Their Failure to Comply with Lincoln-Lancaster County 2050 Comprehensive Plan.

All ordinances under the zoning title of the Lincoln Municipal Code must be made in accordance with the Comprehensive Plan. LINCOLN, NEB., MUNICIPAL CODE ch. 27, § 01.010; *see* Comprehensive Plan. The following key components of the Comprehensive Plan have been violated through the purported mayoral approvals of Resolutions A-93302 and A-93303:

A. Goal 9 of the Comprehensive Plan states: “[e]quitable civic participation will require broad efforts that reach the entire community while actively seeking engagement from historically underrepresented groups.” Lincoln City-Lancaster County Planning Department, *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 2.30. The Amendments, Zoning Changes, and Annexations do not comply with Goal 9 of the Comprehensive Plan in that civic participation for development of these Amendments, Zoning Changes, and Annexations was inequitable, and there was insufficient participation in planning and consultation with historically underrepresented groups, including but not limited to Native Americans and practitioners of indigenous religions. The Salt Creek Basin and the Fish Farm Sweat Lodges, located adjacent to the proposed developments of the Amendments, Zoning Changes, and Annexations are of significant historical, cultural, and religious importance to underrepresented communities, particularly, the Native American community, that have been historically marginalized and overlooked by the Zoning Board, City Council and Mayor of the City of Lincoln (hereinafter referred to as “Administrators”), and are threatened by the Mayor’s approved changes. The Administrators have again failed to consult with marginalized and underrepresented groups, including but not limited to Appellants.

B. Goal 11 of the Comprehensive Plan states: “[i]t is important that critical natural

features like native prairie, wetlands, and riparian corridors are protected. Such features need to be valued and sustained as part of the overall planning process...” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 2.34. The Amendments, Zoning Changes, and Annexations do not comply with Goal 11 of the Comprehensive Plan in that they do not protect critical natural features like the native prairie, wetlands, and riparian corridors and will not sustain such features, including but not limited to the Salt Creek Basin.

C. Goal 12 of the Comprehensive Plan States: “[the Comprehensive Plan] encourages the continued use and maintenance of historic and cultural resources, including properties not formally designated as landmarks.” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 2.36. The Amendments, Zoning Changes, and Annexations do not comply with Goal 12 of the Comprehensive Plan as they prevent the continued use and maintenance of historic and cultural resources, including but not limited to the Salt Creek Basin and the Fish Farm Sweat Lodges.

D. Policy 24 of the Comprehensive plan requires action “to consider the relationship among environmental resources . . . and the adjacent land uses for appropriate management and resource protection.” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 4.45. The Amendments, Zoning Changes, and Annexations do not comply with Policy 24 of the Comprehensive Plan in that Administrators have not considered how to protect the environmental resources of the City against the negative impacts of development, including but not limited to the Salt Creek Basin.

E. Policy 37 of the Comprehensive Plan requires action to “encourage continued use and maintenance of historic resources, including properties not formally designated as landmarks.” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 4.67. The Amendments,

Zoning Changes, and Annexations do not comply with Policy 37 of the Comprehensive Plan in that it burdens the Native American community's use and enjoyment of the land's historical and cultural resources, including but not limited to the Salt Creek Basin and the Fish Farm Sweat Lodges.

F. Policy 47 of the Comprehensive Plan requires action to “actively engage with cultural groups so they can provide ideas for planning and public policy, as well as to encourage developers with planning proposals to make early contact with interested parties to allow time to seek resolution of contentious items.” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 4.83. The Amendments, Zoning Changes, and Annexations do not comply with Policy 47 of the Comprehensive Plan as the Administrators that planned and developed the Amendments, Zoning Changes, and Annexations did not actively engage with cultural groups to provide planning and policy input, nor was there any encouragement by the Administrators to the developers, Manzitto, Inc., with planning proposals to make early contact with interested parties, including but not limited to Native Americans, land owners, those that use and operate cultural and historical sites, and practitioners of indigenous religions, to allow time to seek resolution of contentious items. The Amendments, Zoning Changes, and Annexations will negatively impact property owned by Kathleen A. Danker and used by the Niskithe Prayer Camp in that natural resources, cultural and historical sites, and places of religious significance will be damaged, destroyed, or rendered unusable.

G. Element 4 of the Comprehensive Plan requires environmental resources such as native prairies, basins, streams, and riparian areas to be valued and sustained in the planning process. *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 3.53-57. The Amendments, Zoning Changes, and Annexations do not comply with Element 4 of the

Comprehensive Plan in that sufficient consideration has not been taken to protect the environmental resources of the City, including but not limited to the Salt Creek Basin.

H. Element 6 of the Comprehensive Plan asserts an intention to “preserve and enhance the community’s unique character . . . through preservation of cultural and historic resources...” *Plan Forward: Lincoln-Lancaster County 2050 Comprehensive Plan* at 3.75. The Amendments, Zoning Changes, and Annexations do not comply with Element 6 of the Comprehensive Plan in that it burdens the community’s, including that of the Niskítthe Prayer Camp’s, use and enjoyment of historical and cultural resources, including but not limited to the Salt Creek Basin and the Fish Farm Sweat Lodges.

In addition, the Mayor’s approval of Resolutions A-93302 and A-93303 also violates the Lincoln Municipal Code and the intentions and policies encompassed in the same. The Amendments, Zoning Changes, and Annexations will constitute a change in the district map and will impair an adequate supply of light and air to adjacent property, increase the congestion in public streets, increase the public danger of fire and safety, materially diminish and impair established property values within the surrounding area, and otherwise impair the public health, safety, comfort, morals, and welfare of the City of Lincoln, in violation of LINCOLN, NEB., MUNICIPAL CODE ch. 27, § 01.010 and will negatively impact the use and enjoyment for all purposes, including but not limited cultural, historic, and religious purposes of the property of Kathleen A. Danker, the Salt Creek Basin and the Fish Farm Sweat Lodges, as well as other locations throughout the City.

In approving the Amendments, Zoning Changes, and Annexations, the Mayor failed to promote dialogue and conversation between indigenous religious practitioners, Native American communities, the Niskítthe Prayer Camp, Kathleen A. Danker, and any and all developers to

facilitate alternatives and resolutions to accommodate and protect community historical, cultural, and environmental resources in ways consistent with the Comprehensive Plan within the plans of the developer.

By approving the Amendments, Zoning Changes, and Annexations, sweeping in their scope and impact, the Mayor prevented the meaningful participation of the public in the planning process, forestalling any chance for the development of meaningful alternatives, and preventing the substantive involvement of underrepresented communities that have been historically marginalized and overlooked by the Administrators of the zoning laws of the City of Lincoln, including but not limited to Native Americans, the Niskithe Prayer Camp, and Indigenous religious practitioners.

