

City Council Introduction: **Monday**, June 25, 2001
Public Hearing: **Monday**, July 2, 2001, at **1:30 p.m.**

Bill No. 01-103

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3213**, from R-3 Residential to B-2 Planned Neighborhood Business District and O-3 Office Park District, requested by Essex Corporation on behalf of Nebraska Nurseries, Inc., on property generally located at the southwest corner of 80th Street and Pioneers Blvd.

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUESTS: Special Permit No. 1813, The Preserve on Antelope Creek Community Unit Plan (01R-166); Preliminary Plat No. 99027, The Preserve on Antelope Creek (01R-165); and Use Permit No. 125 (01R-164).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 11/29/00, 12/13/00 and 01/10/01
Administrative Action: 01/10/01

RECOMMENDATION: Approval (7-0: Hunter, Krieser, Carlson, Duvall, Newman, Schwinn and Bayer voting 'yes'; Taylor and Steward absent).

FINDINGS OF FACT:

1. This change of zone request and the associated community unit plan, preliminary plat and use permit were heard at the same time before the Planning Commission. This application had three hearings before the Planning Commission.
2. The Planning staff recommendation to approve this change of zone request is based upon the "Analysis" as set forth on p.3-5, concluding that this application is compliant with the general concepts of the Comprehensive Plan.
3. The applicant's testimony is found on p.6-10 and 12-14.
4. Testimony in opposition is found on p.8, 11 and 13-14, and the record consists of a letter in opposition (p.24), with concerns about the impact of the B-2 uses on the neighborhood (See p.24). At the continued public hearing on January 10, 2001, a letter identifying the agreement between the parties (Lincoln Federal Savings Bank/Edenton North and the applicant) regarding the permitted uses in the B-2 district was submitted (p.21-23).
5. On January 10, 2001, the Planning Commission voted 7-0 to agree with the staff recommendation of approval.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: June 18, 2001

REVIEWED BY: _____

DATE: June 18, 2001

REFERENCE NUMBER: FS\CC\FSCZ3213

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3213
The Preserve on Antelope Creek

DATE: December 5, 2000

PROPOSAL: Kent Braasch of Essex Corporation, on behalf of Nebraska Nurseries, Inc., is requesting a change of zone from R-3 to B-2 and O-3.

GENERAL INFORMATION:

APPLICANT:

Nebraska Nurseries, Inc.
7801 Pioneers Boulevard
Lincoln, NE 68506

CONTACT:

Kent B. Braasch
11606 Nicholas Street, Suite 100
Omaha, NE 68154
(402) 431-0500

LOCATION: Southwest corner of 80th Street and Pioneers Boulevard.

LEGAL DESCRIPTION: See attached legal descriptions.

REQUESTED ACTION: Approval of Change of Zone from R-3 to O-3 and B-2.

EXISTING ZONING: R-3 Residential

SIZE: Approximately 7.982 acres

EXISTING LAND USE: Nebraska Nurseries

SURROUNDING LAND USE AND ZONING: R-1 and R-3 to the north with single family residential. R-3 to the east with nurseries, south and southwest with vacant land, and R-3 and O-3 to the northwest with vacant land and a medical office building.

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan shows this site as Urban Residential with wetland and Water Bodies along the southwest lines. On page 64, the strategy of locating Neighborhood Centers halfway between two arterial streets is encouraged.

HISTORY:

The site has been used as a nursery for over 40 years.

The area was converted from A-1 to R-3 during the **1979** zoning update.

In **April, 1998**, the City Council approved the Antelope Commons Preliminary Planned Unit Development.

In **September, 1998**, Change of Zone #3122 for Final P. U. D. and Preliminary Plat #98011 were approved by the Planning Commission.

ASSOCIATED REQUEST:

Preliminary Plat #99027

Special Permit #1813

Use Permit #125

SPECIFIC INFORMATION:

TOPOGRAPHY:

The site slopes from east to west to where Antelope Creek is located.

TRAFFIC ANALYSIS:

Pioneers Boulevard is scheduled to be widened into four lanes with a median during 2000-2001.

PUBLIC SERVICES:

Phares Park is located immediately south.

Holmes Park is located within a mile of the site.

The nearest fire station is located at 84th and South Streets.

Maxey Elementary School is located to the south of the site.

ENVIRONMENTAL CONCERNS:

Protect Holmes Park and Lake and Antelope Commons wetland complex from construction debris and siltation.

