



Hall County Regional Planning Commission

Wednesday, October 7, 2015
Regular Meeting Packet

Commission Members:

Terry Connick	Hall County	
Karen Bredthauer	Grand Island	Vice Chairperson
Julie Connelly	Grand Island	
Jerry Huisman	Grand Island	
Mark Haskins	Hall County	
Carla Maurer	Doniphan	
Dean Kjar	Wood River	
Dean Sears	Grand Island	
Jaye Monter	Cairo	
Pat O'Neill	Hall County	Chairperson
Greg Robb	Hall County	
Leslie Ruge	Alda	Secretary

Regional Planning Director: Chad Nabity

Planning Technician:
Edwin Maslonka

Planning Secretary:
Rose Rhoads

6:00 PM

Call to Order

Roll Call

A - SUBMITTAL OF REQUESTS FOR FUTURE ITEMS

Individuals who have appropriate items for City Council consideration should complete the Request for Future Agenda Items form located at the Information Booth. If the issue can be handled administratively without Council action, notification will be provided. If the item is scheduled for a meeting or study session, notification of the date will be given.

B - RESERVE TIME TO SPEAK ON AGENDA ITEMS

This is an opportunity for individuals wishing to provide input on any of tonight's agenda items to reserve time to speak. Please come forward, state your name and address, and the Agenda topic on which you will be speaking.

DIRECTOR COMMUNICATION

This is an opportunity for the Director to comment on current events, activities, and issues of interest to the commission.



Hall County Regional Planning Commission

Wednesday, October 7, 2015
Regular Meeting

Item A1

Agenda

Staff Contact: Chad Nabity

REGIONAL PLANNING COMMISSION

AGENDA AND NOTICE OF MEETING

Wednesday, October 7, 2015

6:00 p.m.

City Hall Council Chambers — Grand Island

1. Call to Order.

This is a public meeting subject to the open meetings laws of the State of Nebraska. The requirements for an open meeting are posted on the wall in this room and anyone who would like to find out what those are is welcome to read through them.

The Planning Commission may vote to go into Closed Session on any Agenda Item as allowed by State Law.

The Commission will discuss and may take action on any item listed on this agenda.

2. Minutes of September 2, 2015.

3. Request Time to Speak.

4. Community Beautification Award.

5. Consider/Vote on whether to enter into Executive/Closed Session for the protection of the public interest regarding threat of litigation and legal procedures with legal counsel for the County of Hall and City Of Grand Island.

5.5. Public Hearing – Regulation Update – Proposal of Hall County Board of Supervisors regarding possible amendments to the Zoning Regulations of Hall County, Nebraska, pursuant to Article 10, Section 10.01 of the Hall County Nebraska Zoning Resolution #04-0020. The proposed amendments relate to definitional sections and regulations for adult establishments and the land available to adult establishments as a permitted use, in AG-SI Special Agriculture/Industrial Zone, AG-SE Agriculture/Events Zone, LI Light Industrial District, and G-I General Industrial District, as well as harmonizing general penalty provisions in the existing regulations. The proposed amendments would affect Sections 2.03A, 2.03.11 through 2.03.20, 2.03.269, 2.03.389, 2.03.390, 4.06.01, 4.06.02, 4.07.01, 4.07.02, 4.14.01 to 4.14.03 (paragraph 5), 4.15.01 to 4.15.03 (paragraph 13), 6.08, 10.02, 10.03, and 11.01 of the existing regulations, and would add a new Section 3.29 Adult Entertainment Regulations, and a new Section 7.06 Remedies for Violation, Penalties, and Enforcement Generally. (C-01-2016HC)

- 6. Public Hearing – Redevelopment Plan - Public Hearing** - Concerning an amendment to the redevelopment plan for CRA, Area 7, for a Site Specific Redevelopment Plan for property located at the southwest corner of the intersection of Schimmer Road and Blaine Street, in Grand Island, Hall County, Nebraska. Resolution No. 2016-01. (C-02-2016GI)
- 7. Public Hearing –Annexation Cairo –** (C-03-2016C)
A tract of land in the North ½ of Section 19, Township 12 north, Range 11 West of the 6th P.M. in Hall County. Located north of and including Nebraska Highway 2, west of and including 130th Road and south of and including One R Road. A proposed industrial park for the Village of Cairo.
- 8. Public Hearing – Adoption of New Zoning Map for Cairo** (C-03-2016C)
This map includes changes proposed with the annexation above and extension of the Extraterritorial Zoning Jurisdiction.

Consent Agenda

- 9. Final Plat – Concept Third Subdivision** – located south 4th Street and east of Taft Ave., in the City of Grand Island, in Hall County, consisting of 3 lots and 12.5469 acres.
- 10. Final Plat – Cairo Business Park Subdivision** – located south of One R Rd and west of 130th Rd., in Hall County, consisting of 20 lots and 90.072 acres.
- 11. Next Meeting November 4, 2015**
- 12. Adjourn**

PLEASE NOTE: This meeting is open to the public, and a current agenda is on file at the office of the Regional Planning Commission, located on the second floor of City Hall in Grand Island, Nebraska.



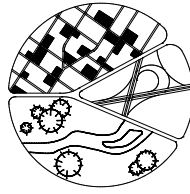
Hall County Regional Planning Commission

Wednesday, October 7, 2015
Regular Meeting

Item E1

Meeting Minutes

Staff Contact: Chad Nabity



THE REGIONAL PLANNING COMMISSION OF HALL COUNTY, GRAND ISLAND,
WOOD RIVER AND THE VILLAGES OF ALDA, CAIRO, AND DONIPHAN,
NEBRASKA

Minutes
for
September 2, 2015

The meeting of the Regional Planning Commission was held Wednesday, September 2, 2015 in the Council Chambers - City Hall – Grand Island, Nebraska. Notice of this meeting appeared in the "Grand Island Independent" August 22, 2015.

Present: Pat O'Neill	Carla Maurer
Karen Bredthauer	Terry Connick
Les Ruge	Greg Robb
Julie Connelly	Dean Kjar
Mark Haskins	Jerry Huisman

Absent: Dean Sears

Other:

Staff: Chad Nabity, Rose Rhoads

Press:

1. Call to order.

Chairman O'Neill called the meeting to order at 6:00 p.m.

O'Neill stated that this was a public meeting subject to the open meetings laws of the State of Nebraska. He noted that the requirements for an open meeting are posted on the wall in the room and easily accessible to anyone who may be interested in reading them.

2. Minutes of August 12, 2015 meeting.

A motion was made by Bredthauer and seconded by Robb to approve the Minutes of the August 12, 2015 meeting.

The motion carried with 9 members present and 7 voting in favor (O'Neill, Ruge, Connick, Maurer, Huismann, Robb, Bredthauer) and 2 members (Haskins and Connelly) abstaining.

3. Request Time to Speak.

No one requested time to speak.

4. Public Hearing - Rezone - A request to rezone property from CD Commercial Development Zone to Amended CD Commercial Development Zone, located north of State Street and east of US Hwy 281, in Grand Island, in Hall County, Nebraska. (C-24-2015GI)

O'Neill opened the Public Hearing.

Nabity reviewed the request for the rezone.

O'Neill closed the Public Hearing.

A motion was made by Haskins to approve the rezone as presented and seconded by Bredthauer.

Motion carried with 9 members present and 9 voting in favor (O'Neill, Ruge, Connick, Maurer, Huismann, Robb, Bredthauer, Haskins and Connelly).

Dean Kjar joined the meeting at 6:03 p.m.

5. Public Hearing - Concerning an amendment to the redevelopment plan for CRA, Area 2, for a Site Specific Redevelopment Plan for 1607 S Locust St., in Grand Island, Hall County, Nebraska. Resolution No. 2015-06. (C-25-2015GI)

O'Neill opened the Public Hearing.

Nabity reviewed the Redevelopment Plan.

O'Neill closed the Public Hearing.

A motion was made by Robb to approve the Redevelopment Plan as presented and seconded by Kjar.

Motion carried with 10 members present and 10 voting in favor (O'Neill, Ruge, Connick, Maurer, Huismann, Robb, Bredthauer, Kjar, Haskins and Connelly).

6. Final Plat – Park-View 6th Subdivision – located south of Pioneer Blvd and east of Blaine Street, in the City of Grand Island, in Hall County, consisting of 2 lots and 2.6234 acres.

7. Grand Island Mall Eighteenth Subdivision – located west of Webb Rd in the City of

Grand Island, in Hall County, consisting of 6 lots and 16.43 acres.

A motion was made by Ruge and seconded by Connelly to approve the consent agenda. The motion carried with 10 members present and 10 voting in favor (O'Neill, Ruge, Maurer, Robb, Kjar, Bredthauer, Huisman, Connick, Haskins and Connelly) and no member abstaining.

4. Next Meeting October 7, 2015

5. Adjourn

Chairman Pat O'Neill adjourned the meeting at 6:20 p.m.

Leslie Ruge, Secretary

By Rose Rhoads



Hall County Regional Planning Commission

Wednesday, October 7, 2015
Regular Meeting

Item F1

Regulation Update

Staff Contact: Chad Nabity

Agenda Item #5.56

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

September 3, 2015

SUBJECT:

Concerning amendments to the Zoning Resolution for the Hall County. The Hall County Board of Supervisors passed resolution 15-049 at their meeting on August 25, 2015 forwarding proposed amendments to the Hall County Zoning Regulations, as otherwise provided by Neb. Rev. Stat. §23-114(1)(c), and in the manner specified by Article 10, Section 10.01, paragraph 2 of the existing zoning regulations, proposes a number of amendments to the Hall County Nebraska Zoning Resolution No.04-0020 (2004): *(C-01-2016HC)* A copy of the proposed changes as updated is attached..

PROPOSAL:

The changes proposed here were suggested by the County's Legal Counsel.

The proposed changes are consistent with current case law regarding regulation of adult establishments. The changes as proposed would permit adult establishments in four zoning districts including the AG-SI, AG-SE, LI and GI districts. These districts represent approximately 8,651 acres (13.5 square miles an area equal to about 40% of the Grand Island Municipal Limits). This 8,651 acres represents 89.1% of the total commercial or industrial zoned property within the jurisdiction of Hall County.

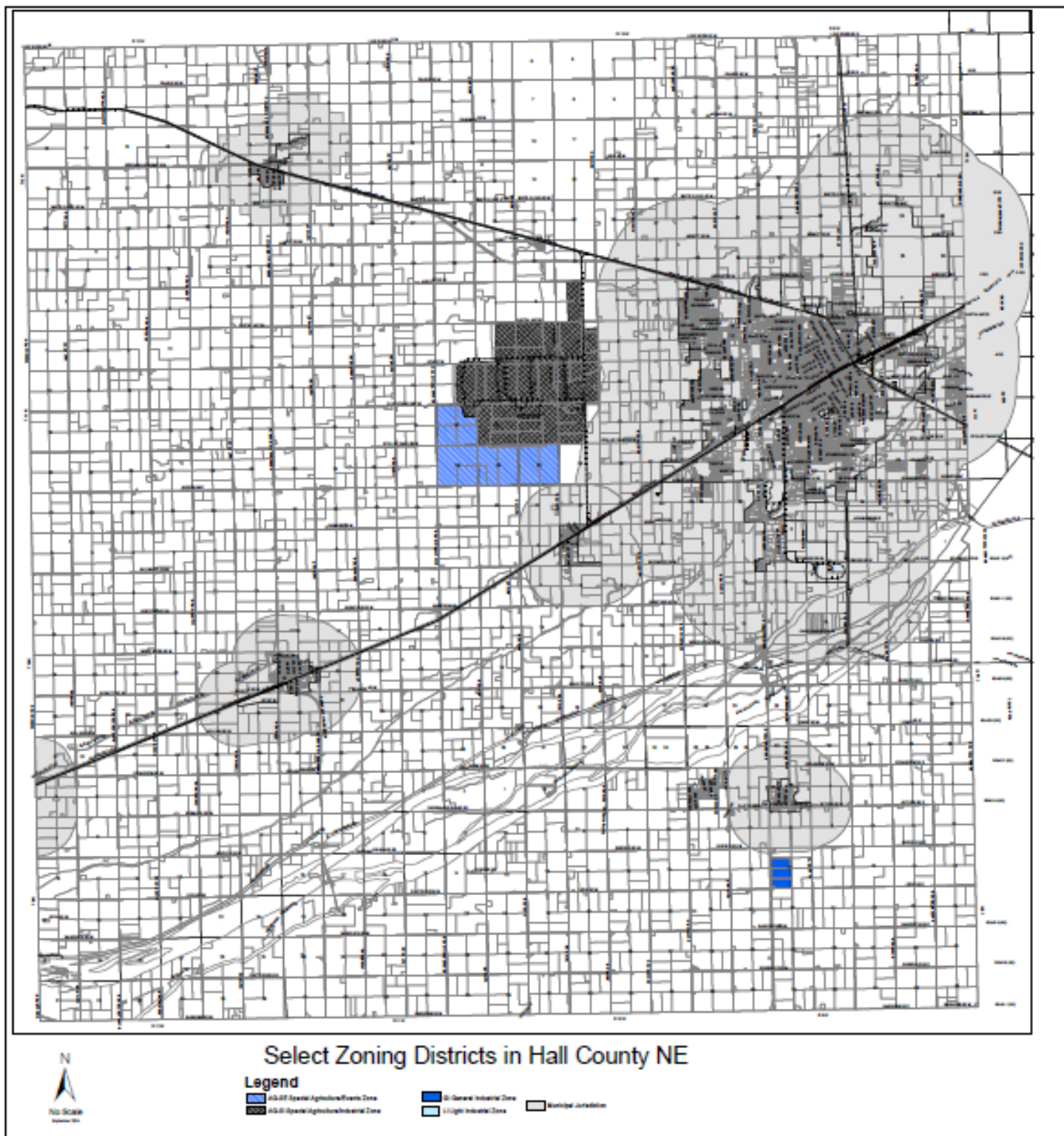
Adult establishments would be permitted principal uses in these districts subject to the performance criteria listed as section 3.29.02 in the attached resolution. Adult establishments that do not meet these minimum standards would be in violation of the regulations and subject to legal action by the County. Such uses would also be subject to minimum lot size, setbacks, fire and building codes as adopted and enforced and other health and safety regulations applicable to all businesses in those zoning districts.

As part of this packet you will find a list of resources documenting the secondary effects of adult establishments, for your consideration. A representative from the Law Office of Mr. Scott D. Bergthold will present this information during a conference call to be held during the meeting and included in the record of the meeting, and answer any questions of the members of the Commission.

RECOMMENDATION:

That the Regional Planning Commission recommend that the Hall County Board of Supervisors **approve** the changes to the Hall County Zoning Resolution as presented finding that it is in the best interest of the citizens of Hall County to regulate adult establishments to limit reduce the negative secondary impacts of such uses as documented in the information presented and included in the record.

_____ Chad Nabity AICP, Planning Director



Zoning Districts Impacted by the proposed changes

**HALL COUNTY BOARD
PROPOSAL FOR CHANGES TO ZONING RESOLUTION**

The Hall County Board of Supervisors, as otherwise provided by Neb. Rev. Stat. §23-114(1)(c), and in the manner specified by Article 10, Section 10.01, paragraph 2 of the existing zoning regulations, proposes the following amendments to the Hall County Nebraska Zoning Resolution No.04-0020 (2004):

RESOLUTION #15-_____
OF THE HALL COUNTY BOARD OF SUPERVISORS

**A RESOLUTION AMENDING PROVISIONS OF THE ZONING RESOLUTION OF
HALL COUNTY, NEBRASKA, REGULATING ADULT ESTABLISHMENTS.**

WHEREAS, adult establishments require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the County; and

WHEREAS, the Board of Supervisors finds that adult establishments, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that adult establishments, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the Board of Supervisors desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding areas and deter the spread of blight; and

WHEREAS, the County recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any resolution, the County and the Board of Supervisors accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Nebraska Constitutions, Nebraska Code, and the Nebraska Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this resolution to suppress any speech activities protected by the U.S. Constitution or the Nebraska Constitution, but to enact legislation to further the content-neutral governmental interests of the County, to wit, the controlling of secondary effects of adult establishments.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED by the Hall County Board of Supervisors that the Hall County Nebraska Zoning Resolution No. 04-0020 (2004), be amended as follows:

Item 1:

That Section 2.03A Definitions of Terms be amended by repealing the definitions in subsections 2.03.11 through 2.03.20, 2.03.269, 2.03.389, and 2.03.390; that the following new definitions be adopted; and that the subsections of Section 2.03A be renumbered accordingly:

ADULT BOOKSTORE OR ADULT VIDEO STORE shall mean a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.” A “principal business activity” exists where the commercial establishment meets any one or more of the following criteria:

1. At least 35% of the establishment’s displayed merchandise consists of said items, or
2. At least 35% of the retail value (defined as the price charged to customers) of the establishment’s displayed merchandise consists of said items, or
3. At least 35% of the establishment’s revenues derive from the sale or rental, for any form of consideration, of said items, or
4. The establishment maintains at least 35% of its floor area for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor area” maintained for the display, sale, or rental of said items); or
5. The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor area for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor area” maintained for the display, sale, or rental of said items); or
6. The establishment regularly offers for sale or rental at least two thousand (2,000) of said items; or
7. The establishment maintains an “adult arcade,” which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or “specified anatomical areas.”

ADULT LOUNGE shall mean a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live, semi-nude conduct. No establishment shall avoid classification as an adult lounge by offering nudity.

ADULT ESTABLISHMENT shall mean an “adult bookstore or adult video store,” an “adult lounge,” an “adult motion picture theater,” or an “adult paraphernalia store.”

ADULT MOTION PICTURE THEATER shall mean a commercial establishment to which the public is permitted or invited wherein an image-producing device is regularly maintained to show images to more than five persons at any one time, and where the images so displayed are characterized by their emphasis upon “specified sexual activities” or “specified anatomical areas.”

ADULT PARAPHERNALIA STORE shall mean a commercial establishment that regularly offers 100 or more sexual devices for sale. This definition shall not be construed to include any establishment located within an enclosed regional shopping mall. For purposes of this definition, “sexual device” means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. “Sexual device” shall not be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

EMPLOYEE OF AN ADULT ESTABLISHMENT shall mean any person who performs any service on the premises of an adult establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ENCLOSED REGIONAL SHOPPING MALL means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with onsite parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large anchor stores, such as department stores. The common walkway or mall is enclosed, climate controlled and lighted, usually with an inward orientation of the stores facing the walkway.

NUDITY means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

OPERATOR OF ADULT ESTABLISHMENT means any person on the premises of an adult establishment who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

SEMI-NUDE OR SEMI-NUDITY means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

SPECIFIED ANATOMICAL AREAS shall mean less than completely and opaquely covered human genitals, pubic region, buttock, and/or female breast below a point immediately above the top of the areola.

SPECIFIED SEXUAL ACTIVITIES shall mean intercourse, oral copulation, masturbation or sodomy.

Item 2:

That Article 3: General Regulations, be amended to add a new subsection 3.29 as follows:

Section 3.29 Adult Establishment Regulations

Section 3.29.01 Purpose; *Findings and Rationale*

1. *Purpose.* It is the purpose of this resolution to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the County. The provisions of this resolution have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this resolution to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this resolution to condone or legitimize the distribution of obscene material.
2. *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of Supervisors, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *City of Lincoln v. ABC Books, Inc.*, 470 N.W.2d 760 (Neb. 1991); *Xiong v. City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL

3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); *DLH Inc. v Nebraska Liquor Control Commission*, 266 Neb. 361(2003); *Village of Winslow v Sheets*, 261 Neb.203 (2001),

and based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analysis," *Crime & Delinquency* (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Adult establishments, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007;

"Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Adult establishments: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; and Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA), McLeary and Weinstein; Do "Off-Site Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory and Empirical Evidence, Law and Policy, Vol. 31, No. 2 (April 2009), Adult Business Study: Town and Village of Ellicottville, Cattaraugus County, New York (January 1998),

the Board of Supervisors finds:

- a. Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- b. Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.
- c. Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating. Additionally, the County's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the County. The County finds that the cases and documentation relied on in this resolution are reasonably believed to be relevant to said secondary effects.

The Board hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects.

Section 3.29.02 Regulations

1. No person shall establish, operate, or cause to be operated an adult establishment in Hall County within:
 - a. 1,000 feet of another adult establishment;
 - b. 500 feet of a business licensed to sell alcohol at the premises; or
 - c. 1,000 feet of a residential district, residential use, residence, church, educational institution, park, or recreational facility.
 - d. For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of

the structure containing the adult establishment to the closest point on a property boundary of another adult establishment, a business licensed to sell alcohol at the premises, a residential district, a residential use, a residence, a church, an educational institution, park, or a recreational facility.

2. No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.
3. No patron, employee of an adult establishment, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.
4. No person shall knowingly or intentionally, in an adult establishment, appear in a semi-nude condition unless the person is an employee of an adult establishment who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
5. No employee of an adult establishment who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee of an adult establishment or the clothing of such an employee of an adult establishment on the premises of an adult establishment.
6. No person shall possess alcoholic beverages on the premises of an adult establishment.
7. No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult establishment.
8. No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any employee of an adult establishment who is semi-nude or who appears semi-nude on the premises of the adult establishment, unless an operator of the adult establishment is present in the same room.
9. A person who operates or causes to be operated an adult establishment which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
 - a. The operator of the adult establishment shall, within one week of opening the adult establishment for business, submit to the County Zoning Administrator a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches.
 - b. It shall be the duty of the operator of the adult establishment, and of any employees of the adult establishment present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

- c. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- d. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
- e. It shall be the duty of the operator of an adult establishment to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - i. That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - ii. That specified sexual activity on the premises is prohibited.
 - iii. That the making of openings between viewing rooms is prohibited.
 - iv. That violators will be required to leave the premises.
 - v. That violations of these regulations are unlawful.
- f. It shall be the duty of the operator of an adult establishment to enforce the regulations articulated in e.i. through e.v. above.
- g. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator of the adult establishment's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator of an adult establishment to ensure that at least one employee of an adult establishment is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator of an adult establishment, and it shall also be the duty of any employees of an adult establishment present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- h. It shall be the duty of the operator of an adult establishment to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- i. It shall be unlawful for a person having a duty under subsections 11.a. through 11.h above to knowingly or recklessly fail to fulfill that duty.
- j. No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.
- k. No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

1. No person shall knowingly or recklessly make any hole or opening between viewing rooms.
10. It shall be the duty of the operator of an adult establishment to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.
11. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state shall be sufficient to establish a violation of a provision of this section 3.29.02.

Item 3:

That Section 4.06: AG-SE Agriculture/Events Zone be amended as follows:

4.06.01 Intent

...

This special use district is to allow for agricultural uses as well as special agricultural demonstration event, expositions and trade shows that require large land areas, in accordance with the Cornhusker Army Ammunition Plant (CAAP) Comprehensive Reuse Plan. Ranch and farm dwellings are not allowed due to Environmental Protection Agency issues with the CAAP site. Adult Establishments are permitted uses in this Zoning District, but are regulated to control the negative secondary effects of these uses, as set forth in Article 3, Section 3.29.

4.06.02 Permitted Principal Uses

...