It was error for the Mayor to determine and approve these sweeping Amendments, Zoning Changes, and Annexations for any of the above reasons and the cumulative impact of these errors accrues to a violation of the professed values of the City and undermines the long-term City goals of preserving cultural, historical, and environmental resources that are significant to all parts of the community, especially those that have been historically excluded and underrepresented. The Zoning Board of Appeals has the responsibility to ensure the City lives up to its professed values by requiring meaningful consultation with underrepresented communities and the opportunity to develop accommodations to protect the cultural and historical resources of Lincoln while providing for reasonable development of residential and commercial resources.

IV. A Stay in Development Proceedings Should Be Granted for the Duration of This Appeal

It is hereby requested that any and all related development and development proceedings following the Mayor's approval of the Amendments, Zoning Changes, and Annexations be stayed during the pendency of this appeal. The Municipal Code provides that "[i]n exercising its appellate

jurisdiction, the board may in conformity with the provisions of this title reverse or affirm, wholly or partially, or may modify the order, requirement, decision, or determination appealed from and may make such decision as ought to be made.” LINCOLN, NEB., MUNICIPAL CODE ch. 27, §§ 75.050. This provision makes clear that the Board of Zoning Appeals has authority to modify the immediate applicability of an administrative official’s decision—temporarily or permanently—to provide the opportunity for a meaningful hearing on the appeal.

Stays pending the final decision on administrative appeals in other jurisdictions are routinely granted.² Moreover, Appellants’ right to appeal this administrative decision cannot be protected, and in fact would be effectively denied, in the absence of such a stay.

The proposed development would permanently damage or destroy significant and vulnerable environmental, cultural, and historic sites and resources, including but not limited to the Salt Creek Basin and use of the Fish Farm Sweat Lodges. Therefore, the Board should issue an immediate stay during the pendency of this administrative action to ensure Appellants’ meaningful right to administrative appeal.

REQUEST FOR RELIEF

For all the above-described reasons, the Appellants request:

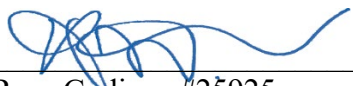
1. An immediate stay prohibiting any further development proceedings pursuant to the Amendments, Zoning Changes, and Annexations while this appeal is under consideration;
2. An order finding the Mayor’s approvals were untimely, and therefore, have rendered the actions of the City Council unapproved or vetoed and otherwise, ineffective;

² Section 14-410 of Nebraska’s revised statute—although not applicable in this jurisdiction—states that “an appeal [to the zoning board of appeals] stays all proceedings in furtherance of the action appealed from,” with an exception only in cases where such a stay would “cause imminent peril to life or property.” NEB. REV. STAT. § 14-410. Moreover, courts upholding these statutes have found that appellants’ right to appeal of administrative decision cannot be protected, and in fact would be effectively denied, in the absence of a stay. *Lamar Co. of Nebraska, L.L.C. v. Omaha Zoning Bd. of Appeals*, 271 Neb. 473, 480 (2006).

3. Modification to the Amendments, Zoning Changes, and Annexations that are consistent with the City of Lincoln's previous Comprehensive Plan, including but not limited to its goals, values, and policies for the protection of private property, cultural and historical sites, and the delicate environment, and include the input of historically underrepresented communities including Appellants; and
4. Any other relief this Board of Zoning Appeals deems just and proper.

Respectfully submitted this 2nd day of August 2022,

By: 
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Attorney for Kathleen A. Danker

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of August 2022, a true and correct copy of the foregoing document was filed with the Lincoln/Lancaster County Planning Department by certified mailing with U.S.P.S. and by email submission to plan@lincoln.ne.gov. Also on this day, a true and accurate copy of the foregoing was sent via email to the following individuals as indicated below:

Brian Will
bwill@lincoln.ne.gov

Yohance Christie, City Attorney
ychristie@lincoln.ne.gov

Tim Sieh, Assistant City Attorney
tsieh@lincoln.ne.gov

/s/Samantha Holland
Samantha Holland, Paralegal

MEMORANDUM

TO: File

FROM: Lincoln-Lancaster County Planning Department

SUBJECT: FLU Update at Hwy 77 & W Pioneers

DATE: January 5, 2022

This is an application to amend the Future Land Use Plan of the Lincoln-Lancaster County 2050 Comprehensive Plan. This proposed amendment involves moving a commercial area from the west side of Hwy 77 to the east side in order to reflect proposed development plans with CZ21055/AN21011 (Foxtail Meadows) and CZ21057/AN21013 (Wilderness Crossing). A map of the proposed change is attached.

CITY OF LINCOLN

Planning Department Application Request Form

Planning Department / 555 S 10th St, Ste 213 / Lincoln, NE 68508
 Phone 402-441-7491 / Fax 402-441-6377
 plan@lincoln.ne.gov

Date 1/5/2022

			Office Use Only	
	Application Type	Subtype	File #	PC Final Action
+ -	Comprehensive Plan Amendment		CPA22001	<input type="checkbox"/>

Project Name FLU Update at Hwy 77 & W Pioneers

Address/General Location Hwy 77 & W Pioneers

Legal Description
(Attach legal if necessary.) _____

Parcel ID Number(s) (PID) 0910200006000, 0910200003000

Number of Acres 17 Number of lots being platted App # Being Amended
(Not outlots)

THE FOLLOWING INFORMATION IS NECESSARY TO HAVE A COMPLETE APPLICATION:

1. **LETTER** stating purpose of application. This statement should include information concerning the reason for the request(s), any associated applications, projects or other information related to the application. This letter should include a list of waivers associated with an application and justifications for those waivers. If no waivers are requested state "no waivers are requested."
2. **FEE** ([View Fee Schedule](#)) Note: Make checks payable to the City of Lincoln.
3. **SITE PLAN** The site plan shall be submitted electronically using e-plan. ([View instructions on eplan submittal](#))

NOTE: See [Forms & Fees](#) section of Planning Department website for checklists with specific requirements for each type of project.

*** This application may be returned as incomplete if all requested information is not provided. ***
 The City reserves the right to ask for additional information to process this application.

Property Owner Name Catholic Bishop of Lincoln Phone _____

Address 3400 SHERIDAN BLVD Email _____

City Lincoln State Nebraska Zip 68506

Applicant Name Lincoln-Lancaster County Planning Department Phone _____

Address 555 S 10th Street, Suite 213 Email _____

City Lincoln State Nebraska Zip 68508

Contact Name Andrew Thierolf Phone _____

Address 555 S 10th Street, Suite 213 Email athierolf@lincoln.ne.gov

City Lincoln State Nebraska Zip 68508

ProjectDox Contact Andrew Thierolf **ProjectDox Email** athierolf@lincoln.ne.gov

Applicant Signature: 

* Property Owner Signature: _____

* NOTE: If application is for a special permit or a use permit and the applicant is not the owner of the property, the property owner must sign the application or the applicant must attach written permission of the owner authorizing the applicant to sign on behalf of the owner. By signing this application request form or granting the applicant permission to sign on the owner's behalf, the owner hereby grants all authorized city/county personnel to access the property for purposes of review of this application.

22R-132



Introduce: 4-11-22

RESOLUTION NO. A- 93303

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the Annexation and Change of Zone Agreement for Wilderness Crossing which is
3 attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City
4 of Lincoln, and Wilderness Crossing, LLC, ("Developer") for the annexation of the property
5 generally located west of South 1st and south of Pioneers Boulevard and re-zoning the property
6 from AG Agricultural District to R-3 Residential with a Planned Unit Development, as set forth in
7 the Agreement, is hereby approved and the Mayor is authorized to execute the Annexation and
8 Change of Zone Agreement on behalf of the City.

9 BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this
10 Agreement to Abigail Littrell, Assistant City Attorney, for distribution to the Developer.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to file the Annexation and
12 Change of Zone Agreement for Wilderness Crossing with the Lancaster County Register of Deeds
13 with the recording fees to be paid in advance by the Developer.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this
15 Agreement to Michaela Dugan, Impact Fee Administrator.

See further Council
Proceedings on next page.

Introduced by:

AYES: Beckius, Bowers, Meginnis, Shobe, Ward,
Washington; NAYS: Raybould.

Approved as to Form & Legality:

City Attorney

ADOPTED
APR 25 2022
BY CITY COUNCIL

Approved this 5th day of MAY, 2022:

Mayor

22R-132

04/25/22 Council Proceedings:

RAYBOULD Verbal Motion to Delay Bill No. 22R-132 for 3 weeks.

Seconded by Washington & carried by the following votes: AYES: Raybould, Washington;
NAYS: Beckius, Bowers, Meginnis, Shobe, Ward.

**ANNEXATION AND CHANGE OF ZONE AGREEMENT
FOR WILDERNESS CROSSING**

This Annexation Agreement ("Agreement") is made and entered into as of this ___ day of _____, 2022 by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **Wilderness Crossing, LLC**, a Nebraska limited liability company ("Wilderness Crossing"), hereinafter also referred to as the "Developer".

RECITALS

1. Wilderness Crossing controls and intends to acquire fee simple title to and to develop a tract of the real property generally located west of South 1st Street and south of Pioneers Boulevard, Lancaster County, Nebraska. The Property is shown on Exhibit A and is legally described as:

S10, T9, R6, 6th Principal Meridian, Lot 59 NE, Lancaster County, Nebraska

(the "Developer Property").

Wilderness Crossing desires to cause the urban development of the Developer Property.

2. Wilderness Crossing has requested that the City annex the Developer Property into the corporate limits of the City as part of AN21013. AN21013 includes additional property not owned by Developer. The entire annexation area for AN21013 is shown on Exhibit B.

3. Wilderness Crossing has requested that the City rezone that portion of the Developer Property from AG to R-3 Residential with a Planned Unit Development zoning overlay which is shown also on Exhibit "A" (CZ21057).

4. The Lincoln-Lancaster County Planning Department has made application for a Comprehensive Plan Amendment to the Lincoln-Lancaster County 2050 Comprehensive Plan to designate a small portion in the northwest corner of the Developer Property as Commercial (CPA22001).

5. The City's approval of the Annexation, Change of Zone, and Comprehensive Plan Amendment are collectively referred to herein as "Governmental Actions".

6. The City is willing to approve the Governmental Actions and subsequently consider approving the use permits, special permits, preliminary plats, and final plats for the balance of the Developer Property pursuant to the Comprehensive Plan (collectively "Subsequent Governmental Actions"); provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area. All preliminary plats, final plats, and other land use applications concerning the Developer Property shall be considered pursuant to the City's Comprehensive Plan, land development ordinances, applicable design standards, and the terms and conditions of this Agreement.

7. This Agreement identifies the Developer's and City's responsibilities regarding the construction of infrastructure improvements necessitated by the development of the Developer Property.

NOW, THEREFORE, in consideration of the mutual covenants established herein, the parties to this Agreement do hereby agree as follows:

I.

DEFINITIONS

1. Defined Terms. The following are defined terms to this Agreement. Other paragraphs of this Agreement contain numerous refinements and exceptions which qualify the provisions of this Paragraph 1; all other defined terms are as shown in other provisions of this Agreement.

- a. "Construct" or "construction" means installation of the infrastructure components according to the City's standard specifications and shall also include proper drainage, utility relocation (electric, cable, phone, communication, fiber optic, gas, water, rural water, and sediment) and erosion controls and measures.
- b. "Cost", "cost and expense", "expense" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing and inspection expenses, acquisition of right-of-way or easements from a party other than the Developer, construction costs, publication costs, financing costs, and related miscellaneous costs.

II.

CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS;

CONDITIONAL APPROVAL

A. Concurrent Approval. The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:

1. Annexing the Property shown on Exhibit “B”; and
2. Amending the Lincoln zoning district maps to adopt the Change of Zone of the Property on Exhibit “A”.
3. Approving CPA22001.

B. Conditional Approval. Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Developer Property; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

III.

STREET IMPROVEMENTS

A. South 1st & Pioneers Boulevard.

1. Developer will, at a minimum, design and construct temporary left and right turn lanes at the intersection of South 1st Street & Pioneers Boulevard as a requirement of the first final plat within the Phase I development as described in the PUD. Developer acknowledges that construction of temporary turn lanes at this intersection will not entitle Developer to impact fee reimbursement.
2. In the alternative, Developer may construct permanent left and right turn lanes at this intersection. Turn lane improvements will only be eligible for impact fee

reimbursement if they conform to the future grade elevation as determined by Lincoln Transportation and Utilities (LTU).

B. Southwest 2nd & Pioneers Boulevard.

1. Prior to application for building permits for any commercial uses (not including exclusive multifamily use) on the Developer Property, Developer shall, at a minimum, design and construct temporary left and right turn lanes at the intersection of Southwest 2nd & Pioneers Boulevard. Developer acknowledges that construction of temporary improvements at this intersection will not entitle Developer to impact fee reimbursement.
2. In the alternative, Developer may construct permanent improvements in the form of round-about at this intersection.

C. Arterial Street Impact Fees:

1. City agrees that the Arterial Street Intersection Improvements described in subsections A.2 and B.2 of this Article are considered Impact Fee Facility Improvements as that term is defined in LMC §27.82.040. Therefore, if Developer elects to construct permanent intersection improvements, City agrees that it shall reimburse Developer for the South 1st & Pioneers Boulevard and Southwest 2nd & Pioneers Boulevard Street Intersection Improvements from the arterial street impact fees generated by development of the Developer Property, and by development of:

- Lot 29 NW, S11, T9, R6, 6th P.M. Lancaster County, Nebraska; and
- Lot 60 SE, S10, T9, R6, 6th P.M., Lancaster County, Nebraska (“Other Impact Fee Properties”),

which are all benefited by the Arterial Street Intersection Improvements. Said reimbursement from arterial street impact fees generated by development of the

Developer Property and Other Impact Fee Properties shall be paid quarterly as arterial street impact fees are received. The foregoing notwithstanding, any reimbursement to be paid from the arterial street impact fees shall not constitute a general obligation of the City.