6. ~~All other uses indicated as Permitted within the Zoning Matrix.~~ Adult Establishments.
- ~~6-7. All other Permitted Principal uses indicated as Permitted within the Zoning Matrix.~~

Item 4:

That Section 4.07: AG-SI -Special Agriculture/Industrial Zone be amended as follows:

4.07.01 Intent

This special use district is to allow for agricultural uses as well as manufacturing, processing, fabrication, research, warehousing, storage and wholesaling facilities in accordance with the Cornhusker Army Ammunition Plant (CAAP) Comprehensive Reuse Plan. Ranch and farm dwellings are not allowed due to the Environmental Protection Agency issues with the CAAP site. Adult Establishments are permitted uses in this Zoning District, but are regulated to control the negative secondary effects of these uses, as set forth in Article 3, Section 3.29.

4.07.02 Permitted Principal Uses

The following permitted uses are permitted in the AG-SI Special Agriculture/Industrial Zone:

6. Adult Establishments.
- ~~6-7.~~ All other Permitted Uses Principal Uses indicated as Permitted within the Zoning Matrix.

Item 5:

That Section 4.14.03 Conditional Uses, paragraph 5 including subsections (A) through (M) be repealed, and that the paragraphs under Sections 4.14.03 be renumbered accordingly.

That Section 4.15.03 Conditional Uses, paragraph 13, including subsections (A) through (M) be repealed, and that the paragraphs under Sections 4.15.03 be renumbered accordingly.

Item 6:

That Section 4.14: L1 Light Industrial District be amended as follows:

4.14.01 Intent

...

Adult Entertainment Facilities Establishments are included in this Zoning District. The intent of the Hall County Zoning Resolution is not to prohibit these uses but to regulate the secondary effects of these uses within the community permitted uses in this Zoning District, but are regulated to control the negative secondary effects of these uses, as set forth in Article 3, Section 3.29.

4.14.02 Permitted Uses

...

~~10. All other uses indicated as Permitted within the Zoning Matrix. Adult Establishments.~~

~~1011. All Permitted Uses as indicated in the Zoning Matrix.~~

Item 7:

That Section 4:15 GI General Industrial District be amended as follows:

4.15.01 Intent

...

Adult Entertainment Facilities Establishments are included in this Zoning District. The intent of the Hall County Zoning Resolution is not to prohibit these uses but to regulate the secondary effects of these uses within the community permitted uses in this Zoning District, but are regulated to control the negative secondary effects of these uses, as set forth in Article 3, Section 3.29.

4.15.02 Permitted Principal Uses

...

~~8. All other uses indicated as Permitted within the Zoning Matrix. Adult Establishments.~~

~~910. All Permitted uses as indicated within the Zoning Matrix.~~

Item 8:

That Section 10.02 Remedies and Section 10.03 Fines and Penalties, and the second paragraph only of Section 7.04 Enforcement by the Zoning Administrator be repealed.

That a new Section 7.06 in Article 7 Administration and Enforcement be enacted to replace the above repealed sections as follows:

Section 7.06 Remedies for Violation, Penalties, and Enforcement Generally

Remedies for violation and penalties concerning the Regulations and provisions in this Resolution, as may be amended, as read in its entirety, shall be those set forth in Neb. Rev. Stat. §23-114.05 and §23-174, or as otherwise amended by the State Legislature.

Item 9:

That Section 6.08 Schedule of Minimum Off-Street Parking and Loading Requirements, be amended as follows:

Adult ~~Entertainment~~ Establishments

Item 10:

That Section 11.01 Separability be repealed, and replaced with the following new Section:

Section 11.01 Severability

Each section and provision herein is hereby declared to be independent and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision herein, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions, and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision or application so known to be invalid.

Item 11:

That the “Table of Contents” of the existing zoning regulations be renumbered and revised accordingly for consistency with all amendments contained herein.

**HALL COUNTY, NEBRASKA
ADULT ESTABLISHMENT REGULATIONS
INDEX TO LEGISLATIVE SECONDARY EFFECTS DOCUMENTATION**

1. Legal Presentation on Regulating Negative Secondary Effects of Sexually Oriented Businesses (PowerPoint Slides)
2. Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses
3. *Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD*, Journal of Urban Health: Bulletin of the New York Academy of Medicine (15 February 2011)
4. *Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses*, Crime & Delinquency (29 November 2012) (Louisville, KY)
5. Metropolis, Illinois, Investigator Affidavits Documenting Paid Sexual Conduct in Adult Entertainment Club, 2011-2012
6. Manatee County, Florida Investigator Affidavits and News Articles re: Secondary Effects of Sexually Oriented Businesses, 2007
7. Hillsborough County, Florida Investigator Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2006
8. Clarksville, Indiana, Investigator Report re: Live Sexual Conduct in Adult Entertainment Establishment Booth Areas, 2009
9. El Paso, Texas, Affidavits re: Illicit Sex Acts and Unsanitary Conditions in Adult Cabarets and Adult Bookstores, 2008
10. Memphis Articles re: Crime at Strip Clubs and Strip Club Owner Guilty Plea, 2006
11. New Albany, Indiana, Investigator Report re: Illicit Sexual Conduct at Gentlemen's Club, 2009
12. Louisville, Kentucky Police Reports, Investigator Affidavits, and Citizen Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2004
13. Report on Fulton County Adult Entertainment Businesses, July 2001, and minutes of public hearing
14. Chattanooga Police Records re: Public Masturbation and Public Nuisance Activities at Cinema One Theatre, 1999-2003
15. Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the Jackson County Legislature, May 9, 2008

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16. Survey of Appraisers, Fort Worth & Dallas, Effects of Land Uses on Surrounding Property Values, September 2004
17. Report to the City Attorney on Crime-Related Secondary Effects, Kennedale, Texas, 2005
18. A Methodological Critique of the Linz-Yao Report: Report to the Greensboro City Attorney, December 15, 2003
19. An Analysis of the Effects of SOBs on the Surrounding Neighborhoods in Dallas, Texas, April 1997
20. Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston City Council, January 7, 1997
21. Legislative Report on an Ordinance Amending Section 28-73 of the Code of Ordinances of the City of Houston, Texas, November 1983
22. Adult Cabarets, Factual Record, Phoenix, Arizona, 1995-1998
Incall Escort Bureaus/Nude Modeling Studios (Private Room Nude Dancing)
Factual Record, Phoenix, Arizona, 1995-1998
23. Tucson, Arizona Police Memorandum dated May 1, 1990
24. Declaration in Support of City of Spokane's Motion for Summary Judgment re: Secondary Effects Evidence Concerning Retail Adult Bookstores, July 24, 2002; and other Spokane, Washington documents
25. Summary of Review and Conclusions Regarding the City of St. Cloud's Regulation of Adult Use Businesses, December, 1994
26. Adult Business Study, Planning Department, City of Phoenix, May 25, 1979
27. Report on Adult Oriented Businesses in Austin, prepared by Office of Land Development Services, Austin, Texas, May 19, 1986
28. Adult Entertainment Businesses in Indianapolis, An Analysis, Department of Metropolitan Development, Division of Planning, February 1984
29. The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October 23, 1991
30. Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles, Department of City Planning, City of Los Angeles, June 1977
31. Staff Report, Amendment to Zoning Regulations, Adult Businesses in C-2 Zone with Conditional Use Permit, City of Whittier, California, January 9, 1978

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32. Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers, March 3, 1986
33. Report on Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area, April 1994
34. Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, State of Minnesota, June 6, 1989
35. Expert Report in *Illusions-Dallas Private Club, Inc. v. Steen*, N.D. Tex. no. 3:04-CV-201, October 5, 2007
36. *Rural Hotspots: The Case of Adult Businesses*, 19 Criminal Justice Policy Review 153 (2008)
37. Stripclubs According to Strippers: Exposing Workplace Sexual Violence, by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota
38. David Sherman, Sexually Oriented Businesses: An Insider's View, Testimony before Michigan House Committee—Ethics and Constitutional Law, January 12, 2000
39. Sex Store Statistics and Articles
40. Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA)
41. Summary of Arrests for Jacksonville, Florida Bikini Bars (1/1/2004-8/3/2005)
42. Expert Report in *Wacko's Too, Inc. v. City of Jacksonville*, M.D. Fla. No. 3:04-cv-1307 (Oct. 2005)
43. Media articles re: bikini bars
44. Affidavit of J.R. Long, Hillsborough County, Florida, 2006
45. Cases Discussing the Negative Secondary Effects of Sexually Oriented Businesses and/or the Constitutionality of Regulations Pertaining to Same
46. Secondary Effects study on smaller community of Ellicottville, NY, Jan. 1998
47. Do "Off-Site" Adult Businesses Have Secondary Effects?, Law and Policy, 2009
48. *Major Liquors v. City of Omaha*, 188 Neb. 628 (1972)
49. *DLH, Inc. v. Nebraska Liquor Control Commission*, 266 Neb. 361 (2003)
50. *Village of Winslow v. Sheets*, 261 Neb. 203 (2001)

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Legal Presentation Regarding Negative Secondary Effects of Adult Establishments

**Hall County
Planning Commission
October 7, 2015**

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Renton v. Playtime Theatres, Inc., 475 U.S. 41, 51-52 (1986)

“Renton was entitled to rely on the experiences of Seattle and other cities, and in particular on the ‘detailed findings’ summarized in [prior case].

The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.”

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Courts Have Recognized Many Types of Secondary Effects

- 1. Negative impacts on surrounding properties**
- 2. Personal and property crimes, public safety risks, confrontations**
- 3. Lewdness, public indecency, illicit sexual activity and potential spread of disease**
- 4. Illicit drug use and trafficking**
- 5. Litter, aesthetic impacts, traffic, noise, blight**



Courts Have Recognized a Wide Variety of Sources of Secondary Effects Evidence

- 1. Land Use Reports**
- 2. Crime Impact Reports**
- 3. Judicial Opinions**
- 4. Expert Reports**
- 5. Anecdotal Data**

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Legal Rationale & Findings re: Negative Secondary Effects

Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

Negative Secondary Effects Justify Location Regulations

- 1. *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007) (upholding zoning of adult uses to industrial zone)**
- 2. *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148 (4th Cir. 2009) (“Thus, when cities exercise their power to zone the location of adult establishments, they need not show that each individual adult establishment actually generates the undesired secondary effects.”)**
- 3. *Tollis, Inc. v. County of San Diego*, 505 F.3d 935 (9th Cir. 2007) (upholding zoning that isolates adult businesses to industrial zones)**

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***New York State Liquor Authority v. Bellanca*, 452 U.S. 714, 718 (1981)**

“Common sense indicates that any form of nudity coupled with alcohol in a public place begets undesirable behavior.”

***Daytona Grand v. Daytona Beach*, 490 F.3d 860, 882 (11th Cir. 2007)**

“[Plaintiffs’ evidence] cast[s] little or no doubt on the City’s evidence that nudity in establishments that serve alcohol encourages ‘prostitution, . . . undesirable behavior . . . , [and] sexual, lewd, lascivious, and salacious conduct among patrons and employees . . . in violation of law and [en]dangers . . . the health, safety and welfare of the public.’”

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***Ocello v. Koster*, 354 S.W.3d 187, 210
(Mo. 2011)**

“The government also relied on expert testimony from Dr. McCleary, who found that criminological theory predicted alcohol would increase crime at sexually oriented businesses by lowering patrons’ inhibitions, thereby making them more susceptible to predatory criminals.”

“Alcohol aggravates an SOB’s already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB’s patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this theoretical expectation in all respects.”

-Richard McCleary, Ph.D., Expert Report for
Jackson County Missouri, May 9, 2008

**Negative Secondary Effects
Justify Licensing, Conduct Regs**

- 1. *City of Erie v. Pap’s A.M.*, 529 U.S. 277 (2000)
(nudity ban)**
- 2. *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541
U.S. 774 (2004) (licensing ordinance)**
- 3. *Peek-A-Boo Lounge v. Manatee County*, 630
F.3d 1346 (11th Cir. 2011) (nudity prohibition,
interior configuration, alcohol ban, licensing)**
- 4. *Jake’s Ltd., Inc. v. City of Coates*, 284 F.3d
884 (8th Cir. 2002) (6-ft. rule)**

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Supporting Cases (cont'd)

- 5. *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009) (upholding secondary-effects regulation of retail adult bookstore)**
- 6. *ILQ Investments, Inc. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994) (upholding regulation of adult retail stores)**
- 7. *High Five Investments, LLC v. Floyd County*, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008) (upholding regulation of retail-only store through licensing with set-back provision)**

Court-Approved Expert Findings

- 1. Finding of secondary effects from adult establishments is confirmed in wide variety of sources.**
- 2. Industry “studies” flawed: Reliance on police calls-for-service (CFS) is flawed because most vice crimes never result in a CFS. *See Daytona Grand*, 490 F.3d 860, 881-883 (11th Cir. 2007).**
- 3. All subclasses of adult establishments, including retail-only stores, have secondary effects. *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007).**

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**Cases rejecting industry's experts'
secondary effects attacks:**

- 1. *City of Erie v. Pap's A.M.*,
529 U.S. 277 (2000) (Linz)**
- 2. *Daytona Grand, Inc. v. City of Daytona Beach*,
490 F.3d 860 (11th Cir. 2007) (Linz, Fisher)**
- 3. *SOB, Inc. v. County of Benton*,
317 F.3d 856 (8th Cir. 2003) (Linz)**
- 4. *Gammoh v. City of La Habra*,
395 F.3d 1114 (9th Cir. 2005) (Linz)**
- 5. *G.M. Enterprises, Inc. v. Town of St. Joseph*,
350 F.3d 631 (7th Cir. 2003) (Linz)**

**Cases rejecting industry's experts'
secondary effects attacks (cont'd):**

- 6. *World Wide Video of Washington v. Spokane*,
368 F.3d 1186 (9th Cir. 2004) (McLaughlin)**
- 7. *Fantasy Ranch, Inc. v. City of Arlington*,
459 F.3d 546 (5th Cir. 2006) (Morris)**
- 8. *Fantasyland Video, Inc. v. County of San Diego*,
505 F.3d 996 (9th Cir. 2007) (Linz, Goldenring)**
- 9. *High Five Investments, LLC v. Floyd County*, No.
4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008)
(McLaughlin)**
- 10. *Peek-A-Boo Lounge v. Manatee County*, 630 F.3d
1346 (11th Cir. 2011) (Fisher, Danner)**

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Some Court-Approved Secondary Effects Evidence

- 1. Tucson, Arizona (illicit sexual behavior in adult bookstore)**
- 2. New York, New York (adverse impacts on surrounding properties)**
- 3. Garden Grove, California (ambient crime risk)**
- 4. Houston, Texas (illicit sex acts)**
- 5. McCleary Expert Report (2008 Jackson County, MO report) (refuting industry experts)**
- 6. Oklahoma City, Oklahoma (adverse impacts on surrounding properties)**



Some Court-Approved Secondary Effects Evidence (cont'd)

- 7. Memphis, Tennessee ("Lewd, nude, and under review" and nuisance articles, plea documents)**
- 8. Fulton County, Georgia (secondary effects documents discussed in *Flanigan's* 2010 case)**
- 9. Manatee County, Florida (affidavits re: illicit sex acts and alcohol law violations)**
- 10. Spokane, Washington (secondary effects of retail adult bookstores)**
- 11. Hillsborough County, Florida; Metropolis, Illinois (investigator affidavits)**

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Courts Have Upheld Regulations Like Those Proposed for Hall County

- 1. *Metro Pony, LLC v. City of Metropolis*, Case No. 11-CV-144, 2012 WL 1389656 (S.D. Ill. 2012) (licensing, no alcohol, 6-ft. rule, no-touch, hours)**
- 2. *Ocello et al. v. Koster, Missouri Attorney General*, 354 S.W.3d 187 (Mo. 2011), *cert. denied* (U.S. 2012) (comprehensive statewide statute)**
- 3. *84 Video/Newsstand, Inc. v. Sartini*, 455 Fed. Appx. (6th Cir. 2011), *cert. denied* 137 S.Ct. 1637 (U.S. 2012) (statewide no-touch, hours)**



The Voluminous Secondary Effects Materials are Made A Part of the Official Record and/or Minutes for this Public Meeting.

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**NEGATIVE SECONDARY EFFECTS OF SEXUALLY ORIENTED BUSINESSES:
SUMMARIES OF KEY REPORTS**

GARDEN GROVE, CALIFORNIA
September 12, 1991

This report by independent consultants summarized statistics to determine whether adult businesses should be regulated because of their impact on crime, property values and quality of life. Statistics were measured from 1981 to 1990, and included crime data and surveys with real estate professionals and city residents. Garden Grove Boulevard, which has seven adult businesses, was selected as the study area. The study incorporated many control factors to insure accurate results. The report included a brief legal history of adult business regulation and an extensive appendix with sample materials and a proposed statute.

Crime increased significantly with the opening of an adult business, or with the expansion of an existing business or the addition of a bar nearby. The rise was greatest in "serious" offenses (termed "Part I" crimes: homicide, rape, robbery, assault, burglary, theft and auto theft). On Garden Grove Boulevard, the adult businesses accounted for 36 percent of all crime in the area. In one case, a bar opened less than 500 feet from an adult business, and serious crime within 1,000 feet of that business rose more than 300 percent the next year.

Overwhelmingly, respondents said that an adult business within 200-500 feet of a residential and commercial property depreciates that property value. The greatest impact was on single family homes. The chief factor cited for the depreciation was the increased crime associated with adult businesses.

Phone calls were made in a random sample of households in the Garden Grove Boulevard vicinity. The public consensus was that adult businesses in that area were a serious problem. Nearly 25 percent of the surveyed individuals lived within 1,000 feet of an adult business. More than 21 percent cited specific personal experiences of problems relating to these businesses, including crime, noise, litter and general quality of life. Eighty percent said they would want to move if an adult business opened in their neighborhood, with 60 percent saying they "would move" or "probably would move." Eighty-five percent supported city regulation of the locations of adult businesses, with 78 percent strongly advocating the prohibition of adult businesses within 500 feet of a residential area, school or church. Women commonly expressed fear for themselves and their children because of adult businesses.

The report concluded that adult businesses have a "real impact" on everyday life through harmful secondary effects and made four recommendations: (1) keep current requirement of 1,000 feet separation between adult businesses; (2) prohibit adult establishments within 1,000 feet of residential areas; (3) enact a system of conditional use permits for adult businesses with

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police department involvement in every aspect of the process; and (4) prohibit bars or taverns within 1,000 feet of an adult business.

NEW YORK CITY, NEW YORK (TIMES SQUARE) 1994

Insight Associates performed this study in 1994 - one year after the City of New York passed extensive legislation that restricted and regulated sexually oriented businesses. The study focused on the Times Square Business Improvement District, especially on the areas of sexually oriented business concentration.

Researchers combined analysis of available data on property values and incidence of crime with a demographic and commercial profile of the area to show relationships between the concentration of adult-use establishments and negative impacts on businesses and community life. The study also included anecdotal evidence from property owners, businesses, community residents and others regarding public perceptions of the impact of sexually oriented businesses on their neighborhoods.

The study cited the strategies of several other big cities as possible methods to regulate sexually oriented businesses, including dispersal and concentration strategies.

Using crime and pollution statistics from 1992 and 1993, the study showed that the streets were significantly less polluted and overall crime in the area had dropped drastically since the increase in regulation.

Survey respondents acknowledged the improvements in the area and voiced optimism about the future of Times Square. They also complained of the increase of adult establishments on Eighth Avenue. Many respondents felt that some adult establishments could exist in the area, but that their growing number and their concentration on Eighth Avenue constituted a threat to the commercial prosperity and residential stability achieved in the preceding years in that section of the city.

Some data from before the recent increase in adult establishments was unobtainable, and the study thus could not show if there had been an increase in actual complaints corresponding to the proliferation of sexually oriented businesses. The study did, however, reveal a reduction in criminal complaints corresponding to the distance from the major concentration of sexually oriented establishments. In addition, from 1985 to 1993 property values increased 26% less in concentrated sex-business areas than in the control group areas.

DALLAS, TEXAS April 29, 1997

An analysis of the effects of sexually oriented businesses on their surrounding neighborhoods was completed by The Malin Group on December 14, 1994 and supplemented by them on April 29, 1997. The analysts reviewed similar studies of adult entertainment completed by five other major cities and found that comparable results were obtained in each study. This study compared two control areas—one with no sexually oriented businesses and one with two sexually oriented businesses more than a half mile apart—with a study area

having similar land-use and traffic patterns and containing a high concentration of sexually oriented businesses. The Malin Group also interviewed property owners, real estate brokers and agents who are actively leasing, listing, managing, buying or selling properties in the study and control areas. The Malin Group also collected and analyzed crime statistics within the study areas and the two control areas.

The study revealed that the number of sex-crime arrests in the study area containing sexually oriented businesses was five times higher than in the control area with no sexually oriented businesses, and nearly three times higher than in the control area with two isolated sexually oriented businesses.

The study determined that in areas with sexually oriented businesses, crime rates are higher, property values are lower, or the properties take longer to lease or sell. Heightened concentrations of these businesses correlate to heightened impact on their neighborhoods. Negative public attitudes toward areas of concentrated sex-related land uses create "dead zones" unattractive to shoppers, store owners, and investors, and greatly decrease property marketability and values in the vicinity of the sexually oriented businesses. Several interviewees indicated concern for the safety of children and other pedestrians in the area.

The study indicated that the location of multiple sexually oriented businesses in one neighborhood can have a major impact on the neighborhood by contributing to crime, driving away family oriented businesses and impacting nearby residential neighborhoods. When concentrated, sexually oriented businesses typically compete with one another for customers through larger, more visible signs and graphic advertising. They tend to be magnets for certain types of businesses such as pawnshops, gun stores, liquor stores, check-cashing storefronts and late-night restaurants. Even residences in the vicinity of concentrated sexually oriented businesses tend to be relegated to rental use, as families move out of them but find them difficult to market due to diminished resale value.

The study indicated that sex-related crimes occurred five times more frequently in the study areas than in the area without sexually oriented businesses, and nearly three times more frequent than in the area with widely separated sexually oriented businesses.

The Milan Group reviewed records of police calls emanating from 10 different sexually oriented businesses over a four-year period from 1993 through 1996 and found that such businesses were a major source of police calls. The seven sexually oriented businesses in the study area collectively averaged more than one call to the police per day. Those performing the study also reviewed records of sex-related arrests from the four-year period ending in March, 1997. The number of arrests for sex crimes—including rape, prostitution and other sex offenses—was 396 in the study area including the concentration of seven sexually oriented businesses. By contrast, the control area without sexually oriented businesses had 77 sex crime arrests during the study period, and the control area with two widely spaced sexually oriented businesses had 133. The evidence demonstrated that there were increased arrests for sex crimes, other criminal acts, and disturbances that required increased police presence in the vicinity of sexually oriented businesses.

In most cases, the other localities considered in the study had prohibited sexually oriented businesses from locating in all but a few zoning districts. They set minimum distances between sexually oriented businesses and residential, religious, educational and recreational uses. These distances were generally 500 or 1,000 feet. Most localities established amortization periods after the enactment of their ordinances. In most cases, local authorities

could "grandfather" certain sexually oriented businesses through a public hearing process. Most of the clubs that were grandfathered were isolated establishments which advertised discreetly and were buffered from residential uses.