2. Should Developer elect to construct impact fee ineligible temporary improvements, City shall use the arterial street impact fees generated from development of the Developer Property and Other Impact Fee Properties as permitted by Lincoln Municipal Code. City shall reserve arterial street impact fees generated from the Developer Property and Other Impact Fee Properties, and not expend on other arterial street projects in the area, until the intersections at both South 1st & Pioneers Boulevard and Southwest 2nd & Pioneers Boulevard are improved with either temporary or permanent improvements.

D. Local Streets/ Driveways

1. The Wilderness Crossing Development, as described in the PUD, requires relocation of South 1st Street. Said relocation will necessitate the extension or relocation of the driveways for the properties located at 4700 & 4800 South 1st Street. Developer agrees to pay any and all costs to relocate or extend both driveways.
2. If Developer elects to extend the driveway at 4800 South 1st Street and the extended driveway is less than 250 feet (measured as the distance from the property line to the new South 1st Street right of way), the extended driveway may remain surfaced with gravel. If the driveway distance between the property line and the new South 1st Street right of way is more than 250 feet, the newly constructed driveway shall be surfaced in asphalt.

- E. Dedication of Street Right-of-Way.** At the time of final platting or prior to construction of the intersection improvements described in subsections A and B above, Developer agrees to dedicate, at no cost to City, additional right-of-way to the satisfaction of the Lincoln Transportation and Utilities Department (LTU). Wilderness Crossing shall dedicate and convey to City the necessary right of way for the construction and operation of turn lanes at South 1st & Pioneers Boulevard and for the construction and operation of a roundabout at Southwest 2nd & Pioneers Boulevard. Developer shall dedicate and convey, at no cost to the City, the necessary right of way for Internal Streets located within the Developer Property.
- F. Vacation.** At such time as relocated S. 1st Street is completed, City agrees to vacate South 1st Street from Pioneers Blvd to the southern end of the development as shown in the PUD and deed the west approximate 67 feet of vacated South 1st Street to Developer in exchange for Developer's dedication of a new South 1st Street right of way within the PUD at final plat.

III.

PUBLIC WATER INFRASTRUCTURE

- A. Public Water Mains:** Developer shall design and construct twelve (12) inch water mains (i) from Old Cheney Road to Pioneers Blvd; and (ii) from relocated S. 1st Street to the western property line in the mid-section of the Developer Property. City agrees that if a future adjacent property owner taps the water main from Old Cheney Road constructed by Developer, City shall collect connection fees from said future property owner and reimburse Developer for its water main construction costs associated with constructing a typical 6-inch water line as permitted by Lincoln Municipal Code 17.10.110.

B. Oversizing: City shall be responsible for all costs attributable to oversizing the water mains with pipe, valves, fitting and all other accessories that are larger than 6-inches. If required, the Water Lines shall be publicly bid and awarded as provided by law.

IV.

SANITARY SEWER

Developer shall design and construct an eight (8) inch sanitary sewer main from Old Cheney Road to the Developer Property at its own cost. City agrees that if a future adjacent property owner taps the sanitary sewer main constructed by Developer, City shall collect connection fees from said future property owner and reimburse Developer for its sanitary sewer construction costs as permitted by Lincoln Municipal Code 24.52.010.

NOTICE

A. Notice. Any notices required to be forwarded to a Party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
575 South 10th Street
Lincoln, NE 68508

(2) If to Wilderness Crossing, LLC:

Wilderness Crossing, LLC
Sam Manzitto, Jr.
4400 Lucile Drive, Suite 201
Lincoln, NE 68516

with a copy to:

DaNay Kalkowski
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

Any Party hereto may change its address for notification purposes by written notice to all Parties hereto in the manner and method set forth within this paragraph.

VI.

MISCELLANEOUS

A. Release of Platted Lot. Notwithstanding any contrary provisions herein, any Platted Lot shall automatically be deemed released from all of the terms of this Agreement without further written release. A “Platted Lot” shall mean a lot as defined by the City subdivision ordinances that has been lawfully included within a final plat of the Developer Property, or portion thereof.

C. Contribution to Rural Fire Protection District. Wilderness Crossing understands and acknowledges that the City’s annexation of the Developer Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Developer Property or any portion thereof being annexed.

D. Exhibits. The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

Exhibit “A” Developer Property Map

Exhibit “B” AN21013 Annexation Area Map

D. Amendments. This Agreement may only be amended or modified in writing signed

by the Parties to this Agreement.

E. Further Assurances. Each Party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the Parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

F. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

G. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either Party because such Party prepared any portion of this Agreement but shall be interpreted according to the application of rules of interpretation of contracts generally.

H. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

I. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any Party shall be deemed or construed by the City, Developer, or by any third person to create the relationship of partnership or of joint venture or of any association between the Parties other than the contractual relationship stated in this Agreement.

J. Assignment. In the case of the assignment of this Agreement by any of the Parties, prompt written notice shall be given to the other Parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release

in writing is given and signed by the other Parties to this Agreement or unless otherwise stated herein.

K. Default. In the event the Developer defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Developer may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

L. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Developer Property.

M. Recordation. This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.

N. Cooperation. Whenever a Party's approval or consent shall be required under this Agreement, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. A Party whose approval or consent is requested under the terms of this Agreement shall either provide the approval requested to the requesting party within fourteen (14) days of receiving the request for such approval or consent or notify the requesting Party that the receiving Party is denying such approval or consent within fourteen (14) days of receiving the request. Any refusal must state the reasonable ground for the refusal to grant such approval or consent. Each undersigned Party will whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants and agreements herein provided.

O. Authority. The City has the authority to engage in the reimbursements to

Developer described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Developer described in this Agreement will comply with all applicable laws.