The study noted that in several instances, state and federal courts have upheld local ordinances controlling sexually oriented businesses, and have deemed them constitutional as long as the localities provided for a sufficient number of relocation sites.

These studies in the other localities "found that adult entertainment uses have negative secondary impacts such as increased crime rates, depreciation of property values, deterioration of community character and the quality of urban life."

The study results indicated that even a single sexually oriented business impacts the properties immediately surrounding it, and those adverse impacts increase in proportion to the visibility of the business.

ENVIRONMENTAL RESEARCH GROUP REPORT March 31, 1996

In 1996, Environmental Research Group (ERG) of Philadelphia, PA performed a study of the negative effects of sexually oriented businesses. The study involved examining several municipal land use studies and historical data from the 1970s through 1996, compiling data and drawing conclusions based on statements and conclusions of previous land use studies.

This study concluded that sexually oriented businesses provide a focus for illicit activities pertaining to prostitution, pandering, and other illegal sex acts. Also noted was an increase in crime statistics, especially sexual crimes such as illegal exposure. The most frequent clients of sex businesses are (and have been since at least the late 18th century) young, transient, single males. Statistically, this social category has interests that are in conflict with those of social groups consisting of families and/or the elderly. Studies of businesses in Bothell, WA and Austin, TX revealed that fewer than three percent (3%) of the vehicles parked in the lots were registered to owners residing a mile or less away.

ERG concluded that the impact of sex businesses upon small towns is more intense than that upon big towns. The business district of a small town is not as large and not capable of "dividing up" sections of town. A national survey of real estate appraisers and lenders revealed that the placement of a sexually oriented business is generally an indicator of the decline of a community - in a small town, the business district as a whole is impacted. Also, the target audience in a small town will not suffice for a sex business, which must draw business from a larger surrounding region. Sex businesses also set the tone of the pedestrian traffic in the area. Interviews with non-sex-business patrons and passers-by indicated a likelihood that a person on foot in the vicinity of sexually oriented businesses will be propositioned for sex acts or sexually harassed.

Finally, a review of surveys of real-estate appraisers suggests that the establishment of a sexually oriented business in either a residential or a commercial neighborhood will predictably lead to a significant drop in neighborhood property values.

HOUSTON, TEXAS

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000017

November 3, 1983

Report by the Committee on the Proposed Regulation of Sexually Oriented Businesses determined the need and appropriate means of regulating such businesses. Four public hearings provided testimony from residents, business owners, realtors, appraisers, police and psychologists. The committee and legal department then reviewed the transcripts and drafted a proposed ordinance. More hearings obtained public opinion on the proposal and the ordinance was refined for vote by the City Council.

The testimony was summarized into six broad premises:

1. The rights of individuals were affirmed.
2. Sexually oriented businesses can exist with regulations that minimize their adverse effects.
3. The most important negative effects were on neighborhood protection, community enhancement and property values.
4. Problems increased when these businesses were concentrated.
5. Such businesses contributed to criminal activities.
6. Enforcement of existing statutes was difficult.

The proposed ordinance: (1) required permits for sexually oriented businesses (non-refundable \$350 application fee); (2) imposed distance requirements of 750 feet from a church or school, 1,000 feet from other such businesses, and 1,000 feet radius from an area of 75 percent residential concentration; (3) imposed an amortization period of six months that could be extended by the city indefinitely on the basis of evidence; (4) required revocation of permit for employing minors (under 17), blighting exterior appearance or signage, chronic criminal activity (three convictions), and false permit information; and (5) required age restrictions for entry.

TUCSON, ARIZONA
May 1, 1990

This report records the investigation following citizen complaints to the Tucson Police Department regarding incidences of illegal sex and unsanitary conditions in sexually oriented businesses. Undercover police verified the complaints and noted several other violations, also making arrests.

A major concern of the report is the issue of doors on peep show booths. The booths were the major area of sanitation and public health concerns in that the police ascertained that 81% to 96% of samples obtained from such booths tested positive for semen. The report described a compromise between the city and sex businesses, such that the businesses were allowed to keep doors on the booths but were required to remove the bottom 30 inches of the doors. It was thought that this would reduce opportunities or likelihood for customers to masturbate privately, or to engage in anonymous sex through the use of "glory holes" in the walls between adjoining booths—practices previously common in such establishments—while

allowing the management to observe and control the booths to ensure use by paying customers only.

The police also made arrests for illegal sexual performances and acts of prostitution. The police also determined that underage females (including one who was 15 years old) were being employed as nude dancers with the full knowledge and support of management and required to perform nude, engaging in masturbatory acts several times an hour on stage.

LOS ANGELES, CALIFORNIA
June, 1977

The Department of City Planning studied the effects of the concentration of sexually oriented businesses on surrounding properties for the years 1969-75 (a time of proliferation for such businesses). The report focuses on five areas with the greatest concentration of these businesses (compared to five "control" areas free of them), and cites data from property assessments/sales, public meeting testimony, and responses from two questionnaires (one to business/residential owners within a 500 foot radius of the five study areas and a second to realtors/real estate appraisers and lenders). Crime statistics in the study areas were compared to the city as a whole. Also included: a chart of sexually oriented business regulations in 11 major cities, details of current regulations available under state/municipal law, and appendices with samples of questionnaires, letters and other study materials.

While empirical data for 1969-75 did not conclusively show the relation of property valuations to the concentration of sexually oriented businesses, more than 90 percent of realtors, real estate appraisers and lenders responding to the city questionnaires said that a grouping of such businesses within 500-1,000 feet of residential property decreases the market value of the homes. Also residents and business people at two public meetings spoke overwhelmingly against the presence of sexually oriented businesses, citing fear, concern for children, loss of customers and difficulty in hiring employees at non-adult businesses, and the necessity for churches to provide guards for their parking lots.

More crime occurred where sexually oriented businesses were concentrated. Compared to city-wide statistics for 1969-75, areas with several such businesses experienced greater increases in pandering (340 percent), murder (42.3 percent), aggravated assault (45.2 percent), robbery (52.6 percent), and purse snatching (17 percent). Street robberies, where the criminal has face-to-face contact with his victim, increased almost 70 percent more in the study areas. A second category of crime, including other assaults, forgery, fraud, counterfeiting, embezzlement, stolen property, prostitution, narcotics, liquor laws and gambling increased 42 percent more in the study areas over the city as a whole.

The study recommended distances of 1,000 feet between separate sexually oriented businesses, and a minimum of 500 feet separation of such businesses from schools, parks, churches and residential areas.

6
000019

PHOENIX, ARIZONA
May 25, 1979

The study examined crime statistics for 1978, comparing areas that have sexually oriented businesses with those that do not.

The results show a marked increase in sex offenses in neighborhoods with sexually oriented businesses, and increases in property and violent crimes as well.

Three study areas (near locations of sexually oriented businesses) and three control areas (with no sexually oriented businesses) were selected. The study and control areas were paired according to the number of residents, median family income, percentage of non-white population, median age of population, percentage of dwelling units built since 1950, and percentage of acreage used for residential and non-residential purposes.

Three categories of criminal activity were included in the study: property crimes (burglary, larceny, auto theft), violent crimes (rape, murder, robbery, assault), and sex crimes (rape, indecent exposure, lewd and lascivious behavior, child molestation).

On average, the number of sex offenses was 506 percent greater in neighborhoods where sexually oriented businesses were located. In one of the neighborhoods the number was 1,000 percent above the corresponding control area. Of the sex offenses, indecent exposure was the most common offense and the largest contributor to the increase of crimes in areas where sexually oriented businesses were located. Even without considering the crime of indecent exposure the number of other sex crimes, such as rape, lewd and lascivious behavior, and child molestation, was 132 percent greater than in control areas without sexually oriented businesses.

On average, the number of property crimes was 43 percent greater in neighborhoods where sexually oriented businesses were located, and the number of violent crimes was 4 percent higher in those areas.

The Phoenix ordinance requires sexually oriented businesses to locate at least 1,000 feet from other sexually oriented businesses and 500 feet from schools or residential zones. Approval by the City Council and area residents can waive the 500 foot requirement.

A petition signed by 51 percent of the residents in the 500 foot radius who do not object must be filed and be verified by the Planning Director.

WHITTIER, CALIFORNIA

7
000020

January 9, 1978

After experiencing a rapid growth of sexually oriented businesses since 1969, the Whittier City Council commissioned a study of the effects of the businesses on the adjacent residential and commercial areas. At the time of the study, Whittier had 13 "adult" businesses: six model studios, four massage parlors, two bookstores and one theater. Utilizing statistics, testimonies and agency reports, the study compared two residential areas and four business areas over a span of 10 years (1968-1977). One residential area was near the largest concentration of adult businesses, the other had no commercial frontage but was chosen because of similar street patterns, lot sizes and number of homes. For businesses, Area 1 had six adult businesses, Area 2 had one, Area 3 had three and Area 4 had none. Two chief concerns cited in the report are residential and business occupancy turnovers and increased crime.

After 1973, 57 percent of the homes in the adult business area had changes of occupancy, compared to only 19 percent for the non-adult business area. Residents complained of "excessive noise, pornographic material left laying about, and sexual offenders (such as exhibitionists) venting their frustrations in the adjoining neighborhood." Citizens also expressed concern about drunk drivers coming into the area. Business Area 1, with the most concentration of adult businesses (six), experienced a 134 percent increase in annual turnover rate. Area 3, with three adult businesses at one location, showed a 107 percent turnover rate. Area 2 (with one adult business) had no measurable change and Area 4 (with no commercial or adult businesses) experienced a 45 percent decrease in turnover from similar periods.

The City Council looked at crime statistics for the two residential areas for the time periods of 1970-73 (before adult businesses) and 1974-77 (after adult businesses). In the adult business area, criminal activity increased 102 percent (the entire city had only an 8.3 percent increase). Certain crimes skyrocketed (malicious mischief up 700 percent; all assaults up 387 percent; prostitution up 300 percent). All types of theft (petty, grand and auto) increased more than 120 percent each. Ten types of crime were reported for the first time ever in the 1974-77 period.

The Council's report recommended a dispersal-type ordinance that prohibits adult businesses closer than 500 feet to residential areas, churches and schools, and 1,000 feet from each other. In addition, the study proposed a 1,000 foot separation from parks because of their use by citizens after normal working hours. Adult businesses would be given an 18-36 month amortization period (if the change involved only stock in trade, a 90-day period was recommended).

INDIANAPOLIS, INDIANA
February, 1984

8
000021

After a 10-year growth in the number of sexually oriented businesses (to a total of 68 on 43 sites) and numerous citizen complaints of decreasing property values and rising crime, the city compared six sexually oriented business "study" areas and six "control" locations with each other and with the city as a whole. The study and control areas had high population, low income and older residents. In order to develop a "best professional opinion," the city collaborated with Indiana University on a national survey of real estate appraisers to determine valuation effects of sexually oriented businesses on adjacent properties.

From 1978-82, crime increases in the study areas were 23 percent higher than the control areas (46 percent higher than the city as a whole). Sex-related crimes in the study areas increased more than 20 percent over the control areas. Residential locations in the study areas had a 56 percent greater crime increase than commercial study areas. Sex-related crimes were four times more common in residential study areas than commercial study areas with sexually oriented businesses.

Homes in the study areas appreciated at only half the rate of homes in the control areas, and one-third the rate of the city. "Pressures within the study areas" caused a slight increase in real estate listings, while the city as a whole had a 50 percent decrease, denoting high occupancy turnover. Appraisers responding to the survey said one sexually oriented business within one block of residences and businesses decreased their value and half of the respondents said the immediate depreciation exceeded 10 percent. Appraisers also noted that value depreciation on residential areas near sexually oriented businesses is greater than on commercial locations. The report concluded: "The best professional judgment available indicates overwhelmingly that adult entertainment businesses -- even a relatively passive use such as an adult bookstore -- have a serious negative effect on their immediate environs."

The report recommended that sexually oriented businesses locate at least 500 feet from residential areas, schools, churches or established historic areas.

OKLAHOMA CITY, OKLAHOMA
March 3, 1986

This study contained the results of a survey of 100 Oklahoma City Real Estate Appraisers. Appraisers were given a hypothetical situation and a section to comment on the effects of sexually oriented businesses in Oklahoma City. The hypothetical situation presented a residential neighborhood bordering an arterial street with various commercial properties which served the area. A building vacated by a hardware store was soon to be occupied by an "adult" bookstore. No other sexually oriented businesses were in the area and no other vacant commercial space existed. With less than a one month response time, 34 completed surveys were received by the city.

Thirty-two percent of the respondents said that such a bookstore within one block of the residential area would decrease home values by at least 20 percent. Overwhelmingly, respondents said an "adult" bookstore would negatively affect other businesses within one block (76 percent). The level of depreciation is greater for residents than businesses. The negative effects on property values drop sharply when the sexually oriented business is at least three blocks away. In the subjective portion, 86 percent of the respondents noted a negative impact of sexually oriented businesses on Oklahoma City. Frequent problems cited by the appraisers included the attraction of undesirable clients and businesses, safety threats to residents and other shoppers (especially children), deterrence of home sales and rentals, and immediate area deterioration (trash, debris, vandalism).

Oklahoma City's findings supported results from other national studies and surveys. Sexually oriented businesses have a negative effect on property values, particularly residential properties. The concentration of sexually oriented businesses may mean large losses in property values.

AMARILLO, TEXAS
September 12, 1977

This Planning Department report cited several sources including national news magazines, "adult business" ordinances from other cities, an American Society of Planning Officials report and pertinent Supreme Court decisions. Lengthy explanation of the Miller test with legal definitions, discussion of *Young v. American Mini Theatres*, and a comparison of the Boston and Detroit zoning models are included. The city defined "adult businesses" as taverns, lounges, lounges with semi-nude entertainment, and bookstores or theaters with publications featuring nudity and explicit sexual activities. (At the time, Amarillo had three such theaters and four bookstores with space for such publications).

The police department provided an analysis showing that areas of concentrated "adult only" businesses had two and one-half times the street crime as the city average. The Planning Department concluded that concentrations of these businesses have detrimental effects on residential and commercial activities caused by: (1) noise, lighting and traffic during late night hours; (2) increased opportunity for street crimes; and (3) the tendency of citizens to avoid such business areas. The study noted that lack of zoning regulations would lead to concentrations of sexually oriented businesses (causing increased crime) or more such establishments locating near residential areas or family and juvenile oriented activity sites (churches, parks, etc.).

The report recommended: (1) adult businesses locate 1,000 feet from each other, (no distance was specified from residential zones or family/juvenile activities); (2) city development of an amortization schedule and permit/licensing mechanism; (3) city regulation of signs and similar forms of advertising; (4) vigorous enforcement of State Penal Code, especially relating to

"Harmful to Minors"; (5) city amendments prohibiting minors from viewing or purchasing sexually oriented materials (enforced physical barriers).

AUSTIN, TEXAS
May 19, 1986

The report was the basis for developing an amendment to existing sexually oriented business ordinances. At the time, 49 such businesses operated in Austin, mostly bookstores, theaters, massage parlors and topless bars. The study examined crime rates, property values and trade area characteristics. The study is also useful because it summarizes many other city studies.

The report focused on sexually related crimes in four study areas (with sexually oriented businesses) and four control areas (close to study areas and similar). Two study areas had one sexually oriented business and the others had two such businesses. To determine the effects of these businesses on property values, the city sent surveys to 120 real estate appraising or listing firms (nearly half responded). For trade area characteristics, three businesses (a bookstore, theater and topless bar) were observed on a weekend night to determine customer addresses.

Sexually related crime ranged from 177 to 482 percent higher in the four study areas than the city average. In the two study areas containing two sexually oriented businesses, the rate was 66 percent higher than in the study areas with one such business. All control areas had crime rates near the city average.

Eighty-eight percent said that a sexually oriented business within one block of a residential area decreases the value of the homes (33 percent said depreciation would be at least 20 percent). Respondents also said such a business is a sign of neighborhood decline, making underwriters hesitant to approve the 90 to 95 percent financing most home buyers require. They said commercial property is also negatively affected by such businesses.

Of 81 license plates traced for owner addresses, only three lived within one mile of the sexually oriented business; 44 percent were from outside Austin.

The report recommended: (1) sexually oriented businesses should be limited to highway or regionally-oriented zone districts; (2) businesses should be dispersed to avoid concentration; and (3) conditional use permits should be required for these businesses.

BEAUMONT, TEXAS
September 14, 1982

This report by the city Planning Department encouraged amendments to existing "adult business" ordinances to include eating or drinking places featuring sexually oriented entertainment (strippers, etc.). Zoning laws required "adult uses" to locate 500 feet from residential areas; 300 feet from any other adult bookstore, adult theater, bar, pool hall or liquor store; and 1,000 feet from a church, school, park or recreational facility where minors congregate.

Police verified that bars, taverns and lounges (especially those with sexually oriented entertainment) are frequent scenes of prostitution and the sale/use of narcotics. On the whole, all criminal activity was higher at sexually oriented businesses.

The report recommended: (1) adding eating/drinking places that exclude minors (under Texas law), unless accompanied by a consenting parent, guardian or spouse, to list of protected uses; (2) require specific permits for areas zoned as General Commercial - Multiple Family Dwelling Districts; and (3) reduce the required distance of sexually oriented businesses from residential areas, schools, parks and recreational facilities from 1,000 to 750 feet.

STATE OF MINNESOTA, REPORT OF THE ATTORNEY GENERAL'S WORKING GROUP ON
THE REGULATION OF SEXUALLY ORIENTED BUSINESSES
June 1989

The Minnesota Attorney General's Working Group reviewed studies performed in a number of large U.S. cities, consulted with police departments in a number of other cities, researched enforcement strategies from other states, and heard testimony concerning the impact of sexually oriented businesses on their surrounding neighborhoods and concerning the relationship of sexually oriented businesses to organized crime.

The Working Group concluded that there was "compelling evidence that sexually oriented businesses are associated with high crime rates and depression of property values." The Working Group recommended that communities take steps to minimize the negative secondary effects of sexually oriented businesses. Among the steps recommended were:

- that communities reduce negative secondary effects by enacting and enforcing zoning restrictions on sexually oriented business locations, including prohibitions against locating multiple such businesses in the same building, and against locating any such businesses within certain minimum distances of sensitive uses such as residences, schools, and parks, and within certain minimum distances of liquor establishments and other sexually oriented businesses;
- that communities adopt regulations to reduce the likelihood of criminal activity on sexually oriented business premises, and to require licensure of sexually oriented businesses and provide for revocation or denial of licenses when the licensees commit certain relevant offenses;
- that communities regulate exterior features of sexually oriented businesses and enforce the existing state law requiring sexually oriented material to be provided only in opaque covers; and

- that communities vigorously prosecute violations of obscenity laws and other sex-related crimes, making use of asset forfeiture and injunctive procedures where possible.

ISLIP, NEW YORK
September 23, 1980

This study was performed through a review of studies and ordinances from Detroit, MI, Norwalk, CA, Dallas, TX, Prince George's County, MD, and New Orleans, LA, a survey of media coverage and public reaction arising out of the establishment of a sexually oriented bookstore in the city, and inspection of sexually oriented businesses.

Islip's study recommended basing an ordinance on the dispersal-style 1976 Detroit ordinance. Its authors reviewed the existing case law that required space to be available for adult uses and forbade attempting to zone adult uses out completely.

Islip planners observed that two sex businesses in the downtown area were responsible for creating a "dead zone" that people not interested in adult uses actively avoided—at a detriment to neighboring businesses. Also, short-term parking was used long term by patrons of the sex business. In some cases the authors observed that the sexually oriented businesses that were close to other businesses appeared to have had a negative impact on those nearby businesses. Also, they noted that a significant number of the owners and managers had ties to organized crime, with multiple arrests and convictions.

Islip planners recommended that adult uses be restricted to industrial zones. They also recommended a 500' buffer between adult uses and residential and public facilities. Because Islip has a rural highway with sex-businesses located an average of 1.1 miles apart, for 5 miles, the planning department recommended that a buffer of a half mile be placed between any sex businesses on this specific highway to prevent the development of a "Combat Zone" on the road into the town. They also recommended establishing an amortization system by which nonconforming sexually oriented businesses would be phased out over a period of years. More broadly, they recommended that the entire ordinance be focused on reducing the negative effects of sex businesses.

The proposed ordinance (included as an appendix to the study) was upheld in substantial part by New York's highest court in *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 540 N.E.2d 215, 542 N.Y.S.2d 139 (1989).

NEW YORK CITY, NEW YORK
1994

This extensive and well-assembled study was performed by New York City's Department of City Planning ("DCP"). The DCP reviewed studies and ordinances from other localities and studied the industry as it existed in New York City—among other things, meeting with members of the sexually oriented business industry. The DCP reviewed accounts of secondary effects from sources as diverse as the City Planning Commission, the Office of Midtown Enforcement, the Chelsea Business Survey, the Task Force on the Regulation of Sex-Related Businesses,

the Times Square Business Improvement District Study, and a number of newspaper reports and correspondence from citizens. DCP examined signage and neighborhood conditions in six study areas containing sexually oriented businesses, also surveying local organizations, businesses, police officers, real estate brokers, and sanitation department officials in each of the six areas. It also comparatively analyzed criminal complaints and assessed property values in the study areas and in control areas without sexually oriented businesses.

The DCP concluded that other localities' studies had found sexually oriented businesses to have negative secondary effects including "increased crime rates, depreciation of property values, [and] deterioration of community character and the quality of urban life." It found that between 1984 and 1993 the number of sexually oriented businesses in New York City increased from 131 to 177. The DCP found that sexually oriented businesses tend to cluster, especially in central areas and along major vehicular routes connecting central business districts with outlying city areas and suburbs. Crime report statistics in New York City did not show higher crime rates in areas with sexually oriented businesses than in areas without them, but property values in proximity to sex businesses grew at an appreciably slower rate than in areas away from such businesses. The DCP found widespread fear of sex businesses' secondary effects on the part of the citizenry, and also found that survey respondents indicating that their businesses or neighborhoods had not suffered adverse secondary effects tended to be the ones living in areas with isolated sex businesses. Real estate brokers overwhelmingly reported that sex businesses would have negative effects on surrounding property values. Finally, the DCP found that signage for adult businesses tended to be larger and more garish than other nearby signage—a source of concern to residents living nearby.

Based on its findings, the DCP recommended special regulation of sexually oriented businesses, advising that the city specifically consider "restrictions on the location of adult uses in proximity to residential areas, to houses of worship, to schools and to each other."

OKLAHOMA CITY, OKLAHOMA
June, 1992

Jon Stephen Gustin, a retired sergeant of the Oklahoma City Police Department, authored a report on the successful abatement of adult oriented business nuisances in Oklahoma City, Oklahoma from 1984 – 1989. This report narrates the history of Oklahoma City's successful efforts to combat the negative secondary effects of sexually oriented businesses.

Active police enforcement of laws relating to sex businesses began after a strong, grass-roots campaign called for a response to the concentration of so many sex-businesses in one city. Initially, prosecution of illegal sexual activities was hampered by poor or nonexistent laws and lax police enforcement.

The police began an active anti-prostitution effort and arrest records were published by the media and TV stations carried names and faces of the people involved. Initially, police made several arrests at known houses of prostitution. Adult bookstores with peepshow booths also posed particular problems. Specimens of seminal fluid on walls and floors contributed to the forced closure of several such businesses. The district attorney's office consistently won the cases it brought against those committing illegal acts in sexually oriented businesses.

Nude dancing businesses were also the source of several criminal and illicit sexual conduct, with undercover police officers making arrests for illegal sex acts on the premises of

the businesses. A police department "escort service" sting operation resulted in the arrest of many men soliciting prostitution through such businesses.

Sergeant Gustin reported that by 1992, most of the original sexually oriented businesses had shut down, with only a few remaining under the newly-enforced and stringent regulations.

HOUSTON, TEXAS
January 7, 1997

This report by Houston's Sexually Oriented Business Ordinance Revision Committee was prepared to supplement prior reports issued in 1983, 1986 and 1991, with the aim of reforming the existing sexually oriented business ordinance if necessary and assessing possible improvements to protect the interests of the public and the rights of sexually oriented businesses.

Hearing testimony and evaluating evidence from many sources, including police and parties favoring and disfavoring regulation of sexually oriented businesses, the committee concluded that criminal activity associated with sex businesses justified licensure requirements for such businesses and their entertainers and managers. It noted difficulties in obtaining convictions through sting operations. It viewed video evidence concerning "glory holes" between peepshow booths, whereby patrons of such establishments engage in anonymous sex with one another on the premises, and recommended prohibition of such holes. It found that sex businesses with inadequate lighting or without clear lines of sight to all parts of the premises encouraged lewd behavior and illegal sexual activity. It found that many sex businesses had locked rooms on their premises, serving as venues for prostitution. It entertained requests that public parks be included among the sensitive uses shielded from sexually oriented businesses by minimum distance requirements, and that increased prior public notice be given to neighborhoods in which sexually oriented businesses intend to locate.

The Committee recommended various means of streamlining the licensure and enforcement processes. It proposed increasing some of the minimum distances required between sex businesses and other land uses, and strengthening of signage regulations, and more strenuous licensure requirements for sex business managers and employees. The committee recommended prohibition of the touching of customers by sex business employees engaging in display of specified anatomical areas or other specified sexual activities. Finally, the committee reviewed and opted to retain the city's amortization scheme, as an "appropriate balancing of interests" of the sex businesses and the community. The final portion of the report consists of specific proposed changes to the language of Houston's sexually oriented business ordinance.

Rural Hotspots

The Case of Adult Businesses

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A recent U.S. Tenth Circuit decision questions whether the routine activity theory of hotspots applies to adult businesses located in sparsely populated rural areas. Although few criminologists are interested in urban-rural differences, the Tenth Circuit decision makes this topic acutely relevant to policy makers and courts. To address the threshold question, the hotspot theory is analyzed to demonstrate its generality to urban, suburban, and rural locations. The results of a corroborating case study are then presented. When an adult entertainment business opens on an interstate highway off-ramp to a small rural village, total crime rises by 60%. Alternative explanations related to uncontrolled threats to internal validity are considered and ruled out. After reporting the results of the case study, the consequences of the theory and results for policy makers and courts are discussed.

Keywords: *secondary effects; hotspots; ambient crime risk; adult businesses; rural crime*

Expressive activities that occur inside adult entertainment businesses, including cabarets that feature live nude or seminude dancing, x-rated video arcades, and bookstores, enjoy First Amendment protection. Courts have ruled that governments may regulate these businesses, so long as the regulations are aimed at mitigating the businesses' potential adverse "secondary effects" (Andrew, 2002).

To defend an ordinance, a government must produce evidence to show that the businesses are associated with secondary effects such as ambient noise, litter, and in particular, crime. The government's evidence need not satisfy arbitrary standards of methodological rigor. On the contrary, the 1986 U.S. Supreme Court decision in *City of Renton v. Playtime Theatres* holds that governments may rely on any evidence "reasonably believed to be relevant to the problem that the city addresses." Taking advantage of this evidentiary standard, few governments conduct local secondary effects studies; most rely on the large body of studies conducted in other places and times.

The U.S. Supreme Court reviewed the evidentiary standard 16 years later. Though reaffirming the modest "reasonably believed to be relevant" *Renton* standard, in *City of Los Angeles v. Alameda Books*, the Court allowed adult businesses to challenge

Author's Note: Paul Brantingham, Marcus Felson, and Alan Weinstein read early drafts. The author also benefited from conversations with the late Dennis W. ("Denn") Roncek. Correspondence concerning this article should be addressed to Richard McCleary, School of Social Ecology, Irvine, CA 62697-7080; e-mail: mccleary@uci.edu.

the relevance of secondary effects evidence. If a business could demonstrate that the government's evidence was irrelevant to the problem that its ordinance purported to address, the ordinance could be struck down.

Relevance challenges fall into two categories. The first centers on the fact that secondary effects studies have typically ignored salient differences among distinct adult business models. In *Encore Videos v. City of San Antonio*, an adult bookstore argued that its products were sold for "off-site" use only and, thus, that it could not have the same secondary effects as cabarets, video arcades, and other "on-site" adult businesses. Accepting part of this argument, the Fifth Circuit struck down a San Antonio ordinance whose evidentiary predicate failed to include secondary effects studies of "off-site" adult bookstores.

An ambiguous passage in the *Encore Videos* decision left the impression that the Fifth Circuit had endorsed an interpretation of criminological theory favoring the plaintiffs. Citing the ambiguous passage, "off-site," adult businesses argued subsequently that criminological theory precluded secondary effects for their business model. Four years later, however, in *H and A Land Corp. v. City of Kennedale*, the Fifth Circuit upheld an ordinance the evidentiary predicate of which included studies of "off-site" adult bookstores. The three-judge panel, including one member who had participated in the *Encore Videos* decision, took the unusual step of retracting the passage that seemed to endorse an interpretation of criminological theory (McCleary & Weinstein, 2007).

The second category of Constitutional challenges centers on the fact that secondary effect studies have ignored idiosyncratic local conditions. In 2004, an adult bookstore in rural Kansas used criminological theory to argue that the sparsely populated rural environment precluded the possibility of secondary effects. And because the local government had not studied this issue prior to enactment, the ordinance should be struck down. Rejecting this argument, the trial court granted the defendant's summary judgment motion. On appeal, however, in *Abilene Retail #30 v. Dickinson County*, the Tenth Circuit agreed with the plaintiff's interpretation of criminological theory:

All the studies relied on by the Board examine the secondary effects of sexually oriented businesses located in urban environments; none examines businesses situated in an entirely rural area. To hold that legislators may reasonably rely on those studies to regulate a single adult bookstore, located on a highway pullout far from any business or residential area within the County would be to abdicate "independent judgment" entirely. Such a holding would require complete deference to a local government's reliance on prepackaged secondary effects studies from other jurisdictions to regulate any single sexually oriented business of any type, located in any setting. (p. 1175)

Because the adult bookstore was located in an isolated rural area, and because the County had no evidence to suggest that rural adult businesses would have secondary effects, the Tenth Circuit reversed the summary judgment and remanded the case for trial.

Although the question of urban–rural generality is only one of many weighed in the Tenth Circuit’s decision, it is the central question of this essay. Because most criminological research has been conducted in nonrural areas, criminological theories do not necessarily generalize to rural crime. Because relatively little crime occurs in rural areas, of course, few criminologists are interested in urban–rural questions. Following the Tenth Circuit’s *Abilene Retail* decision, on the other hand, urban–rural differences are acutely relevant to policy makers and courts.

The potential cost of the decision is staggering. In the best case, local governments will be forced to rewrite ordinances to cover businesses located in more rural areas. In the worst case, litigious adult businesses will have an incentive to relocate to rural areas, forcing trial courts to judge the relative ruralness of areas, case by case. In any case, extrapolating the Tenth Circuit’s argument to other variables not explicitly addressed by criminological theory threatens the ability of local governments to mitigate public safety hazards associated with adult businesses.

This essay addresses the threshold question of whether criminological theories can be generalized to rural areas. Although the generalization may be difficult for some criminological theories, the relevant theory of “hotspots” (Sherman, Gartin, & Buerger, 1989) applies to any accessible area, rural or urban. After describing the relevant criminological theory, I report the results of a corroborating quasi-experimental case study. When an adult business is opened on an interstate highway off-ramp in a sparsely populated rural community, ambient crime risk rises precipitously, in effect making a hotspot of the community.

The Criminological Theory of Secondary Effects

Writing shortly after the advent of Uniform Crime Reports, Vold (1941) confirmed that a city’s crime rate was proportional to its population. The observed relationship had an obvious explanation: “[B]ehavior in the country in all probability comes under much greater informal control of the opinions and disapprovals of the neighbors than is the case in the relative anonymity of the city” (p. 38). The negative correlation confirmed not only grand sociological theory (e.g., Tönnies, 1887/1963; Durkheim, 1893/1964) but also the related criminological theory of social disorganization.

As proposed by Shaw and McKay (1942), the theory of social disorganization predicts that neighborhoods with low residential stability will have high rates of delinquency and vice versa. To the extent that a small town has the characteristics of a stable neighborhood, social disorganization theory would predict the low crime rates observed by Vold (1941). Moreover, when a small town is disrupted by an influx of newcomers, the same theory predicts an abrupt increase in the town’s crime rate.

This can occur in at least two ways. First, the newcomers may victimize the town’s residents. Indeed, fear of victimization by newcomers is implicated in the rapid spread of gated communities (Blandy, Lister, Atkinson, & Flint, 2003). Second, the influx of newcomers may disrupt the town’s routine activities in a way that

attracts predatory criminals, creating a local “hot spot of predatory crime” (Sherman et al., 1989).

The discovery of hotspots by Sherman et al. (1989) was anticipated by the work of Brantingham and Brantingham (1981); adult business hotspots have many of the properties associated with crime “attractors” and “generators” (see also Brantingham & Brantingham, 1993). A simpler routine activity theory (Clarke, 1983; Cohen & Felson, 1979; Felson, 1998; Felson & Cohen, 1980) is sufficient for present purposes, however. In this context, the routine activity theory of crime equates ambient crime risk, generally defined as the number of crimes within 500-1,000 feet of a site, with the product of four risk factors. This can be written as:

$$\text{Ambient Crime Risk} = \frac{N \text{ of Targets} \times \text{Expected Value}}{\text{Police Presence}} \times \text{Offenders}$$

An increase (or decrease) in the number of targets at the site or in their expected value, defined in the usual way, yields an increase (or decrease) in ambient crime risk. An increase (or decrease) in police presence, on the other hand, yields a decrease (or increase) in ambient crime risk.

Targets

Adult business sites are crime hotspots because they attract potential victims, or targets, from wide catchment areas. Adult business sites are no different in that respect than tourist attractions (Danner, 2003; Dimanche & Lepetic, 1999) and sporting events (Corcoran, Wilson, & Ware, 2003; Westcott, 2006). Compared to the targets found at these better known hotspots, however, the targets found at adult businesses are exceptionally attractive to offenders. This reflects the presumed characteristics of adult business patrons. They are disproportionately male, open to vice overtures, and carry cash. Most important of all, when victimized, they are reluctant to involve the police. From the offender’s perspective, they are “perfect” victims.

Offenders

The crime–vice connection has been a popular plot device for at least 250 years. John Gay’s *Beggar’s Opera* (1728/2006), for example, describes the relationship between MacHeath, a predatory criminal, and the vice ring composed of Peachum, Lucy, and Jenny. This popular view is reinforced by the empirical literature on criminal lifestyles and thought processes. The earliest and best-known study (Shaw, 1930/1966; Snodgrass, 1982) describes the life of “Stanley,” a delinquent who lives with a prostitute and preys on her clients.

This simple application of the routine activity theory assumes a pool of rational offenders who move freely from site to site, choosing to work the most attractive site

available. These offenders lack legitimate means of livelihood and devote substantial time to illegitimate activities; they are “professional thieves” by Sutherland’s (1937) definition. Otherwise, they are a heterogeneous group—some are vice purveyors who dabble in crime, whereas others are predatory criminals who promise vice to lure and lull their victims. Despite their heterogeneity, the offenders share a rational decision-making calculus that draws them to adult business sites.

Expected Value

Criminological thinking has changed little in the 75 years since Shaw’s (1930/1966) *Jack-Roller*. To document the rational choices of predatory criminals, Wright and Decker (1997) interviewed 86 active armed robbers. Asked to describe a perfect victim, all mentioned victims involved in vice, either as sellers or buyers. Three of the armed robbers worked as prostitutes:

From their perspective, the ideal robbery target was a married man in search of an illicit sexual adventure; he would be disinclined to make a police report for fear of exposing his own deviance. (p. 69)

The rational calculus described by these prostitute-robbers echoes the descriptions of other predators (see Bennett & Wright, 1984; Feeney, 1986; Fleisher, 1995; Katz, 1988, 1991; Shover, 1996).

Police Presence

With respect to the quantity and quality (or value) of the targets at a site, urban and rural adult business sites are equally attractive to the rational offender. Police presence is generally lower at rural sites, however. Some part of the urban–rural disparity is because of obvious factors. Rural police agencies protect larger areas with fewer personnel, for example, and drive longer distances in response to calls. Though less obvious, fuzzier jurisdictional lines and more complex demands for service make policing more difficult and less effective in rural areas (Thurman & McGarrell, 1997; Weisheit, Falcone, & Wells, 1999). Because police presence is relatively lower at rural sites, controlling for the quantity and quality of targets, rural sites are more attractive to the rational offender.

Montrose, Illinois: A Case Study

An unincorporated village of 250 residents, Montrose, Illinois is located on I-70 midway between St. Louis and Indianapolis. I-70 separates Montrose’s residential dwellings from its businesses: a convenience store-gas station, a motel, and for a short period, a tavern. Other than gas and lodging, cross-country travelers had no reason to exit I-70 at Montrose prior to February, 2003. In that month, the Lion’s

Den opened on a service road within 750 ft of the I-70 off-ramp. A large, elevated sign let I-70 travelers know that x-rated videos, books, and novelties could be purchased "24/7." The store was successful by all accounts.

The residents of Montrose did not welcome the new business. Unlike the village's other businesses, the Lion's Den was located on the residential side of I-70. Complaining that the store disrupted their idyllic lifestyle, villagers picketed the site on several occasions. Traffic was a chronic complaint. The narrow gravel access road connecting the site to I-70 could not support the weight of big-rig trucks; it soon fell into disrepair. The Lion's Den offered to build a new, larger access road from I-70 to its site. But fearing an even larger volume of traffic, the villagers declined the offer.

Like all Illinois villages, Montrose had no adult business ordinances. However, the Lion's Den was located within 1,000 feet of a public park, in violation of an Illinois statute. When the State moved to enforce its statute, the Lion's Den sued, arguing that "off-site" adult businesses could not generate the public safety hazards associated with adult cabarets, video arcades, and other on-site adult entertainment businesses. The trial in *State v. The Lion's Den et al.* lasted 4 days. The court upheld the statute and, in July, 2005, the Montrose Lion's Den closed its doors.

At the trial, the State presented evidence of the Lion's Den's adverse impact on the surrounding area: sexually explicit litter and decreased use of the nearby park. However neither party presented local crime data. Table 1 reports data bearing on the crime-related secondary effects of the adult business in Montrose. During the 1,642-day period beginning January 1, 2002, the Effingham County Sheriff's Office recorded 83 crime incidents in the village. The most common incidents involved the theft or destruction of property. Incidents of disorder and indecency, traffic-related incidents, and alcohol-drug offenses were nearly as common. Incidents involving danger or harm to persons (robbery, assault, etc.) were rare.

The columns labeled "Open" and "Closed" in Table 1 break the incidents down into an 881-day segment in which the Lion's Den was open and a 761-day segment in which it was closed. Crime rates are 22.39 and 13.92 total incidents per year for the "Open" and "Closed" segments, respectively. From these raw rates, it appears that crime in Montrose rose when the Lion's Den opened and fell when the Lion's Den closed. Of course, this assumes that plausible alternative hypotheses for the difference can be ruled out.

Null Hypothesis

The most obvious alternative explanation is that the difference is because of chance. To rule this out, the daily total crime count series was regressed on a binary variable representing "Open" and "Closed" days (Cameron & Trivedi, 1998). The log-parameter values reported in Table 1 were estimated with Stata 9.2 (Stata Corporation, 2007). Because the effect estimate $\beta = 0.475$ occurs with probability $p(t \geq 2.09) < 0.035$, by the conventional 95% confidence criterion, the chance explanation, or null hypothesis, is rejected.

Table 1
Crime-Related Secondary Effects of a Rural Adult Business

	Open		Closed		Log Effect	β	<i>t</i>
Property crimes	23	9.54	15	7.20			
Personal crimes	3	1.24	5	2.40	Constant	-3.267	-17.60
All other crimes	28	11.61	9	4.32	Open	0.475	2.06
Total crimes	54	22.39	29	13.92	$e^{0.475}$	1.61	

Although parameter estimation requires working in the natural log metric, log-parameters are not easily interpreted. However, the exponentiated effect estimate is approximately equal to the ratio of the segments. In this instance, the value ($e^{0.475}$) 1.61 is interpreted as a 61% difference. The rate of total crime in Montrose was 61% higher during the 29 months that the Lion's Den was open, that is, compared to the period prior to February 2003, before the Lion's Den opened, and the period after July 2005, when it closed. This is a large, statistically significant crime-related secondary effect.

Internal Validity

Another set of alternative explanations involve uncontrolled threats to internal validity. The switching regime (closed–open–closed) property of the quasi-experimental design controls many of the most common threats to internal validity. Nevertheless, authorities on quasi-experimental design (Campbell & Stanley, 1966; Cook & Campbell, 1979; Shadish, Cook, & Campbell, 2002) cite maturation, history, and instrumentation as the most plausible threats to the internal validity of time-series designs.

The threat of maturation refers to the possibility that the effect reported in Table 1 may be due, not to the opening of the Lion's Den but to a natural trend in the village's crime rate. However, because the daily time total crime time series satisfies the simple Poisson homogeneity assumption (Feller, 1968), the maturation hypothesis is rejected.

The threat of history refers to the possibility that the effect may be because of some event in the village that coincided with the opening of the Lion's Den. A search of local news media found only one significant event during the 1,662-day time series. Shortly after the Lion's Den opened, the village's only liquor-serving tavern closed permanently. However, if the tavern's closing had any effect on crime in Montrose, the expected effect would have been to reduce the crime rate during the 881 days that the Lion's Den was open. Accordingly, history is rejected as an alternative hypothesis.

Instrumentation refers to the possibility that the effect may be due, not to the opening of the Lion's Den but to a coincidental change in the way that crimes are recorded in the village. If the Effingham County Sheriff stepped up the frequency of

patrols in the village when the Lion's Den opened, for example, the effect reported in Table 1 might be a spurious artifact of heightened surveillance. Criminologists acknowledge that heightened surveillance can exaggerate "victimless" crime rates; proactive enforcement against prostitution and drugs invariably leads to higher vice crime rates. However, proactive enforcement against "serious" crime does not produce higher rates of homicide, assault, and robbery. On the contrary, criminologists generally agree that heightened surveillance reduces the rate of "serious" crime.

The detailed incident reports do not support an instrumentation hypothesis. During the 881 days that the Lion's Den was open, crime in the village grew more "serious." Although five "Personal Crimes" were reported during the 761 days that the Lion's Den was closed versus three when it was open, none of the five incidents involved a weapon or resulted in an injury. When the Lion's Den was open, in contrast, two of the three "Personal Crimes" reported in the Village were armed robberies, one committed by a gang of four men wearing ski masks and armed with shotguns. Moreover, both armed robberies were committed at the site of the Lion's Den and were the only robberies recorded in the village's modern history.

The timing of the crime incidents is related to their seriousness. During the 761 days that the Lion's Den was closed, Montrose's modal crime incidents were "drive-off" thefts from the village's gasoline station and vandalism at the Village's motel. Most of these incidents occurred during the day and required no immediate response from the Sheriff's Office; and because the businesses were separated from residences by I-70, the modal incidents attracted little attention. On the other hand, during the 881 days that the Lion's Den was open, a majority of incidents occurred at night and demanded immediate action; as more incidents began to occur on the residential side of I-70, crime became more noticeable to village residents.

Discussion

Following the opening of an adult business on an interstate highway off-ramp into a sparsely populated rural village, total crime in the village rose by approximately 60%. Two years later, when the business closed, total crime in the village dropped by approximately 60%. In light of the strong quasi-experimental design, artifactual explanations for this effect, including maturation, history, and instrumentation are implausible. The only plausible explanation for the effect reported in Table 1 is that, like adult businesses in urban and suburban settings, adult businesses in sparsely populated rural areas generate ambient crime-related secondary effects.

This finding was not unexpected. Although criminological theories are based largely on data collected in urban and suburban areas, the routine activity theory of hotspots (Sherman et al., 1989) generalizes to rural settings. Put simply, adult businesses attract patrons from wide catchment areas. Because these patrons are disproportionately male, open to vice overtures, and reluctant to report victimizations, their presence

attracts offenders. The spatiotemporal conjunction of targets and offenders generates ambient victimization risk—a hotspot of predatory crime. This theoretical mechanism operates identically in rural, suburban, and urban areas. Moreover, because rural areas ordinarily have lower levels of visible police presence, rural hotspots may be riskier than their suburban and urban counterparts.

The Tenth Circuit may not have found the Montrose results useful. Every case study is unique in some respect, after all; and although the U.S. Census Bureau considers both Effingham County, Illinois and Dickinson County, Kansas to be “rural,” the Tenth Circuit may have focused on idiosyncratic, legally relevant factors. Nevertheless, the case study results demonstrate that, whether urban, suburban, or rural, hotspots are hotspots. In urban, suburban, and rural areas, adult businesses attract patrons who are disproportionately male, open to vice overtures, and reluctant to report victimizations to the police. This attracts offenders to the site with predictable consequences for ambient crime risk. In theory, of course, because of the relative scarcity of police in rural areas, offenders may find rural hotspots more attractive. Otherwise, the routine activity theory of hotspots generalizes to any site that is attractive to potential victims, or targets, and accessible to offenders.

Solving the problem of rural hotspots by allocating more police resources to rural areas is politically unfeasible. Governments allocate public safety resources across regions on utilitarian grounds. Per capita allocations have the greatest impact on per capita crime rates. This poses an obstacle to rural problem-oriented policing (Weisheit et al., 1999), of course, but it is a rational policy for a government. Because the targets attracted to a rural hotspot live outside the jurisdiction, and because victimizations are underreported, ignoring the hotspot is a more realistic strategy.

The future is unclear. The relocation of adult businesses to rural areas parallels the postwar “flight” of inner-city families. From the perspective of adult business proprietors, the urban environment has become hostile. Zoning codes force adult businesses into “ghettos” where their operations are strictly regulated and where competition with other adult businesses is fierce. Rural areas have few regulations, on the other hand, and little competition; access to interstate highway traffic is a bonus. As urban environments become more hostile, more adult businesses will relocate to rural areas, forcing state and county governments into policy decisions. The case study reported here can, hopefully, inform that debate.

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Cases and Decisions

- Abilene Retail #30, Inc. v. Board of Commissions of Dickinson County, Kansas, 492 F.3d 1164, 1175 (10th Cir. 2007).
- City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986).
- City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002).
- Encore Videos, Inc. v. City of San Antonio, 330 F.3d 288 (5th Cir. 2003).
- H and A Land Corp. v. City of Kennedale, TX, 480 F.3d 336 (5th Cir. 2007).
- People of the State of Illinois ex rel. Edward C. Deters, State's Attorney of Effingham County v. The Lion's Den, Inc., et al. 4th Ill. Judicial Circuit Court, No. 04-CH-26 (June 10, 2005).