“CITY”

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: *Leirion Gaylor Baird*
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 4th day of May, 2022, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

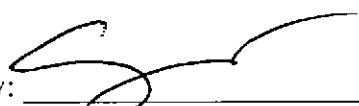
(Seal)

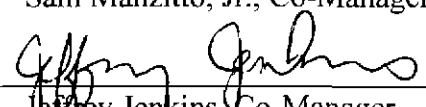


Brandi Lehl
Notary Public

“WILDERNESS CROSSING”

WILDERNESS CROSSING, LLC,
a Nebraska limited liability company

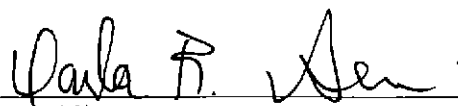
By: 
Sam Manzitto, Jr., Co-Manager

By: 
Jeffrey Jenkins, Co-Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 5 day of April, 2022, by Sam Manzitto, Jr., Co-Manager of Wilderness Crossing, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal) 


Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 5 day of April, 2022, by Jeffrey Jenkins, Co-Manager of Wilderness Crossing, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal) 

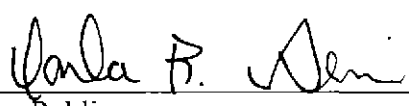
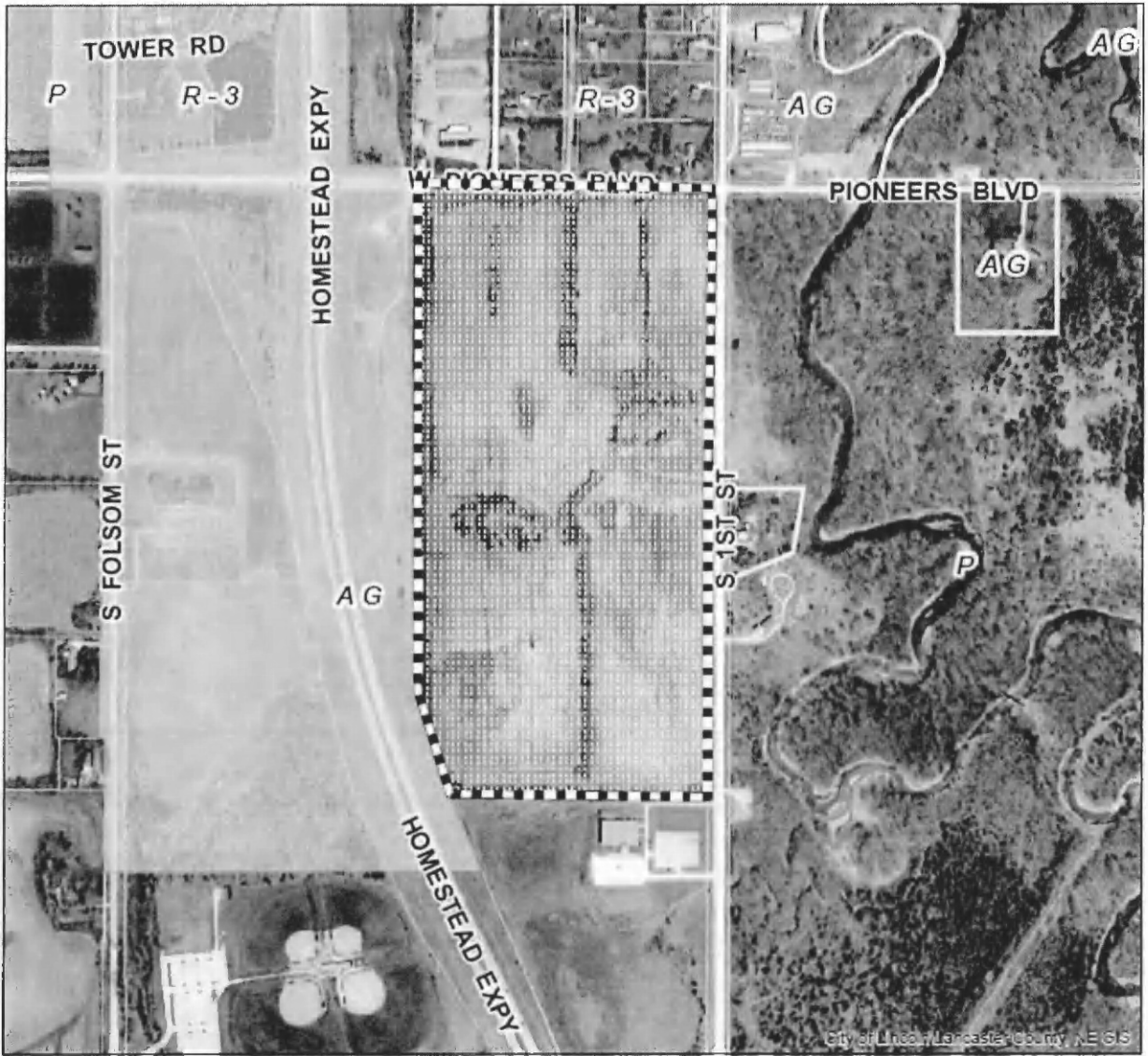

Notary Public

EXHIBIT A
DEVELOPER PROPERTY



S10, T9, R6, 6th Principal Meridian, Lot 59 NE, Lancaster County, Nebraska

EXHIBIT B
AN21013 Entire Annexation Area





A93302

22R-131
Comprehensive Plan Amendment No. 22001

Introduce: 4-11-22

RESOLUTION NO. A- 93302

1 WHEREAS, the Lincoln-Lancaster County Planning Department has applied to amend the
2 2050 Lincoln-Lancaster County Comprehensive Plan to amend the Lincoln-Lancaster Area Future
3 Land Use Map and Growth Tiers Map to reflect recent development interest and provide more
4 refined boundaries, on property generally located at Highway 77 and West Pioneers, and shown
5 on Exhibit "A"; and

6 WHEREAS, the Lincoln City-Lancaster County Planning Commission has recommended
7 approval of the changes.

8 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln,
9 Nebraska that the 2050 Lincoln-Lancaster County Comprehensive Plan be and the same is hereby
10 amended in the following manner:

- 11 1. Amend the 2050 Future Land Use Plan (Figure GF.b 2050) and to reflect a change
12 in future land use designation for those portions of Highway 77 and Pioneers
13 shown on Exhibit A.
- 14 2. Amend the 2050 Priority Growth Area (Figure GF.c: 2050) as shown on Exhibit B
15 and add Wilderness Park to the 2050 Future Service Limit as shown on Exhibit C.


16 BE IT FURTHER RESOLVED that all other maps, figures, and plans where the
17 2050 Lancaster County Future Land Use Plan, are displayed and other references in said plan
18 which may be affected by the above-specified amendment be, and they hereby are amended to
19 conform with such specific amendments.

20

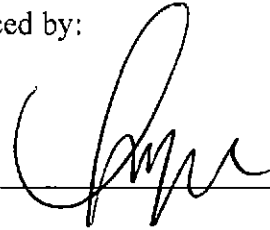
21

See further Council
Proceedings on next page.


Approved as to Form & Legality:


City Attorney

Introduced by:



AYES: Beckius, Bowers, Meginnis, Shobe, Ward,
NAYS: Raybould, Washington.

Approved this 4th day of MAY, 2022.

Mayor

ADOPTED

APR 25 2022

BY CITY COUNCIL

22R-131

04/25/22 Council Proceedings:

RAYBOULD Verbal Motion to Delay Bill No. 22R-131 for 3 weeks.

Seconded by Washington & carried by the following votes: AYES: Raybould, Washington;
NAYS: Beckius, Bowers, Meginnis, Shobe, Ward.