Richard McCleary is a professor of criminology, law and society at the University of California, Irvine. His current interests center on the measurement of ambient public safety hazards associated with hotspot businesses.

A full copy of all the research regarding Secondary Effects can be found at the link provided below.

<http://tinyurl.com/HallCountySecondaryEffects2015>

A copy of these documents was mailed to the Planning Commissioners on a CD with their meeting packet 9/23/2015.

The documents found at this link represent a full copy of what was provided to the Planning Commissioners.



Hall County Regional Planning Commission

**Wednesday, October 7, 2015
Regular Meeting**

Item F2

Redevelopment Plan Area 7

Staff Contact: Chad Nabity

Agenda Item #6

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING COMMISSION:

September 18, 2015

SUBJECT:

Redevelopment plan amendment for property located in Blight and Substandard Area 7 for a Site Specific Redevelopment Plan for property located at the southwest corner of the intersection of Schimmer Road and Blaine Street, in Grand Island, in Hall County, Nebraska to support this development. (C-02-2016GI)

PROPOSAL:

Hatchery Holdings, LLC is proposing to acquire property, and prepare the site for construction of a chicken hatchery. The property is zoned M2 Heavy Manufacturing and a hatchery is a permitted principal use.

OVERVIEW:

The purpose of the CRA and the designated blight and substandard areas is to provide incentives for development in underdeveloped areas of the community. This project will provide manufacturing development in a location that is intended for these uses. Development of this property will hopefully spur additional development at the industrial park. It will also provide jobs necessary to meet the employment requirements of the CDBG Grant used to pay for street, sewer and water infrastructure adjacent to the property. This area has already been declared blighted and substandard by the CRA, the Hall County Regional Planning Commission and the Grand Island City Council.

This project is **consistent** with the **existing zoning** and the **future land use plan** for this area within the City of Grand Island. This is evident by the fact that the property is zoned M2 Heavy Manufacturing. The M2 zone allows for a variety of commercial, office and manufacturing/industrial uses including those proposed with this plan as permitted principal uses.

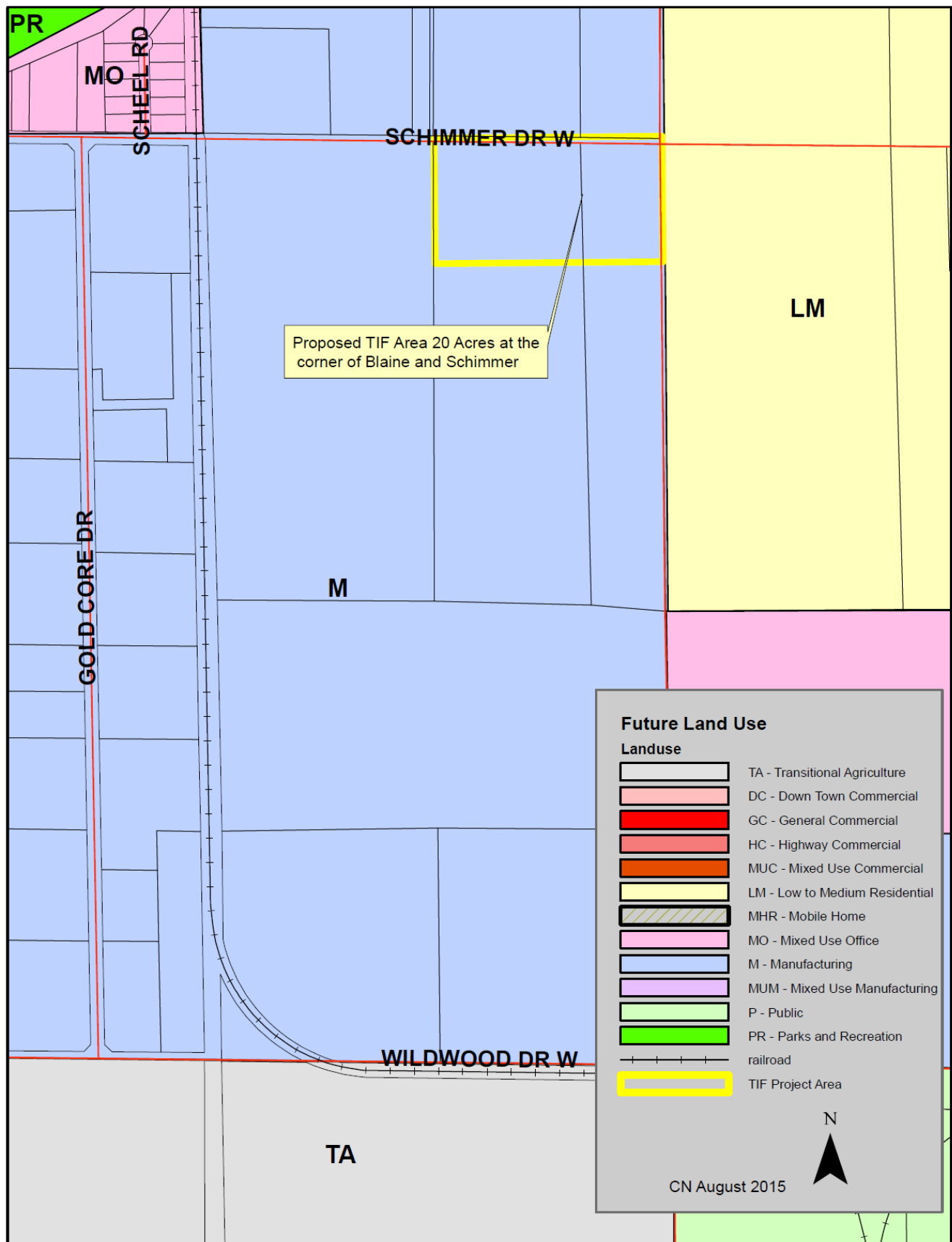
The Regional Planning Commission recommendation is limited to the appropriateness of the proposed use at this location. The Grand Island Comprehensive Plan calls for manufacturing uses here.

The Planning Commission is required to comment on these applications to confirm that expenditure of public funds through TIF is not supporting uses that would be inconsistent with the Comprehensive Plan. The proposed use for manufacturing at this location appears to be supported by the plan.

RECOMMENDATION:

That the Regional Planning Commission recommend that City Council **approve** of the redevelopment plan amendment as submitted. A resolution is attached for your consideration.

_____ Chad Nabity AICP, Planning Director





BACKGROUND INFORMATION RELATIVE TO TAX INCREMENT FINANCING REQUEST

Project Redeveloper Information

Business Name: Hatchery Holdings, LLC

Operational Site Address: SW Corner of Blaine and Schimmer Drive, Grand
Island, NE 68801

Contact: Peter Mumm
Managing Director
Hendrix-ISA, LLC
5953 Frase Court
Fall Creek, WI, 54742
Cell: 937-935-6713

Business/Admin Office Address:

5800 Merle Hay Road, Suite 14

PO Box 394

Johnston, IA 50131

Contact: Todd Carlson – Phone: (515)253-0943 Ext 136, Fax No: (515)253-0942

Brief Description of Applicant's Business:

Development, Construction and Operation of a Hatchery facility that will produce approx. 24,000,000 day old chicks per year. The chicks will be sold to egg producing layer operations regionally, including sales in the states of Nebraska, Iowa, Missouri, South Dakota, Colorado and Minnesota. There will be 6-8 related

breeder operations in the Grand Island area to support the hatchery operations. The operation will include a vaccination department/area to vaccinate the chicks with the appropriate governmental/industry approved vaccinations. There will be approximately 50 employees at the hatchery location.

Present Ownership Proposed Project Site: Owned by Grand Island Economic Development Corporation

Approximately 20 acres in the NE ¼ of Section 5 Township 10 N Range 9 W of the 6th PM in Hall County Nebraska.

Proposed Project:

- 20 acre site
- 60,000 sq/ft building including 5,400 sq/ft of office/support space
- Slab on grade construction with steel frame, bar joist for roof support, exterior interlocking insulated foam panels with Kynar finish
- Approx 8,000 S.Y. of roadway/parking access, 6,000 S.Y. of concrete at dock areas & 240'x420' of asphalt parking area

If Property is to be Subdivided, Show Division Planned:

- Sub-division/Platting in process. Will forward upon receipt.

VI. Estimated Project Costs:

Acquisition Costs:

A. Land	\$ 1,600,000
B. Building	\$ 0

Construction Costs:

A. Renovation or Building Costs:	\$ 10,034,177
B. On-Site Improvements:	
1. Utilities to Building	\$ 136,313

2. Grading	\$ 174,000
3. Site Preparation	\$ 84,000
4. On Site Drainage Facilities	\$ 25,000
5. Parking Lots	\$ 314,687
6. Signage	\$ 5,000
7. Parking Lot Lighting	\$ 20,000
8. Landscaping	\$ 20,000
9. Tap Fees	\$ 25,000
C. Hatchery Equipment	\$ 6,000,000

Soft Costs:

A. Architectural & Engineering Fees:	\$ 350,000
B. Financing Fees:	\$ 540,000
C. Legal/Developer/Audit Fees:	\$ 280,000
D. Contingency Reserves:	\$ 360,000
E. Other (Please Specify)	\$ 0
TOTAL	\$19,998,177

Total Estimated Market Value at Completion:	\$ 21,000,000
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Source of Financing:

A. Developer Equity:	\$ 4,875,647
B. Commercial Bank Loan:	\$ 12,243,217
Tax Credits:	
1. N.I.F.A.	\$ 0
2. Historic Tax Credits	\$ 0
D. Industrial Revenue Bonds:	\$ 0
E. Tax Increment Assistance – Site Funding:	\$ 2,674,313
F. Nebraska Sites Building Development Fund	\$ 125,000

Name, Address, Phone & Fax Numbers of Architect, Engineer and General Contractor:

Architect:

TBD

Engineer:

Civil – TBD

Mechanical - TBD

General Contractor:

Henning Companies, LLC

5800 Merle Hay Road, Suite 14

Johnston, IA 50131

Phone: (515) 253-0943

Fax: (515) 253-0942

Estimated Real Estate Taxes on Project Site Upon Completion of Project:

Dave – please insert calculation here based on details above.

Current Valuation \$220,000 Current Taxes \$4805

Expected Valuation \$11,600,000 Expected Taxes \$253,330

Annual Taxes \$253,330 Less Base \$4805 Expected Increment \$248,525

Project Construction Schedule:

Construction Start Date: October 15, 2015

Construction Completion Date: September 15, 2016

XII. Please Attach Construction Pro Forma

In process, will forward upon completion

XIII. Please Attach Annual Income & Expense Pro Forma

New entity, currently under development by Hatchery operating entity

TAX INCREMENT FINANCING REQUEST INFORMATION

Describe Amount and Purpose for Which Tax Increment Financing is Requested:

Requesting a 15 year deferral of taxes on the property – based on the current assessed value of the property vs the improved value of the property.

Statement Identifying Financial Gap and Necessity for use of Tax Increment Financing for Proposed Project:

The support of the Nebraska Sites and Building Development Fund will bridge the current financing/equity gap to get the project started yet this fall. We are requesting a \$175,000 award to allow us to start the project per the sources/uses gap that exists at this point. \$125,000 of this will be available for building and \$50,000 will be available for training.

Municipal and Corporate References (if applicable). Please identify all other Municipalities, and other Corporations the Applicant has been involved with, or has completed developments in, within the last five (5) years, providing contact person, telephone and fax numbers for each:

- Mr. Rand Fisher, President
Iowa Area Development Group
2700 Westtown Parkway, Suite 425
West Des Moines, IA 50256
rfisher@iadg.com, (515)223-4743
- Mr. Rob Cleveland, Director Economic Development
Indiana Michigan Power
recleveland@aep.com
(260)408-3453

- Ms. Kathy Bantz, Mayor
City of Montpelier Indiana
300 West Huntington Street
Montpelier, IN 47359
mayorbantz@montpeliercity.net
(765)728-6500

IV. Please Attach Applicant's Corporate/Business Annual Financial Statements for the Last Three Years.

* Not applicable, new entity.

Post Office Box 1968
Grand Island, Nebraska 68802-1968
Phone: 308 385-5240
Fax: 308 385-5423
Email: cnabity@grand-island.com

**Redevelopment Plan Amendment
Grand Island CRA Area 7
September 2015**

The Community Redevelopment Authority (CRA) of the City of Grand Island intends to amend the Redevelopment Plan for Area 7 within the city, pursuant to the Nebraska Community Development Law (the “Act”) and provide for the financing of an industrial project in Area 7.

**Executive Summary:
Project Description**

THE ACQUISITION OF PROPERTY AT THE SOUTHWEST CORNER OF SCHIMMER ROAD AND BLAINE STREET (APPROXIMATELY 20 ACRES) AND THE SUBSEQUENT SITE WORK, GRADING, DRAINAGE IMPROVEMENTS, UTILITY IMPROVEMENTS, ENGINEERING, LANDSCAPING AND PARKING IMPROVEMENTS NECESSARY FOR CONSTRUCTING A COMMERCIAL BUILDING TO BE USED AS A COMMERCIAL CHICKEN HATCHERY AT THIS LOCATION.

The use of Tax Increment Financing (TIF) to aid in the acquisition of property, necessary site work including drainage, and installation of public utilities and utility connections necessary to develop this site. The use of TIF for this project was proposed by the Grand Island Area Economic Development Corporation (GIAEDC) in their proposal to bring this project to Grand Island. This project developer is willing to locate this business in Grand Island provided TIF is available to support the project.

The acquisition, site work and construction of all improvements will be paid for by the developer based on their agreements with GIAEDC. The developer is responsible for and has provided evidence that they can secure adequate debt financing to cover the costs associated with the acquisition, site work and other necessary expenditures. The Grand Island Community Redevelopment Authority (CRA) intends to pledge the ad valorem taxes generated over the 15 year period beginning January 1, 2017 towards the allowable costs and associated financing for the acquisition and site work.

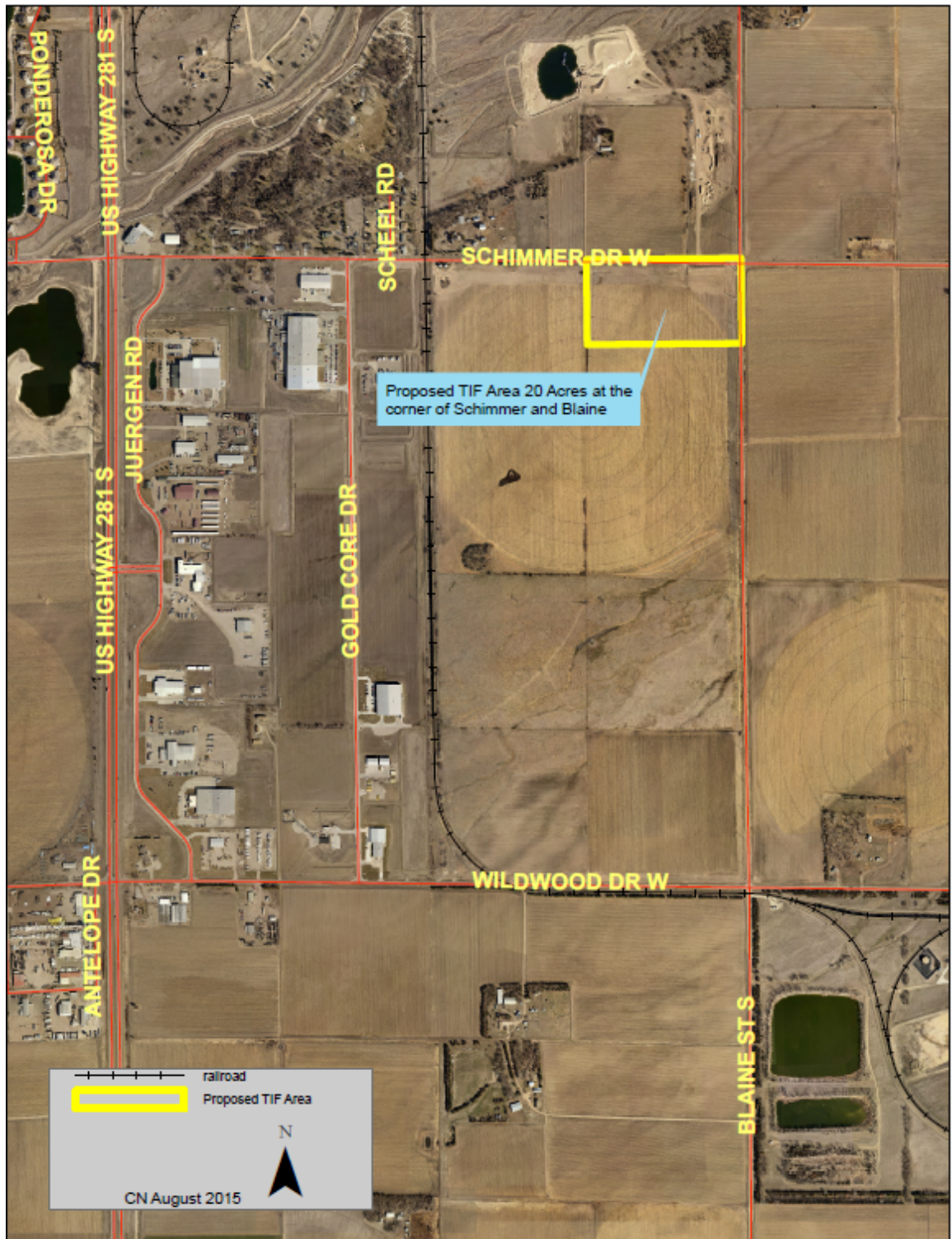
TAX INCREMENT FINANCING TO PAY FOR THE ACQUISITION OF THE PROPERTY AND RELATED SITE WORK WILL COME FROM THE FOLLOWING REAL PROPERTY:

Property Description (the “Redevelopment Project Area”)

This property is located west of Blaine Street south of Schimmer Drive in southern Grand Island, the attached map identifies the subject property and the surrounding land uses:

- **Legal Description** Exact description to be provided later but 20 acres more or less consisting generally of either the N ½ or E ½ of NE ¼ of the NE ¼ of

Section 5, Township 10 North, Range 9 west of the 6th P.M. in Grand Island, Hall County, Nebraska.



Based on the proposal the tax increment will be captured for the tax years the payments for which become delinquent in years 2018 through 2031 inclusive.

The real property ad valorem taxes on the current valuation will continue to be paid to the normal taxing entities. The increase will come from the construction of new commercial space on this property.

Statutory Pledge of Taxes.

Pursuant to Section 18-2147 of the Act, any ad valorem tax levied upon real property in the Redevelopment Project Area shall be divided, for the period not to exceed 15 years after the effective date of the provision, which effective date shall be set with the signed contract estimated now to be January 1, 2017. Said taxes shall be divided as follows:

a. That portion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the redevelopment project valuation shall be paid into the funds, of each such public body in the same proportion as all other taxes collected by or for the bodies; and

b. That portion of the ad valorem tax on real property in the redevelopment project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the Authority to pay the principal of; the interest on, and any premiums due in connection with the bonds, loans, notes, or advances on money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, a redevelopment project. When such bonds, loans, notes, advances of money, or indebtedness including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such redevelopment project shall be paid into the funds of the respective public bodies.

Pursuant to Section 18-2150 of the Act, the ad valorem tax so divided is hereby pledged to the repayment of loans or advances of money, or the incurring of any indebtedness, whether funded, refunded, assumed, or otherwise, by the CRA to finance or refinance, in whole or in part, the redevelopment project, including the payment of the principal of, premium, if any, and interest on such bonds, loans, notes, advances, or indebtedness.

Redevelopment Plan Amendment Complies with the Act:

The Community Development Law requires that a Redevelopment Plan and Project consider and comply with a number of requirements. This Plan Amendment meets the statutory qualifications as set forth below.

1. The Redevelopment Project Area has been declared blighted and substandard by action of the Grand Island City Council on August 28, 2007.[§18-2109] Such declaration was made after a public hearing with full compliance with the public notice requirements of §18-2115 of the Act.

2. Conformation to the General Plan for the Municipality as a whole. [§18-2103 (13) (a) and §18-2110]

Grand Island adopted a Comprehensive Plan on July 13, 2004. This redevelopment plan amendment and project are consistent with the Comprehensive Plan, in that no changes in the Comprehensive Plan elements are intended. This plan merely provides funding for the developer to acquire the necessary property and provide the necessary site work for the construction of a permitted use on this property.

3. The Redevelopment Plan must be sufficiently complete to address the following items: [§18-2103(13) (b)]

a. Land Acquisition:

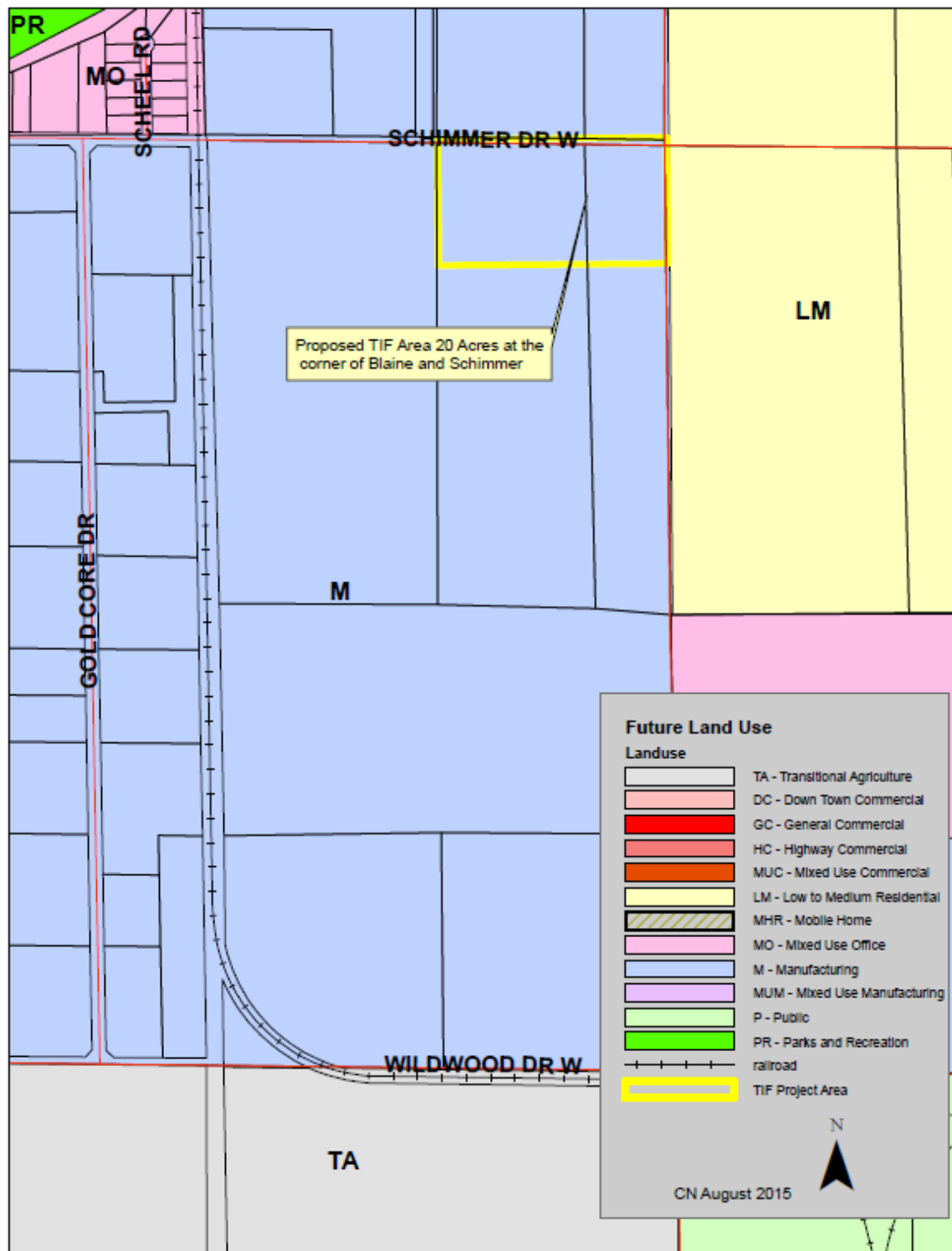
This Redevelopment Plan for Area 7 provides for real property acquisition. There is no proposed acquisition by the authority. The applicant will be acquiring the property from the current owner.

b. Demolition and Removal of Structures:

The project to be implemented with this plan will not require demolition of any existing structures.

c. Future Land Use Plan

See the attached map from the 2004 Grand Island Comprehensive Plan. The site is planned for manufacturing development [§18-2103(b) and §18-2111]. The attached map also is an accurate site plan of the area after redevelopment. [§18-2111(5)]



City of Grand Island Future Land Use Map

d. Changes to zoning, street layouts and grades or building codes or ordinances or other Planning changes.

The area is zoned M2 Heavy Manufacturing District. No zoning changes are anticipated with this project. No changes are anticipated in street layouts or grades. No changes are anticipated in building codes or ordinances. Nor are any other planning changes contemplated. [§18-2103(b) and §18-2111]

e. Site Coverage and Intensity of Use

The developer is proposing to acquire property and build a 60,000 square foot building to be used as a chicken hatchery to supply chickens for egg production in the surrounding agricultural zoning districts in Hall County and the surrounding counties. [§18-2103(b) and §18-2111]

f. Additional Public Facilities or Utilities

Sewer and water are available to support this development. Connections for water and sewer will have to be extended to serve the proposed future development.

Adequate electric utility infrastructure is available to support this development.

No other utilities would be impacted by the development.

No other utilities would be impacted by the development. [§18-2103(b) and §18-2111]

4. The Act requires a Redevelopment Plan provide for relocation of individuals and families displaced as a result of plan implementation. This amendment does not provide for acquisition of any residences and therefore, no relocation is contemplated. [§18-2103.02]

5. No member of the Authority, nor any employee thereof holds any interest in any property in this Redevelopment Project Area. [§18-2106]

6. Section 18-2114 of the Act requires that the Authority consider:

a. Method and cost of acquisition and preparation for redevelopment and estimated proceeds from disposal to redevelopers.

The developer is proposing to purchase this property for redevelopment for \$1,600,000 provided that TIF is available for the project as defined. The cost of property acquisition is being included as a TIF eligible expense. Costs for site preparation, grading and drainage structures, utility extensions and connection fees, of \$444,313 and planning and legal costs of \$630,000 are included as TIF eligible expenses. It is estimated based on the proposed increased valuation of the project of \$11,600,000 will result in \$3,728,000 of increment generated over a 15 year period.

No property will be transferred to redevelopers by the Authority. The developer and GIAEDC will provide and secure all necessary financing.

b. Statement of proposed method of financing the redevelopment project.

The developer and GIAEDC will provide all necessary financing for the project. The Authority will assist the project by granting the sum of \$2,674,313 for the project from the proceeds of the TIF Indebtedness issued by the Authority. This indebtedness will be repaid from the Tax Increment Revenues generated from the project. It is expected that TIF revenues shall be made available to repay the original debt after January 1, 2018 through December 2032 depending on the final building schedule and contract date.

c. Statement of feasible method of relocating displaced families.

No families will be displaced as a result of this plan.

7. Section 18-2113 of the Act requires:

Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the city and its environs which will, in accordance with present and future needs,

promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations or conditions of blight.

The Authority has considered these elements in proposing this Plan Amendment. This development, in and of itself will promote consistency with the Comprehensive Plan, in that it will allow for the utilization of the property for manufacturing purposes consistent with the intent of the Comprehensive Plan. This property was purchased by the GIAEDC in 2006 for the purpose of encouraging industrial development. The City and the GIAEDC have invested substantial funds in extending infrastructure to serve this property for manufacturing purposes. New manufacturing development will raise property values and encourage further development of this property.

8. Time Frame for Development

Development of this project is anticipated to be completed between October of 2015 and September of 2016. Excess valuation should be available for this project for 15 years beginning with the 2017 tax year.

9. Justification of Project

The property is located at the northeast corner of the property referred to variously as Platte Valley Industrial Park East (PVIP East) and more recently as Wildwood Business Park south of Schimmer Drive and west of Blaine Street. A community development block grant of \$935,000 from the Nebraska Department of Economic Development was used to pay for a portion of the paving of Blaine Street and the installation of sanitary sewer and water lines adjacent to the site. The use of those funds obligates the City and the GIAEDC to recruit businesses that will create at least 37 jobs 51% of which are to be “held by” or “made available to” people that are currently considered low to moderate income. This project as proposed would fulfill the job creation requirements of that grant.

10. Cost Benefit Analysis Section 18-2113 of the Act, further requires the Authority conduct a cost benefit analysis of the plan amendment in the event that Tax Increment Financing will be used. This analysis must address specific statutory issues.

As authorized in the Nebraska Community Development Law, §18-2147, *Neb. Rev. Stat.* (2012), the City of Grand Island has analyzed the costs and benefits of the proposed Redevelopment Project, including:

Project Sources and Uses. Approximately \$2,674,300 in public funds from tax increment financing provided by the Grand Island Community Redevelopment Authority will be required to complete the project. The total private investment on this project is the total of the costs not eligible for is TIF \$17,003,687. This \$2,674,300 investment by the Authority and the people of Grand Island will leverage \$17,003,687 in private sector financing and investment; a private investment of \$6.35 for every TIF dollar investment.

Use of Funds. Phase 1			
Description	Eligible for TIF Funds	Private Funds	Total
Site Acquisition	\$1,600,000		\$1,600,000
Utilities/On Site Improvements	\$444,313	359,687	\$804,000
Legal Private	\$250,000		\$250,000
Legal CRA Cost	\$30,000		\$30,000
Fees ¹	\$1,600		\$1,600
Architecture	\$350,000		\$350,000
Building Construction Costs		\$10,034,000	\$10,034,000
Soft Costs		\$610,000	\$610,000
Personal Property		\$6,000,000	\$6,000,000
TOTALS	\$2,675,913	\$17,003,687	\$19,679,600

Tax Revenue. The property to be redeveloped has a January 1, 2015, valuation of approximately \$220,000 according to the Hall County Assessor's Office. Based on the 2014 levy this would result in a real property tax of approximately \$4,804. It is anticipated that the assessed value will increase by almost \$11,400,000 upon full completion, as a result of the site redevelopment. This development will result in an estimated tax increase of over \$248,525 annually resulting in \$3,728,000 of increment over the 15 year period. The tax increment gained from this Redevelopment Project Area would not be available for use as city general tax revenues, for a period of 15 years, or such shorter time as may be required to amortize the TIF bond, but would be used for eligible private redevelopment costs to enable this project to be realized.

Estimated 2015 assessed value:	\$ 220,000
Estimated value after completion	\$ 11,600,000
Increment value	\$ 11,380,000
Annual TIF generated (estimated)	\$ 248,525
TIF bond issue	\$ 2,674,313

(a) Tax shifts resulting from the approval of the use of Tax Increment Financing;

The redevelopment project area currently has an estimated valuation of \$220,000. The proposed redevelopment and commercial construction at this location will result in an additional \$11,380,000 of taxable valuation based on valuations of similar properties. No tax shifts are anticipated from the project. The project creates additional valuation

that will support taxing entities long after the project is paid off. The project will not add any tax burdens to taxing entities. Therefore no tax shifts will occur.

(b) Public infrastructure and community public service needs impacts and local tax impacts arising from the approval of the redevelopment project;

No additional public service needs have been identified. Existing water and waste water facilities will not be impacted by this development. The electric utility has sufficient capacity to support the development. It is not anticipated that this will impact schools. Fire and police protection are available and should not be impacted by this development.

(c) Impacts on employers and employees of firms locating or expanding within the boundaries of the area of the redevelopment project;

This project will not negatively impact employers or employees in the area directly. It is anticipated that this project will create 50 additional jobs more than half of which will be available to people currently considered low to moderate income meeting the job creation component of the Community Development Block Grant that was used to extend utilities to the property and pave Blaine Street. The increase in available jobs may result in further tightening of the job market.

(d) Impacts on other employers and employees within the city or village and the immediate area that are located outside of the boundaries of the area of the redevelopment project; and

No major impacts are anticipated outside of the city or immediate area to total employment from this project. The satellite farming operations that will be raising chickens for egg production will stabilize and diversify the ag sector. There may be an increase in employment in the construction sector during construction of this project and the outlying facilities that will support this plant.

(e) Any other impacts determined by the authority to be relevant to the consideration of costs and benefits arising from the redevelopment project.

This project will serve as a catalyst project developing a 20 acre parcel within the Platte Valley Industrial Park East. This project will meet the obligations the City and the GIAEDC have for job creation as part of the CDBG grant that was used to install utilities across the property and pave Blaine Street. This project will diversify the ag employment sector into new production that is not currently found in central Nebraska, specifically egg and chicken production.

Time Frame for Development

Development of this project is anticipated to be completed during between October 2015 and September of 2016. The date of TIF will be established with the approved contract

but it is anticipated that the base tax year should be calculated on the value of the property as of January 1, 2016. Excess valuation should be available for this project for 15 years beginning with the 2017 tax year. Excess valuation will be used to pay the TIF Indebtedness issued by the CRA per the contract between the CRA and the developer for a period not to exceed 15 years or an amount not to exceed \$2,674,313 the projected amount of the eligible expenses for this project. Based on the purchase price of the property and estimates of the expenses of renovation activities and associated engineering fees, the developer will spend more than \$2,674,313 on TIF eligible activities.

See Attached Site Plan



Hall County Regional Planning Commission

**Wednesday, October 7, 2015
Regular Meeting**

Item F3

Re-Adoption of the Village of Cairo Zoning Map

Staff Contact: Chad Nabity

Agenda Item #7

PLANNING DIRECTOR RECOMMENDATION TO REGIONAL PLANNING September 17, 2015

SUBJECT: Concerning the re-adoption of the Village of Cairo Zoning Map as produced using the Hall County Geographic Information System as the official zoning map for the City of Cairo. (C-03-2016C)

PROPOSAL:

In December of 2015 the Cairo Village Board approved a revised zoning map for the Village of Cairo. This map was produced using the Hall County GIS system as the official zoning map for the Village of Cairo based on the 2003 Comprehensive Plan for the Village of Cairo. As a matter of course, the Village of Cairo occasionally re-adopts the zoning map incorporating all changes since the last re-adoption of the entire map along with other changes as recommended by staff and the Hall County Regional Planning Commission. This will allow a newly revised and adopted copy of the map to be printed for official use by the Board, staff and the general public. This hearing is being held for that purpose. This map will also serve to give notice to all parties that the Cairo Village limits, and 1 mile extraterritorial jurisdiction, is as shown on the map.

BACKGROUND:

ZONING CHANGES

There have been no additional changes to the map since its readoption in 2013. The Village Board has initiated action to annex property owned by the village and designated for an industrial park. The annexation of this additional property will result in the extension of the extra-territorial jurisdiction (ETJ) and the need to extend the industrial district to cover this property in a manner consistent with the future land use map of the Village. The property in the ETJ will be rezoned to keep the TA Transitional Agriculture District extending approximately ½ mile around the municipal limits and the AG Agricultural Zone extending from the outer edge of the TA to the edge of the jurisdiction. The Village of Cairo has chosen square off their ETJ at the quarter quarter section boundary. This means that in some places it will not extend the full mile from the municipal limits but will stop at the quarter quarter section line that is nearest to 1 mile from the municipal limits. This map will be adopted at the completion of the passage of the ordinance for annexation.

ANNEXATIONS

The Village of Cairo will have annexed the industrial park property owned by the Village north of Nebraska Highway 2 and the Burlington Northern Santa Fe (BNSF) rail road tracks, west of 130th Road and south of One R Road as shown.

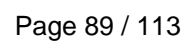
All of these changes are consistent with the existing uses and the Future Land Use map for the Village of Cairo provided the proposed changes to the future land use map also under consideration are

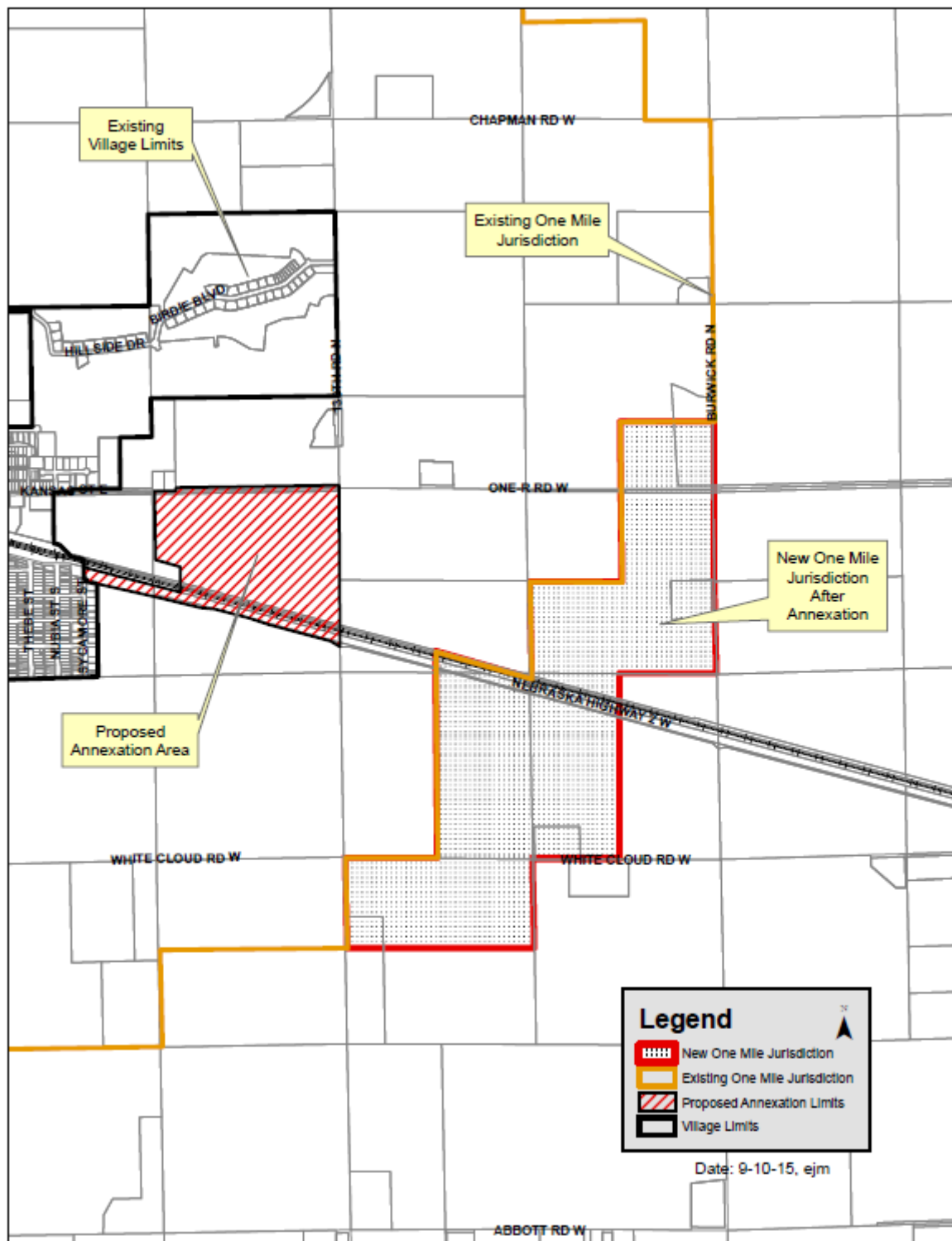
approved. The proposed changes will harmonize the map and make enforcement of the zoning regulations more consistent.

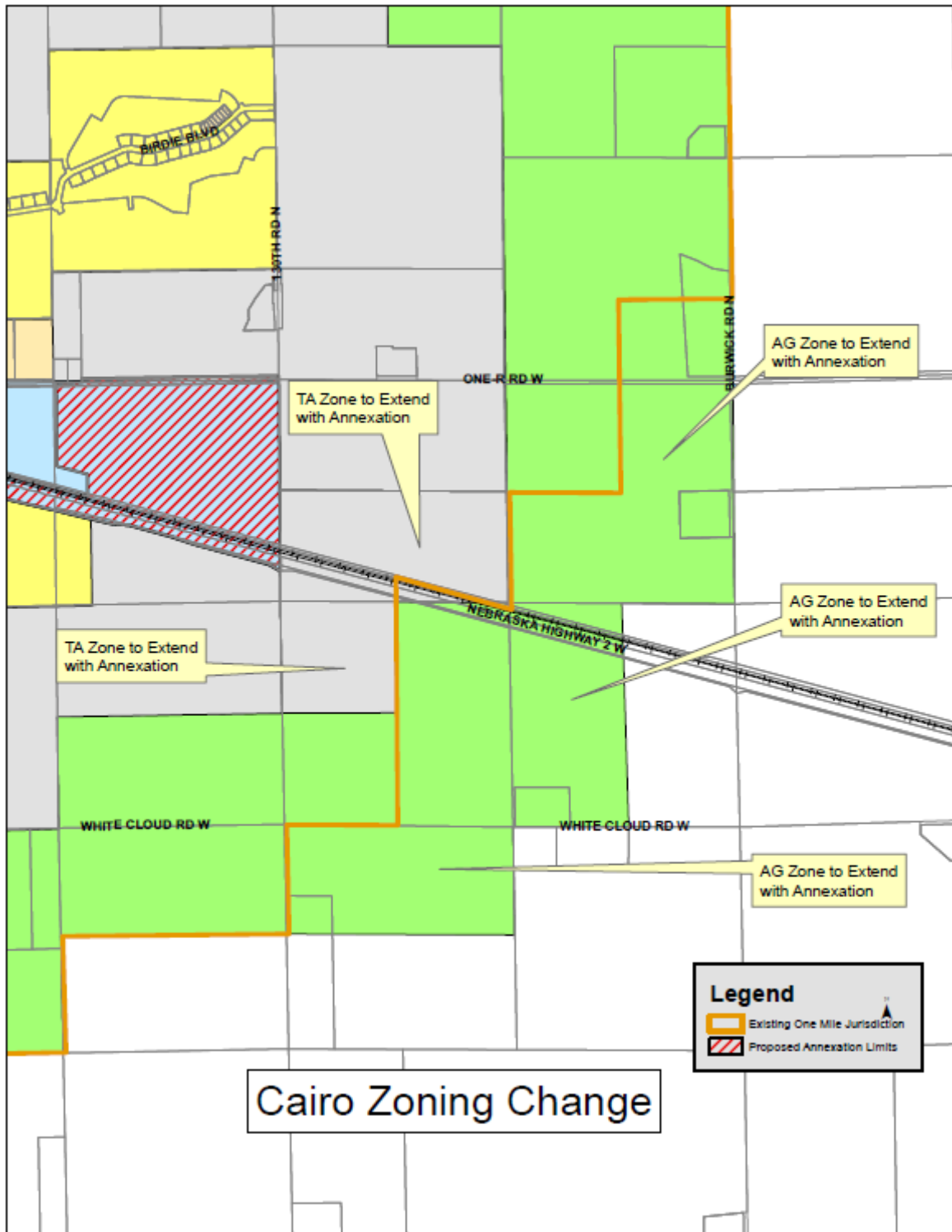
RECOMMENDATION:

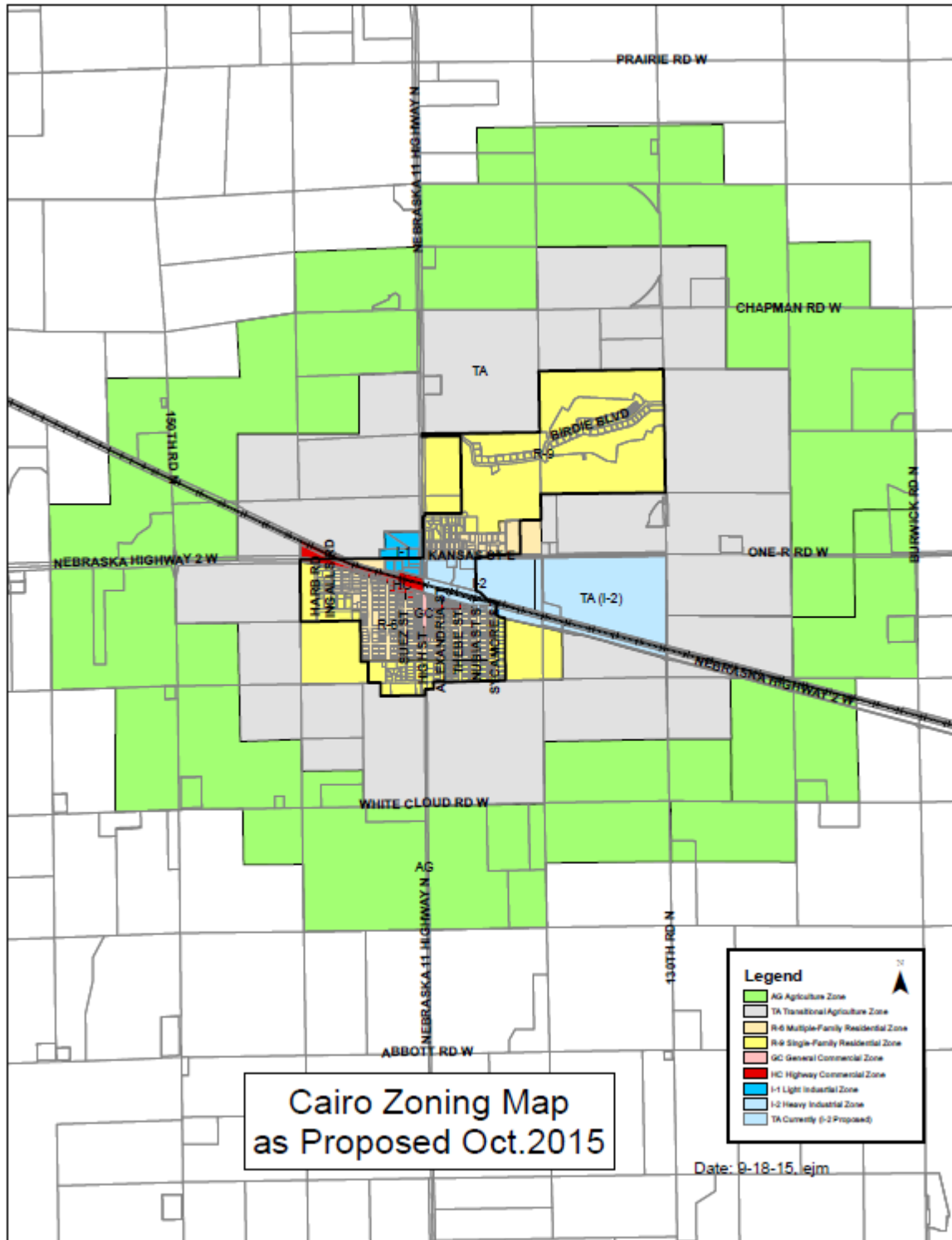
That the Regional Planning Commission recommend that the Village Board of Cairo adopt this map as presented as the official Zoning Map for the Village of Cairo.