WASHINGTON Verbal Motion to Delay Bill No. 22R-131 for 1 weeks.

Seconded by Raybould & carried by the following votes: AYES: Raybould, Washington;
NAYS: Beckius, Bowers, Meginnis, Shobe, Ward.

BECKIUS Moved Motion to Amend Bill No. 22R-131 introduced on April 11, 2022, by adopting the substitute resolutions and attachments.

Seconded by Shobe & carried by the following votes: AYES: Beckius, Bowers, Meginnis
Raybould, Shobe, Ward, Washington; NAYS: None.

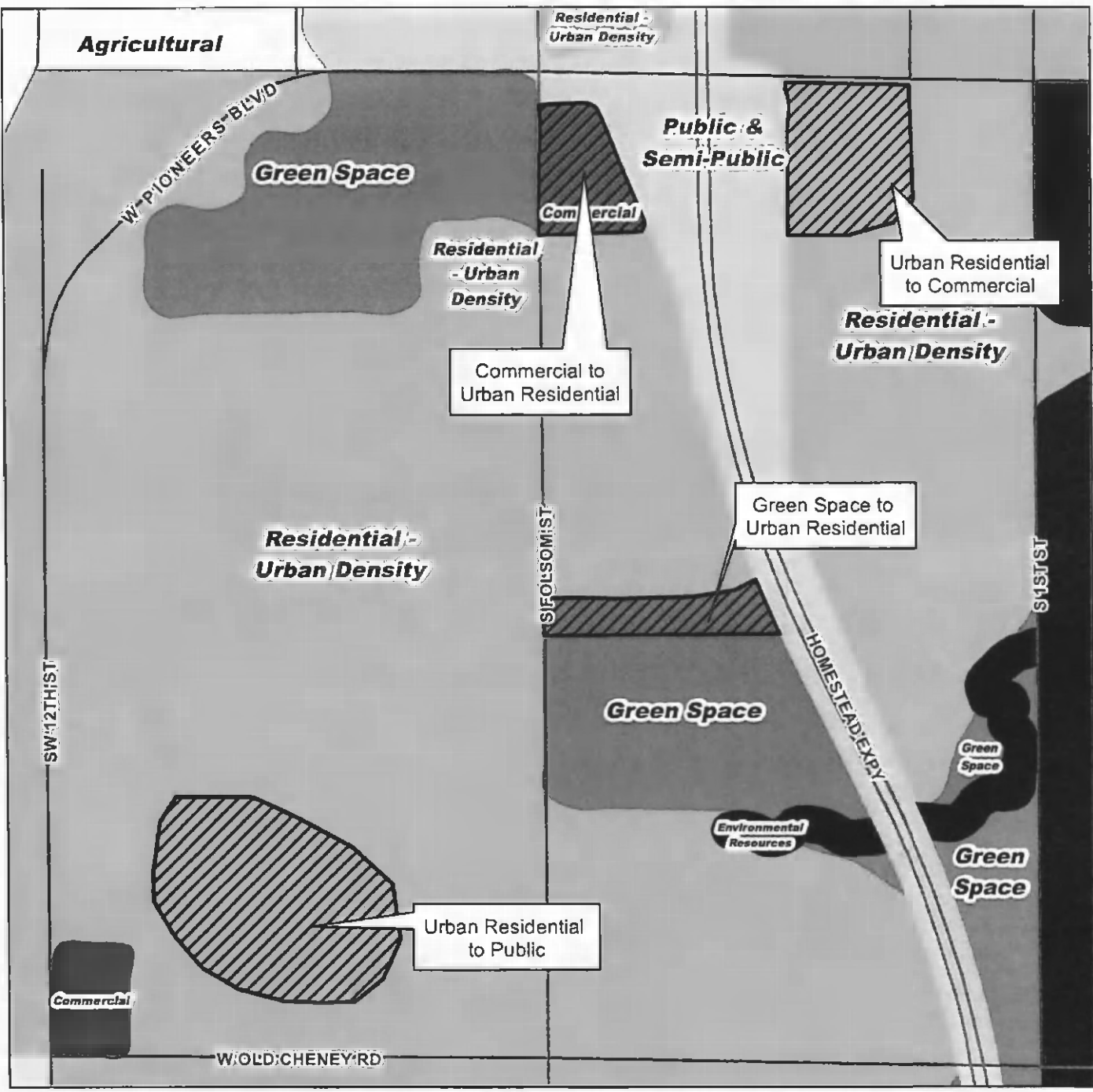
Proposed Land Use Change

Legend

 Proposed Land Use Changes

Future Land Use

-  AG
-  AG STREAM
-  Commercial
-  Environmental Resources
-  Green Space
-  Industrial
-  Public/Semi-Public
-  RES-LOW
-  Residential - Urban Density
-  Lakes & Streams



LINCOLN - LANCASTER COUNTY
 PLANNING DEPARTMENT
RTS
and Health and Social Services
 Planning and Development
 1000 North Pine Street
 Lancaster, PA 17303