_____ Chad Nabity AICP, Planning Director











VILLAGE OF CAIRO
SUSAN KLUTHE, CLERK/TREASURER
P.O. Box 456 • Cairo, NE 68824 •
Phone (308) 485-4400 • Fax (308) 485-4400
Website: www.cairocommunity.com

September 1, 2015

Chad Nabity, Planning Director
Regional Planning Commission
P.O. Box 1968
Grand Island, NE 68801

Dear Chad:

RE: Consideration to annexing Business Park & amendment to Zoning Map

At the regular Board meeting on August 11, 2015, the Village Board had a discussion on annexing the Business Park that is owned by the Village and to amend the zoning map. These changes in zoning will flow with the current zoning for the use of the annexed property to be zoned Heavy Industry (I-2). The Village of Cairo would like for the Regional Planning Commission to review the following changes as recommended by the Village Board. The change being requested is annexing the village property that is outlined in green on the attached map and to change zoning to continue the Heavy Industry Zone from the current I-2 zoning from the south side of Hwy 2 to Kansas Street (One R-Road) and from its current zoning to 130th Road and extending the ETJ by adopting a new map.

If you have any questions or need additional information, feel free to email me at cairoclerk@gmail.com or call (308)485-4400.

Sincerely,

Susan Kluthe, Clerk/Treasurer
Village of Cairo



"This institution is an equal opportunity provider, and employer."
If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at <http://www.ascr.usda.gov/complaintfilingcust.html> or at any USDA office, or call (866)632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202)690-7442 or email at program.intake@usda.gov.

ANNEXATION PLAN –Cairo Nebraska

September 16, 2015

OVERVIEW

Section 17-405 of The Nebraska State Statute allows Villages to annex any contiguous or adjacent lands, lots, tracts, streets, or highways that are urban or suburban in character and in such direction as may be deemed proper.

Regulations governing municipal annexation were implemented in order to develop an equitable system for adding to and increasing village boundaries as urban growth occurs. Areas of the community that are urban in nature, and are contiguous to existing boundaries, are appropriate for consideration of annexation.

Annexation of urban areas adjacent to existing village boundaries can be driven by many factors. The following are reasons annexation should be considered:

1. Governing urban areas with the statutorily created urban form of government, municipalities have historically been charged with meeting the needs of the expanded community.
2. Provide municipal services. Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and well being of residents in areas that are used primarily for residential, industrial, and commercial purposes.
3. Ensure orderly growth pursuant to land use, building, street, sidewalk, sanitary sewer, storm sewer, water, and electrical services.
4. Provide more equitable taxation to existing property owners for the urban services and facilities that non-village residents in proposed annexation areas use on a regular basis such as parks, streets, public infrastructure, emergency services, retail businesses and associated support.
5. Ensure ability to impose and consistently enforce planning processes and policies.
6. Address housing standards and code compliance to positively impact quality of life for residents.
7. Enable residents of urban areas adjacent to village to participate in municipal issues, including elections that either do or will have an impact on their properties.
8. Anticipate and allocate resources for infrastructure improvements. This would include extension of sewer, water and electrical infrastructure.
9. Provide long term visioning abilities as it relates to growth and provision of services.

Other Factors

The Village has caused to be prepared an annexation plat of the parcels under consideration and has forwarded a request to make a recommendation on annexation of these properties to the Hall County Regional Planning Commission.

A comprehensive inventory of services and facilities has been developed, with the types and level of services currently being provided as well as the types of level of services anticipated as a result of annexation.

The inventory includes general information concerning:

- Existing infrastructure in affected area(s)
- Summary of expenditures to extend existing infrastructure
- Emergency services
- Summary of operating expenditures associated with increased services

The service plan incorporates detailed elements of the inventory. The inventory and resulting service plan should be the basis for discussions concerning each specific area identified for potential annexation. ***It should be noted that the capital improvements to existing infrastructure and extending services if necessary will take place over a reasonable period of time in order to ensure adequate time for planning, designing, funding and constructing such a sizable number of projects while protecting the financial integrity of the Village's enterprise funds. Individual property owners will be responsible for the cost of extending services through neighborhoods and for connecting their properties to the public systems.***

Inventory of Service and Service Plan

The parcels under consideration are located adjacent to the Cairo Village limits from the between and including Nebraska Highway 2 and One R Road and west of and including 130th Road.

INVENTORY OF SERVICES

1. Police Protection. The Hall County Sheriff's Department under contract with the Village of Cairo will provide protection and law enforcement services in the annexation area. These services include:

- Normal patrols and responses
- Handling of complaints and incident reports
- Investigation of crimes
- Standard speed and traffic enforcement
- Special units such as traffic enforcement, criminal investigations, narcotics, and gang suppression

These services are offered by contract for all properties within the municipal limits of Cairo.

2. Fire Protection. The Cairo Rural Fire Department will provide emergency and fire prevention services in the annexation area. These services include:

- Fire suppression and rescue
- Hazardous materials regulation
- Periodic inspections of commercial properties
- Public safety education

3. Wastewater (Sanitary Sewer). The Village of Cairo currently maintains the wastewater utilities services for the proposed annexation area. Wastewater services to new development and subdivisions will be provided according to standard policies and procedures of the Village.

4. Maintenance of Roads and Streets. The Village of Cairo will maintain public streets over which the Village has jurisdiction. A section of 130th Road between Nebraska Highway 2 and One R Road and One R Road west of 130th are existing roads that will be included with the municipal limits. These services include:

- Snow and ice removal
- Emergency pavement repair
- Preventative street maintenance
- Asphalt resurfacing
- Ditch and drainage maintenance
- Sign and signal maintenance

The Village of Cairo will coordinate with the State of Nebraska for the necessary services in regard to that portion of Nebraska Highway 2 that is being annexed will assume responsibility or reimburse the State of Nebraska for those services to the extent required.

5. Water Utilities. The Village of Cairo currently maintains the water utilities services for the proposed annexation area.

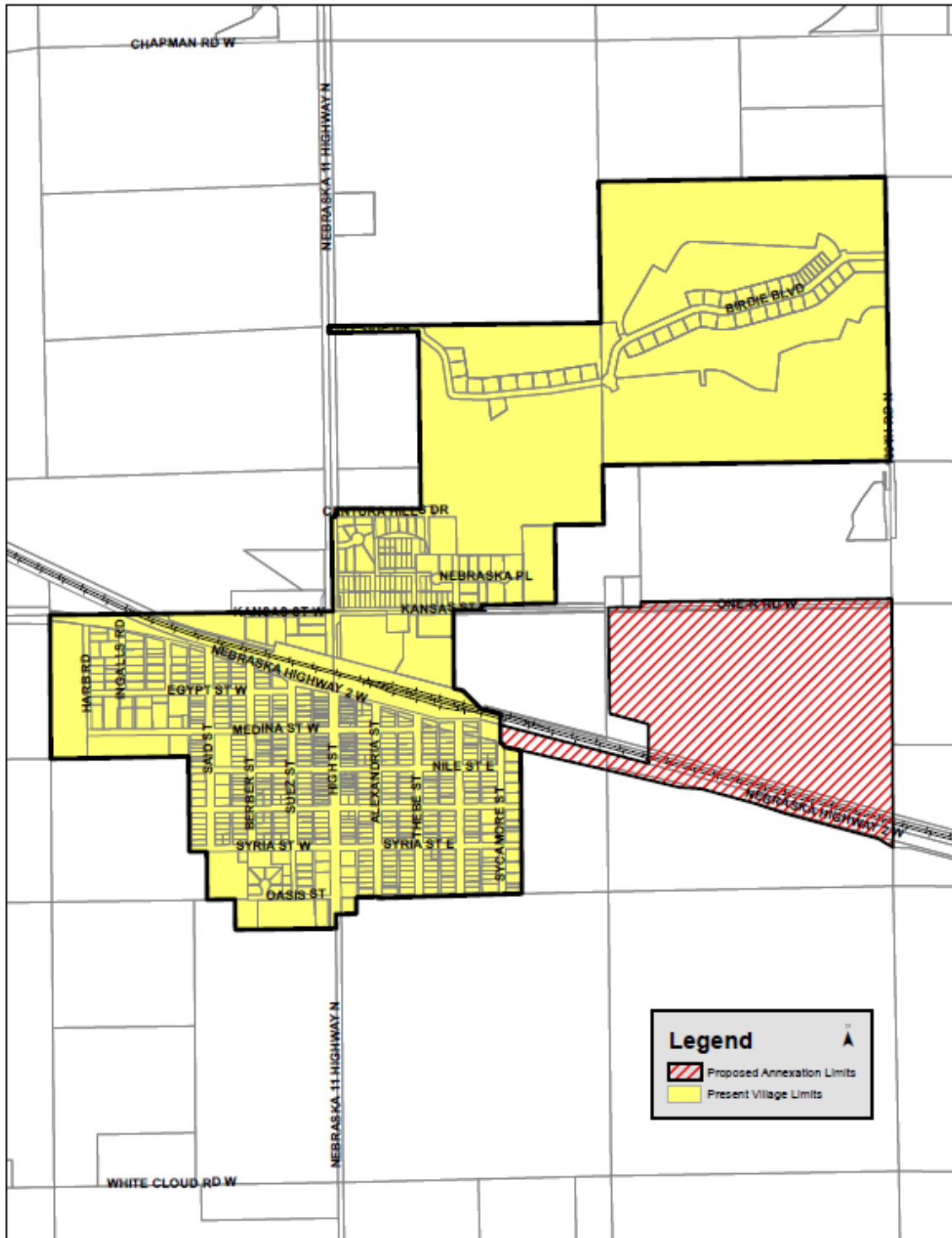
6. Maintenance of Parks, Playgrounds, and Swimming Pools. No impact on public or private recreation facilities is anticipated as a result of annexation. Recreation facilities and area amenities, including parks and pools, that are privately owned and operated, or operated and maintained by another governmental entity, will be unaffected by the annexation.

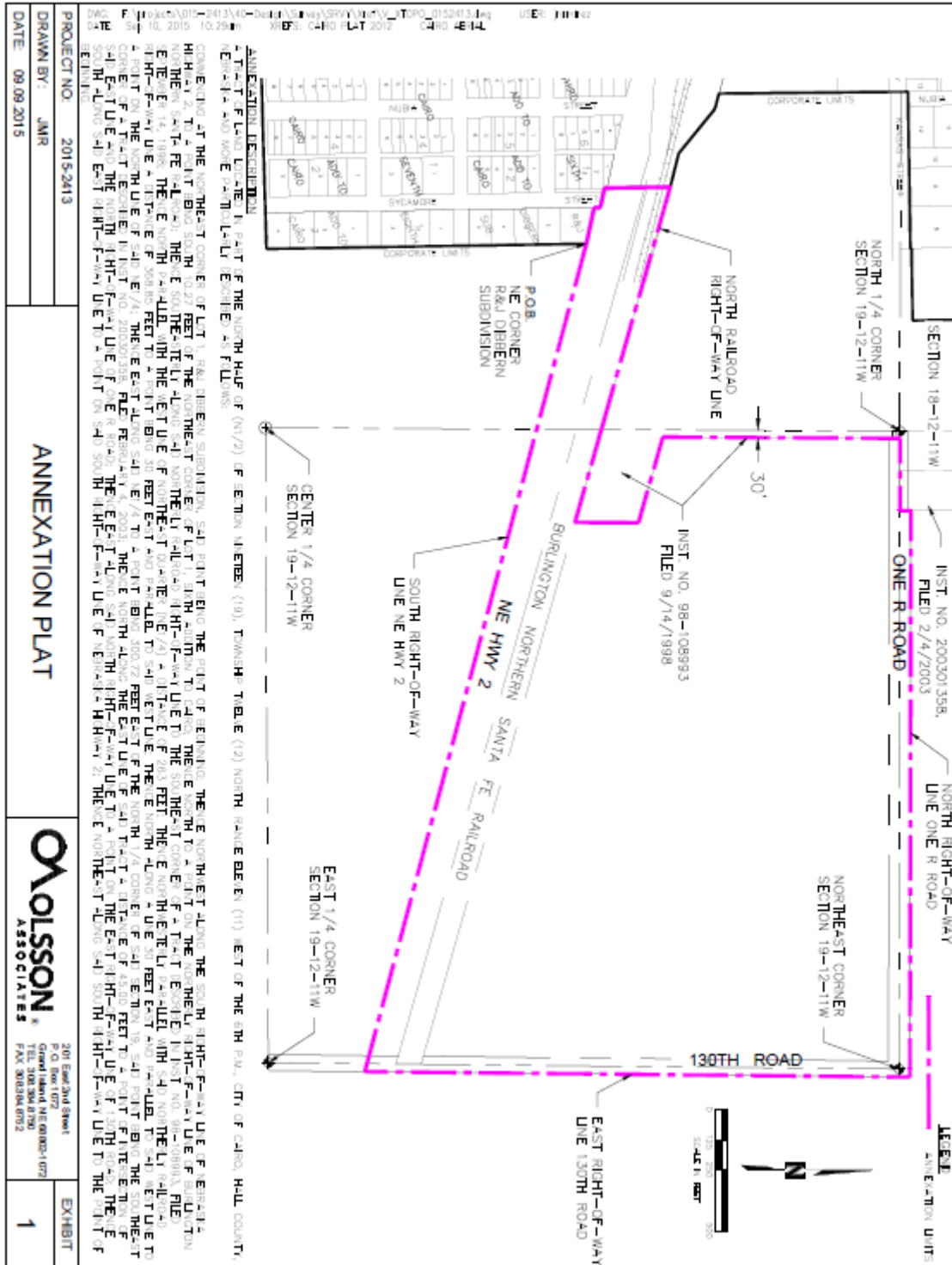
7. Zoning Regulations. The Village of Cairo is not enforcing building regulations. Zoning permits are issued through an agreement with Hall County by the Hall County Building and Grounds Department. Hall County will continue to oversee services associated with zoning regulations, including:

- Zoning Permit Issuance
- Investigation and Enforcement of Zoning Violations

8. Summary of Impacts

Summary of Impacts	
Police Protection	No Impact
Fire Protection	No Change
Wastewater	Available
Roads and Streets	Possible Change of Maintenance responsibilities along the perimeter of Cairo including 130 Road, One R Road and Nebraska Highway 2
Water Service	Available
Parks, Playgrounds and Swimming Pools	No Impact
Zoning Regulations	Already Subject to Cairo Regulations
School District	District 100 (Centura)





Appendix A¹

Nebraska Revised Statutes

The Nebraska Revised Statutes address annexation for Cities in Section §17-405 through §17-405.04. These sections read as follows:

17-405. Contiguous land; annexation; petition; plat; approval of council; recording; effect.

(1) Whenever the owner or owners and inhabitants, or a majority thereof in numbers or value, of any territory lying contiguous to the corporate limits of any city or village, whether the territory be already in fact subdivided into lots or parcels of ten acres or less or remains unsubdivided, except as provided in section 13-1115, shall desire to annex such territory to any city or village, they shall first cause an accurate plat or map of the territory to be made, showing such territory subdivided into blocks and lots, conforming as nearly as may be to the blocks, lots, and streets of the adjacent city or village. It shall also show the descriptions and numberings, as provided in section 17-415, for platting additions, and conforming thereto as nearly as may be.

(2) Said plat or map shall be prepared under the supervision of the city engineer in cases of annexation to adjacent cities, and under the supervision of a competent surveyor in any case. A copy of said plat or map, certified by said engineer or surveyor, as the case may be, shall be filed in the office of the clerk of the city or village, together with a request in writing, signed by a majority of the property owners and inhabitants in number and value of the territory described in said plat for the annexation of said territory. The city council or board of trustees shall, at the next regular meeting thereof after the filing of such plat and request for annexation, vote upon the question of such annexation, and such vote shall be spread upon the journal of said council or board of trustees. If a majority of all the members of the council or board of trustees vote for such annexation, an ordinance shall be prepared and passed by the council or board declaring the annexation of such territory to the corporate limits of the city or village, and extending the limits thereof accordingly.

(3) An accurate map or plat of such territory certified by the engineer or surveyor, and acknowledged and proved as provided by law in such cases shall at once be filed and recorded in the office of the county clerk or register of deeds and county assessor of the proper county, together with a certified copy of the ordinance declaring such annexation, under the seal of the city or village. Thereupon such annexation of such adjacent territory shall be deemed complete, and the territory included and described in the plat on file in the office of the clerk or register of deeds shall be deemed and held to be a part of said original corporate city or village, and the inhabitants thereof shall thereafter enjoy the privileges and benefits of such annexation, and be subject to the ordinances and regulations of said city or village.

17-405.01. Annexation; powers; restrictions.

(1) Except as provided in subsection (2) of this section and section 17-407, the mayor and council of any city of the second class or the chairperson and members of the board of trustees of any village may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time, include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character, and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any municipality over any agricultural lands which are rural in character.

(2) The mayor and city council of any city of the second class or the chairperson and members of the board of trustees of any village may, by ordinance, annex any lands, lots, tracts, streets, or highways which constitute a redevelopment project area so designated by the city or village or its community redevelopment authority in accordance with the provisions of the Community Development Law and sections 18-2145 to 18-2154 when such annexation is for the purpose of implementing a lawfully adopted redevelopment plan containing a provision dividing ad valorem taxes as provided in subsection (1) of section 18-2147 and which will involve the construction or development of an agricultural processing facility, notwithstanding that such lands, lots, tracts, streets, or highways are not contiguous or adjacent or are not urban or suburban in character. Such annexation shall comply with all other provisions of law

¹ This information was provided by Keith Marvin, AICP of Marvin Planning Consultants of David City Nebraska from similar plans provided for other communities in Nebraska

relating to annexation generally for cities of the second class and villages. The city or village shall not, in consequence of the annexation under this subsection of any noncontiguous land, exercise the authority granted to it by statute to extend its jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any other city, village, or county currently exercising such jurisdiction over the area surrounding the annexed redevelopment project area. The annexation of any noncontiguous land undertaken pursuant to this subsection shall not result in any change in the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the city or village lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the city or village, such noncontiguous area shall, solely for the purposes of section 70-1008, be treated as if it had been annexed by the city or village on the date upon which the connecting intervening territory had been formally annexed.

(3) For the purposes of subsection (2) of this section, agricultural processing facility means a plant or establishment where value is added to agricultural commodities through processing, fabrication, or other means and where eighty percent or more of the direct sales from the facility are to other than the ultimate consumer of the processed commodities. A facility shall not qualify as an agricultural processing facility unless its construction or development involves the investment of more than one million dollars derived from nongovernmental sources.

Source: Laws 1967, c. 74, § 1, p. 240; Laws 1997, LB 875, § 1; Laws 2009, LB495, § 6.

17-405.02. Contiguous land, defined.

Lands, lots, tracts, streets, or highways shall be deemed contiguous although a stream, roadway, embankment, strip, or parcel of land not more than five hundred feet wide lies between the same and the corporate limits.

Source: Laws 1967, c. 74, § 2, p. 241; Laws 1971, LB 890, § 1.

17-405.03. Use regulations; effect of annexation.

Any extraterritorial property use regulations imposed upon any annexed lands by the municipality before such annexation shall continue in full force and effect until otherwise changed.

Source: Laws 1967, c. 74, § 3, p. 241.

17-405.04. Inhabitants of annexed land; benefits; ordinances.

The inhabitants of territories annexed under the provisions of sections 17-405.01 to 17-405.05 shall receive substantially the benefits of other inhabitants of such municipality as soon as practicable, and adequate plans and necessary city council or village board action to furnish such benefits as police, fire, snow removal, and water service must be adopted not later than one year after the date of annexation, and such inhabitants shall be subject to the ordinances and regulations of such municipality; Provided, that such one-year period shall be tolled pending final court decision in any court action to contest such annexation.

Source: Laws 1967, c. 74, § 4, p. 241.

Governing Case Law

There has been a number of Nebraska Supreme Court cases handed down regarding annexation and the annexation of land used for agriculture. There are six specific cases that are used in this annexation study. These cases are known as:

183 Neb. 511; Sullivan v. City of Omaha; 162 N. W. 2d 227 (1968) (referred to herein as Sullivan)
186 Neb. 232; Voss v. City of Grand Island; 182 N. W. 2d 427 (1970) (referred to herein as Voss)
188 Neb. 117; Holden v. Tecumseh; 195 N. W. 2d 225 (1972) (referred to herein as Holden)
221 Neb. 272; SID No. 95 v. City of Omaha; **** (referred to herein as SID 95)
243 Neb. 607; Swedlund v. City of Hastings; 501 N.W. 2d 302 (1993) (referred to herein as Swedlund)
248 Neb. 486, 489; SID 57 v. City of Elkhorn; (referred to herein as SID 57)
(Case no???) City of Elkhorn v. City of Omaha; (referred to herein as Elkhorn)

In the Sullivan case the Nebraska Supreme Court ruled that: ***“The use of land for agricultural purposes***

does not necessarily mean it is rural in character. It is the nature of its location as well as its use which determines whether it is rural or urban in character.”

In the Voss case the Nebraska Court expanded the Sullivan case by stating: *“The term ‘agricultural lands which are rural in character’ clearly lends the inference that lands may be currently utilized in an agricultural fashion and still not be rural in character and meet the test of urban and suburban in character. ... The statute does not prescribe, nor does reason dictate, that annexation must be blindly confined to land and areas that have already been zoned and developed into nonagricultural uses. Any such construction of the statute would seriously impair intelligent planning and coordination of the change-over in the use of land for urban purposes.”*

The Holden case provides: *“Although the principal use made by the Holden tract is for agricultural purposes, the evidence shows that its value for residential or commercial use exceeds its value as agricultural land. Because of the development of the city its has become urban and suburban in character rather than rural”*

The Swedlund case challenged both the definition of contiguous and adjacency as well as urban and suburban in character, The Supreme Court stated: *“The burden is on one who attacks an ordinance, valid on its face and enacted under lawful authority, to prove facts to establish its invalidity.... Therefore, the burden is not upon the City to prove that it did not annex the landowners’ property for the purpose of increasing tax revenues. Rather, the burden is upon the property for an impermissible purpose”*

The SID 95 case challenged the validity of an annexation based upon revenue only. The Supreme Court stated: *“The burden is on one who attacks an ordinance, valid on its face and enacted under lawful authority, to prove facts to establish its invalidity.... Therefore, the burden is not upon the City to prove that it did not annex the landowners’ property for the purpose of increasing tax revenues. Rather, the burden is upon the property for an impermissible purpose”*

The SID 57 case once again challenged the validity of an annexation based upon revenue only. The Supreme Court stated: *“Prudent annexation planning compels the city to consider any revenue to be engendered by an annexation, in light of liabilities to be incurred.”*

The Elkhorn case, in regards to the Fairbury annexation has a specific finding that applies. The Supreme Court stated: *“...we have implicitly recognized in Wagner, Bierschenk, and Swedlund that a municipality may annex several tracts as long as one tract is substantially adjacent to the municipality and the other tracts are substantially adjacent to each other.”*

It is these statutory sections and Nebraska Supreme Court decisions which will guide the analysis of this study. Upon completion of this study, it shall be the responsibility of the Mayor and City Council, as well as the City Attorney to review the findings and recommendations and provide the appropriate input on these and/or other properties.