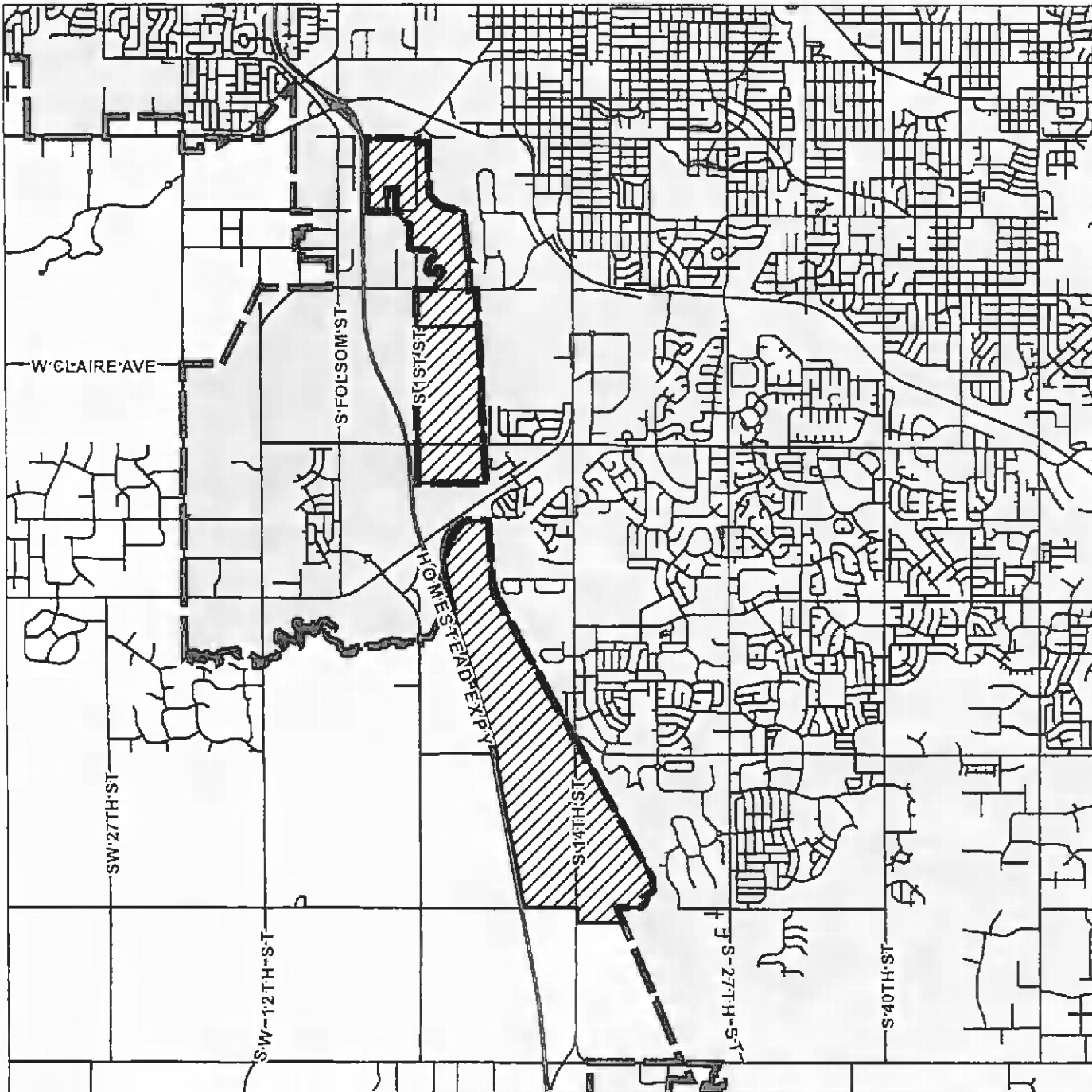


EXHIBIT "A"



EXHIBIT C

CPA # 22001
Hwy 77 & W Pioneers Blvd

Proposed Future Service Limit

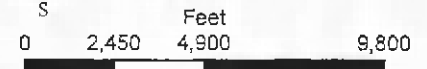


Legend

-  Area to Add to Future Service Limit
-  2050 Future Service Limit



LINCOLN - LANCASTER COUNTY
PLANNING DEPARTMENT
ITS
Information Technology Services
200 South 10th Street
Lincoln, Nebraska 68502
Phone: 402.477.4600 Fax: 402.477.4601









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(CPA22001)

CPA # 22001
 Hwy 77 & W Pioneers Blvd

Proposed Growth Tiers

Legend

 Proposed Growth Tier Changes

-  Existing City
-  Tier I Priority A
-  Tier I Priority B
-  Tier I Priority C
-  Tier II
-  Tier III

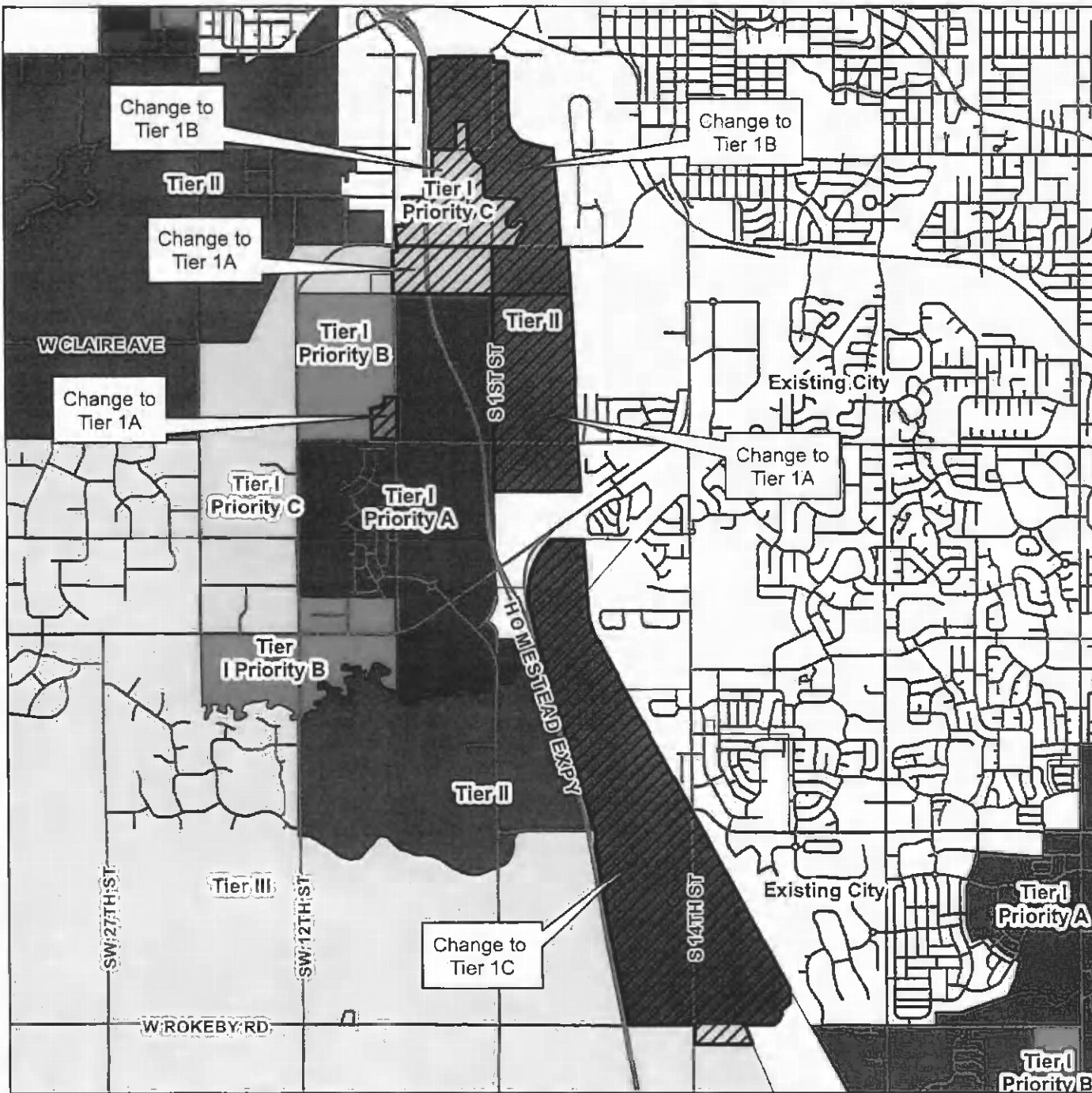


EXHIBIT "B"



LINCOLN - LANCASTER COUNTY
 PLANNING DEPARTMENT

 200 South 49th Street
 Lincoln, Nebraska 68508
 Phone: 402.441.2200

Feet
 0 1,950 3,900 7,800

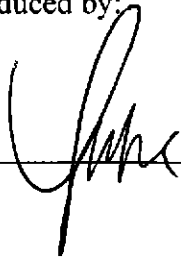
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 (CPA22001)

22R-131

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 22R-131 introduced on April 11, 2022, by adopting the Substitute Resolutions and Attachments attached hereto.

Introduced by:



Approved as to Form and Legality:



City Attorney

Requested by: Law Department

Reason for Request: To include the Future Service Limits Map amendment to the Comprehensive Plan Amendment.

ADOPTED

APR 25 2022

BY CITY COUNCIL

VOID

22R-131
Comprehensive Plan Amendment No. 22001

Introduce: 4-11-22

RESOLUTION NO. A-_____

1 WHEREAS, the Lincoln-Lancaster County Planning Department has applied to amend the
2 2050 Lincoln-Lancaster County Comprehensive Plan to amend the Lincoln-Lancaster Area Future
3 Land Use Map and Growth Tiers Map to reflect recent development interest and provide more
4 refined boundaries, on property generally located at Highway 77 and West Pioneers, and shown
5 on Exhibit "A"; and

6 WHEREAS, the Lincoln City-Lancaster County Planning Commission has recommended
7 approval of the changes.

8 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln,
9 Nebraska that the 2050 Lincoln-Lancaster County Comprehensive Plan be and the same is hereby
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15 BE IT FURTHER RESOLVED that all other maps, figures, and plans where the
16 2050 Lancaster County Future Land Use Plan, are displayed and other references in said plan
17 which may be affected by the above-specified amendment be, and they hereby are amended to
18 conform with such specific amendments.

19

20

Introduced by:

Benn Stobe

Approved as to Form & Legality:

Thomas Christ
City Attorney

Approved this ____ day of _____, 2022:









Mayor

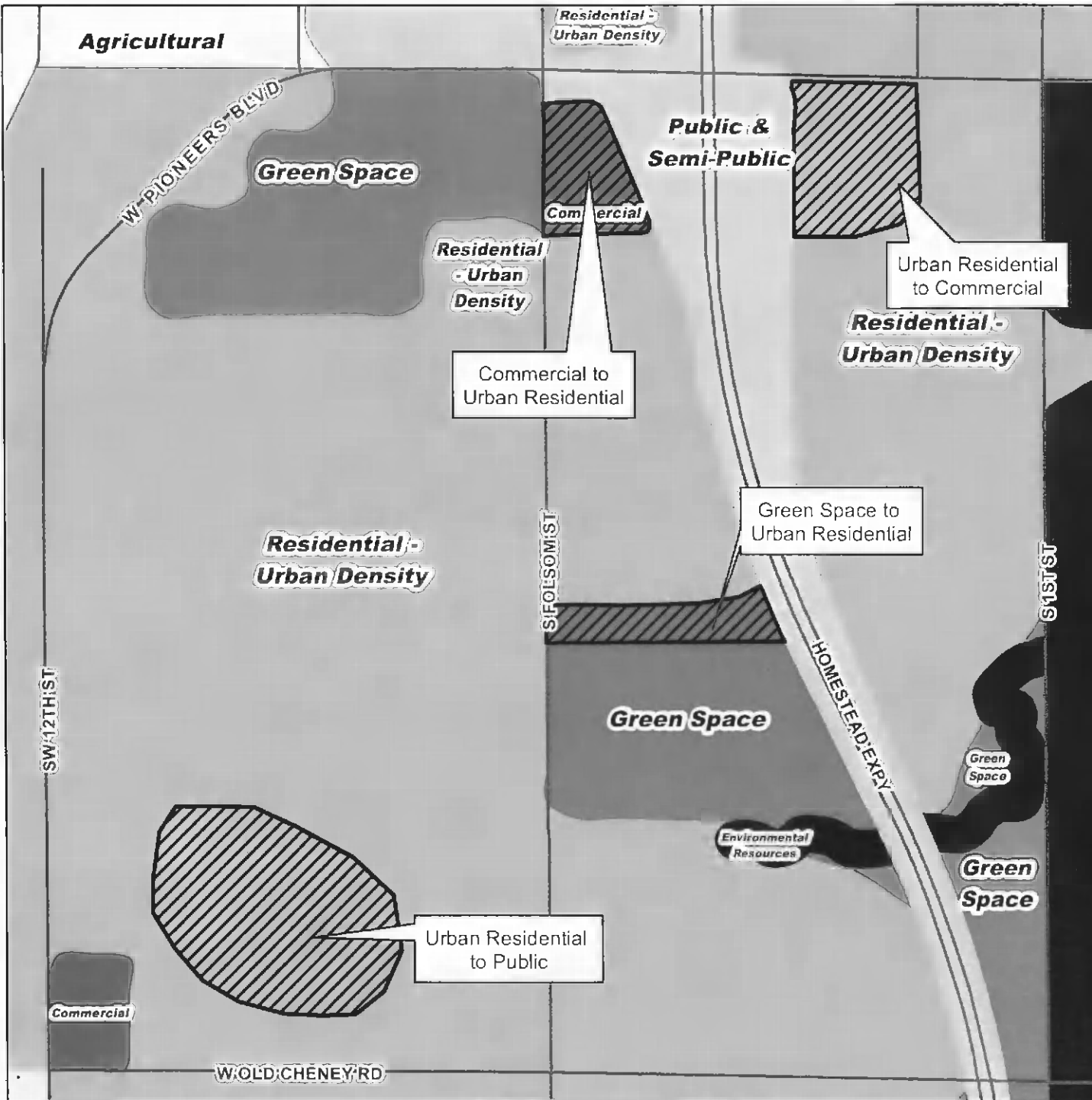
Proposed Land Use Change

Legend

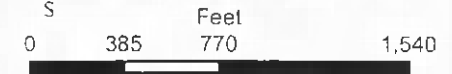
 Proposed Land Use Changes

Future Land Use

-  AG
-  AG STREAM
-  Commercial
-  Environmental Resources
-  Green Space
-  Industrial
-  Public/Semi-Public
-  RES-LOW
-  Residential - Urban Density
-  Lakes & Streams




LINCOLN - LANCASTER COUNTY
 PLANNING DEPARTMENT
 2000 Pennsylvania Boulevard, Suite 200
 Lancaster, PA 17303-1000
 Phone: 717.397.7000 Fax: 717.397.7001



Proposed Growth Tiers

Legend

 Proposed Growth Tier Changes

 Existing City

 Tier I Priority A

 Tier I Priority B

 Tier I Priority C

 Tier II

 Tier III

EXHIBIT "B"



LINCOLN-LANCASTER COUNTY
PLANNING DEPARTMENT
 Information Technology Services
300 Fourth Street
Lancaster, Nebraska 68601
Phone: 402.491.2897 Fax: 402.491.2827

0 1,950 3,900 7,800
Feet