Hall County Regional Planning Commission

**Wednesday, October 7, 2015
Regular Meeting**

Item M1

Concept Third Sub

Staff Contact: Chad Nabity

September 22, 2015

Dear Members of the Board:

RE: Final Plat – Concept Third Subdivision

For reasons of Section 19-923 Revised Statutes of Nebraska, as amended, there is herewith submitted a final plat of Concept Third Subdivision, located in the City of Grand Island, in Hall County Nebraska.

This final plat proposes to create 3 lots, a tract of land comprising all of Lot One (1), Concept Second Subdivision in the City of Grand Island, in Hall County, Nebraska, said tract containing 12.547 acres.

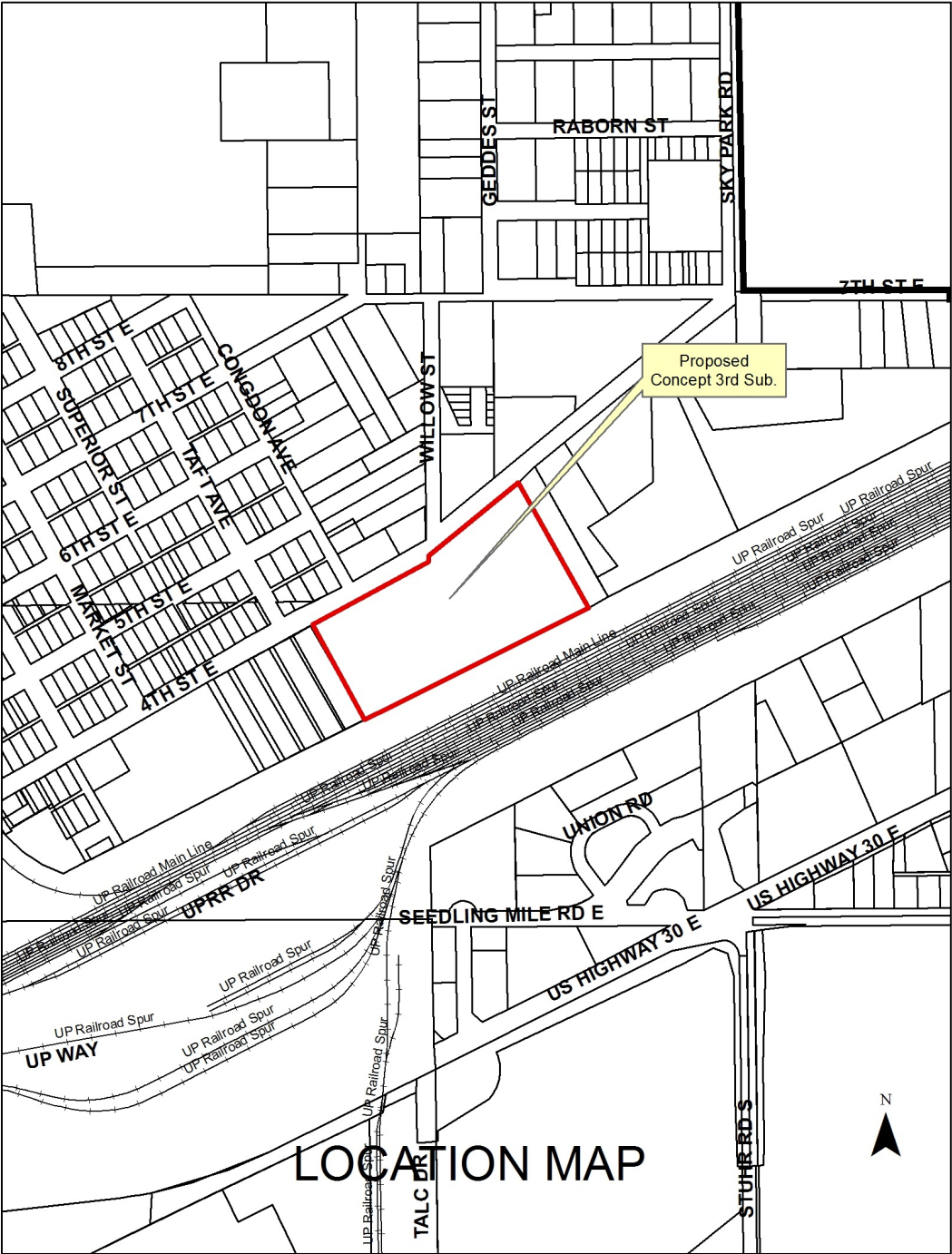
You are hereby notified that the Regional Planning Commission will consider this final plat at the next meeting that will be held at 6:00 p.m. on October 7, 2015 in the Council Chambers located in Grand Island's City Hall.

Sincerely,

Chad Nabity, AICP
Planning Director

Cc: City Clerk
City Attorney
City Public Works
City Building Department
City Utilities
Manager of Postal Operations
Benjamin & Associates, Inc.

This letter was sent to the following School Districts 1R, 2, 3, 19, 82, 83, 100, 126.



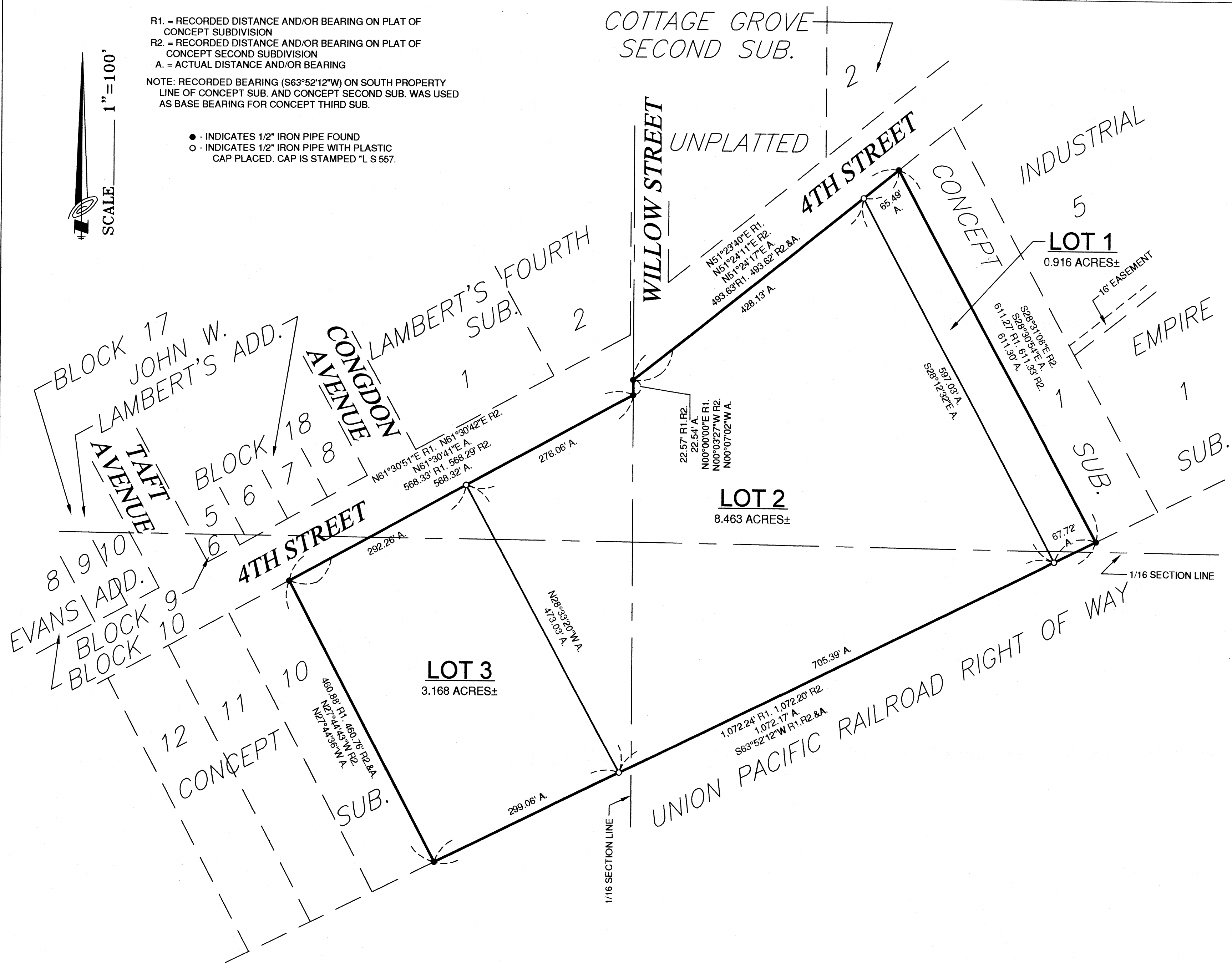


LOCATION MAP

R1. = RECORDED DISTANCE AND/OR BEARING ON PLAT OF
CONCEPT SUBDIVISION
R2. = RECORDED DISTANCE AND/OR BEARING ON PLAT OF
CONCEPT SECOND SUBDIVISION
A. = ACTUAL DISTANCE AND/OR BEARING
NOTE: RECORDED BEARING (S63°52'12"W) ON SOUTH PROPERTY
LINE OF CONCEPT SUB. AND CONCEPT SECOND SUB. WAS USED
AS BASE BEARING FOR CONCEPT THIRD SUB.

- - INDICATES 1/2" IRON PIPE FOUND
- - INDICATES 1/2" IRON PIPE WITH PLASTIC
CAP PLACED. CAP IS STAMPED "L S 557."

SCALE 1" = 100'



CONCEPT THIRD SUBDIVISION

IN THE CITY OF GRAND ISLAND, HALL COUNTY, NEBRASKA

BENJAMIN & ASSOCIATES, INC. - ENGINEERS & SURVEYORS - GRAND ISLAND, NEBRASKA



Hall County Regional Planning Commission

**Wednesday, October 7, 2015
Regular Meeting**

Item M2

Cairo Business Park

Staff Contact: Chad Nabity

September 22, 2015

Dear Members of the Board:

RE: Final Plat – Cairo Business Park

For reasons of Section 19-923 Revised Statutes of Nebraska, as amended, there is herewith submitted a final plat of Cairo Business Park Subdivision, located in Hall County Nebraska.

This final plat proposes to create 20 lots, a tract of land located in part of the Northeast Quarter (NE1/4), of Section Nineteen (19), Township Twelve (12) North, Range Eleven (11) in Hall County, Nebraska, said tract containing 90.072 acres.

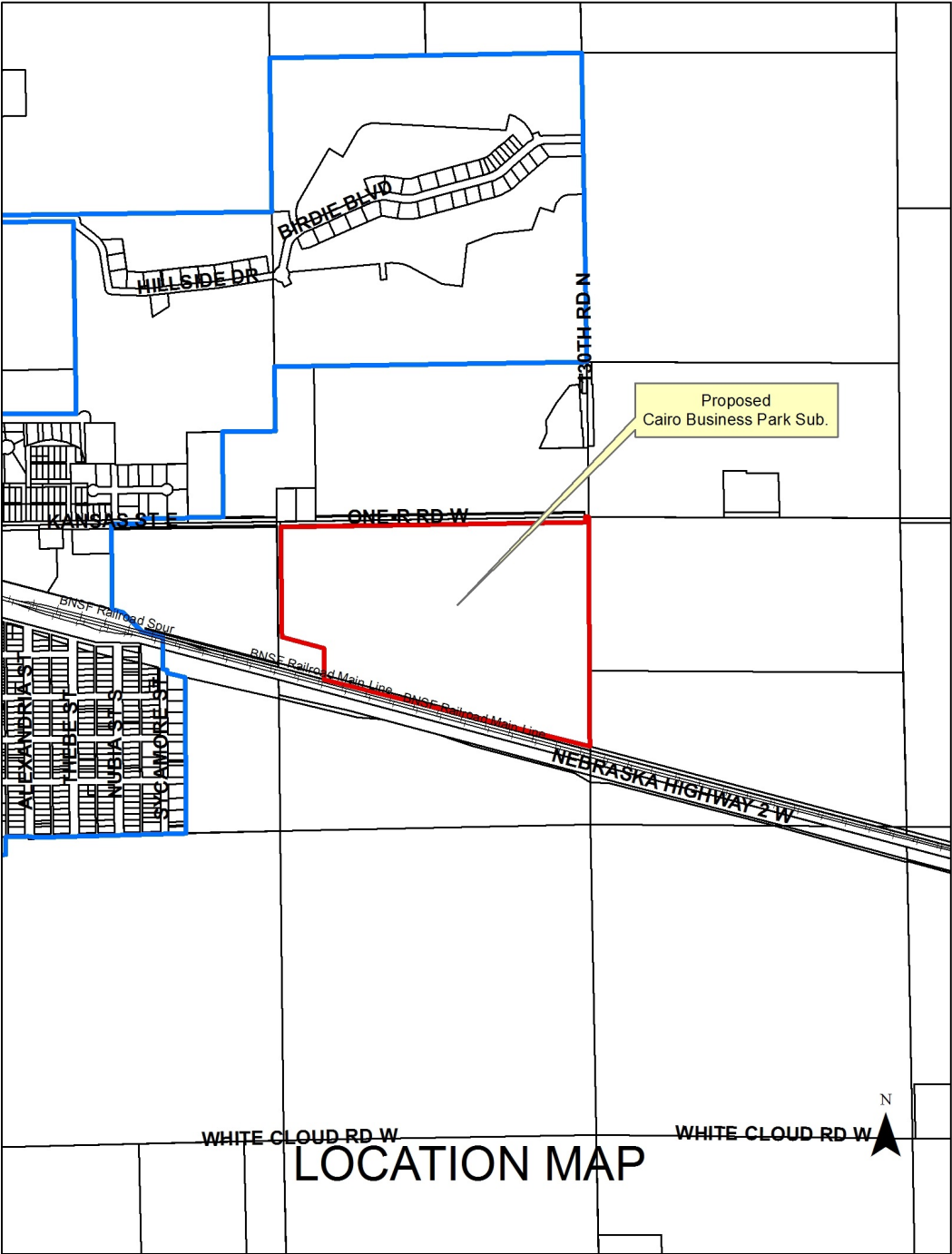
You are hereby notified that the Regional Planning Commission will consider this final plat at the next meeting that will be held at 6:00 p.m. on October 7, 2015 in the Council Chambers located in Grand Island's City Hall.

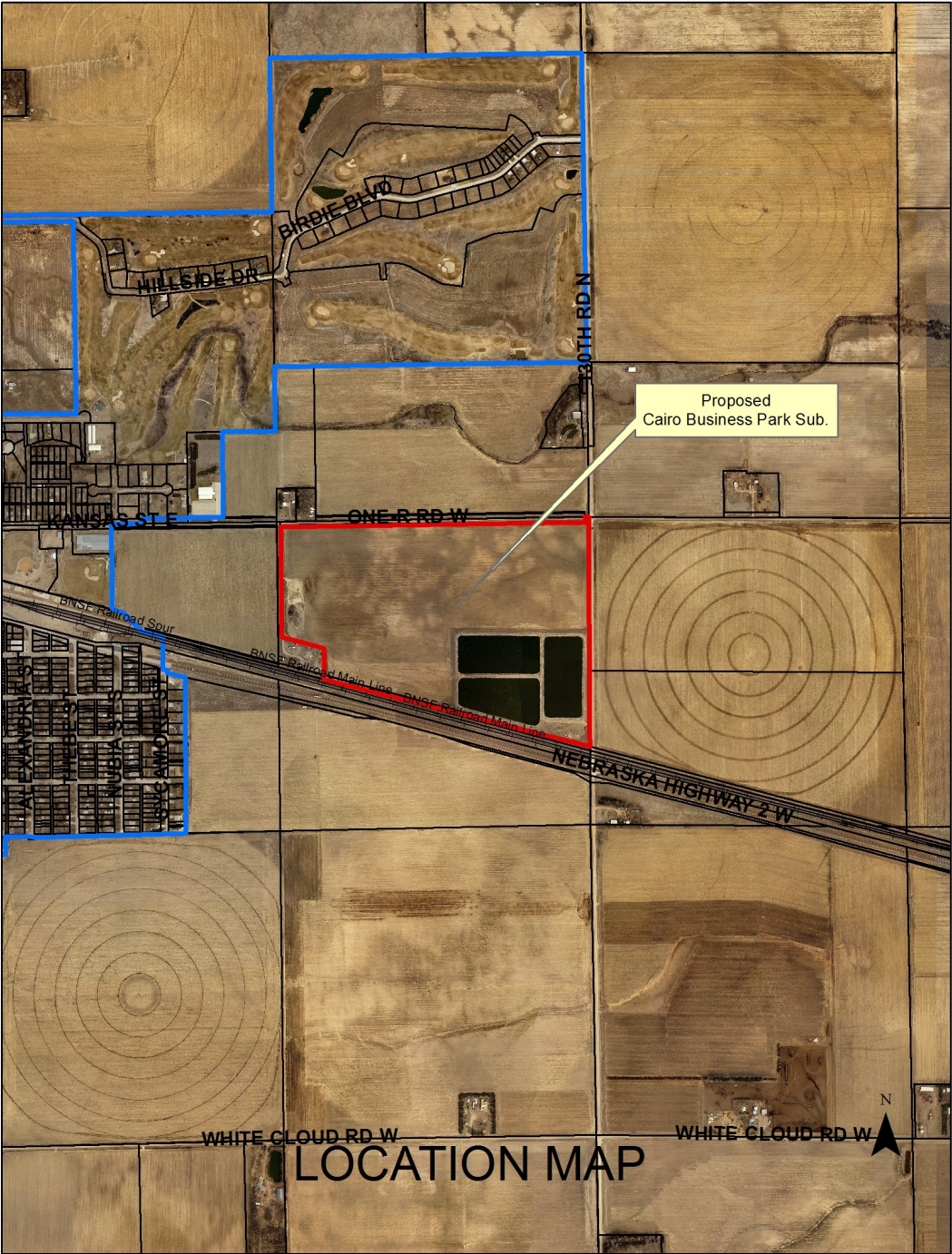
Sincerely,

Chad Nabity, AICP
Planning Director

Cc: Village Clerk
Village Attorney
Hall County Public Works
Hall County Zoning Department
Manager of Postal Operations
Olsson Associates

This letter was sent to the following School Districts 1R, 2, 3, 19, 82, 83, 100, 126.

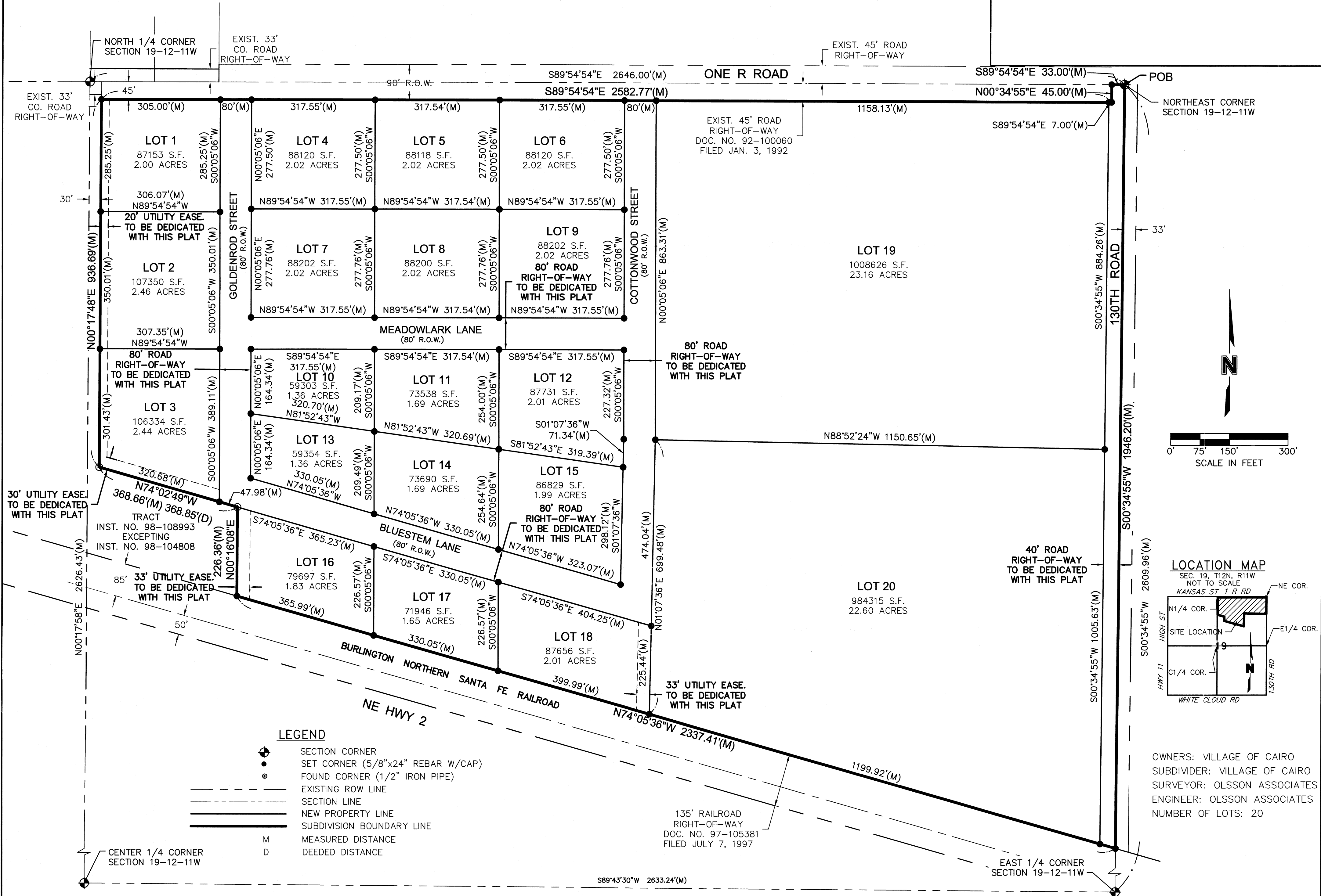




CAIRO BUSINESS PARK SUBDIVISION

HALL COUNTY, NEBRASKA

FINAL PLAT



DWG: F:\projects\015-2413\40-Design\Survey\SRV\Sheets\15-2413-CAIRO PLAT.dwg
DATE: Sep 17, 2015 3:17pm
USER: jramirez
V_XTOPO_0152413