ANALYSIS:

1. The Comprehensive Plan lists criteria for the review of zoning proposals. These include portions of Nebraska Revised Statutes Section 15-902;
 1. Safety from fire, flood and other dangers;
 2. Promotion of the public health, safety, and general welfare;
 3. Consideration of the character of the various parts of the area, and their particular suitability for particular uses, and types of development;
 4. Conservation of property values; and
 5. Encouraging the most appropriate use of land throughout the area zoned, in accordance with a comprehensive plan.

There are seven specific criteria established in the Plan for review including;

a. Infrastructure: the availability of the water, sewer, drainage and the transportation systems.

Public Works and Utilities Department noted that the sanitary sewer, water, and drainage study do not meet the design standards. Revised plans are required for further evaluation.

b. Compatibility: harmony and suitability with the surrounding land uses and the natural environment.

The proposal is consistent with the goal to “maintain and encourage retail establishments and business that are convenient to, and serve, neighborhood residents, yet are compatible with but not intrusive upon residential neighborhood.” Location of the proposed mixed-use area also complies with the strategy to locate neighborhood centers in between two arterial streets.” (Page 64)

c. Health and Safety: protection against natural and man-made hazards including noise; air, ground and water pollution; flooding; and hazards from industrial or agricultural processes or products.

Due to the possibility of activities or certain uses within the business zone impacting residential zoning, the applicant is encouraged to review the City of Lincoln, Noise Control Ordinance Chapter 8.24 L.M.C. Specifically, measured at the property line for residential zoning, noise pollution cannot exceed 65 dB(A) from 7:00 am to 10:00 pm and 55 dB(A) from 10:00 pm to 7:00 am.

d. Physiographic Features: the topography, suitability of proposed land uses with streams, lakes, soil types, natural vegetation or wildlife habitat.

LLCHD encourages the applicant/developer to ensure that building footprints are not within the flood plain. Given the proximity of the flood plain to the proposed development, LLCHD has

some concern over future developments in the watershed possibly changing the flood plain boundary.

e. Accessibility: availability, or lack thereof, of public transportation, arterial connections and pedestrian linkages.

The site will have access to Pioneers Blvd. through 80th Street and Arboretum Drive, two private roadways within the subdivision.

No street connections are planned to the east and south of the site.

f. Open Space: availability of sufficient open space and recreational areas to accommodate a project's residents and employees.

Pares Park is located immediately south of the proposed development, and Holmes Park is located to the northwest.

g. Fiscal Impacts: whether the proposed use does not create a burden to local tax revenues and/or available resources.

No comment was made on fiscal impacts.

STAFF CONCLUSION: This application is compliant with the general concepts of the comprehensive plan.

STAFF RECOMMENDATION:

Approval

Prepared by:

Ching-Yun Liang
Planner

**CHANGE OF ZONE NO. 3213;
SPECIAL PERMIT NO. 1813,
THE PRESERVE ON ANTELOPE CREEK
COMMUNITY UNIT PLAN;
USE PERMIT NO. 125;
and
PRELIMINARY PLAT NO. 99027,
THE PRESERVE ON ANTELOPE CREEK**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 29, 2000

Members present: Carlson, Steward, Newman, Duvall, Hunter, Schwinn, Krieser, Taylor and Bayer.

Planning staff recommendation: Approval of the change of zone and conditional approval of the special permit, use permit and preliminary plat.

The Planning staff requested a two-week deferral to advertise a revised legal description. Schwinn moved to defer, with continued public hearing and administrative action scheduled for December 13, 2000, seconded by Hunter and carried 9-0: Carlson, Steward, Newman, Duvall, Hunter, Schwinn, Krieser, Taylor and Bayer voting 'yes'.

Proponents

1. Bill Kubly, 2417 Ridge Road, CEO of **Landscapes Unlimited, L.L.C.**, presented the application. Landscapes Unlimited purchased Nebraska Nurseries from Richard Speidell approximately 1.5 years ago because of its natural setting and it is considered to be the best of its type and size in the City, second only to Wilderness Woods. The very natural setting will be maintained utilizing existing plant materials to provide a setting for living unparalleled in the midwest. The natural site and character will be maintained as it is today. They will utilize the ponds and create a most desirable place to live in Lincoln. There are 1,000 trees on-site grown for landscape stock and they will be used on the site to create and maintain the natural setting.

2. Kent Brisk, Essex Corporation, 11606 Nicholas St., Omaha, submitted renderings of the unifying elements and the commercial and office lots. The area is generally located between 77th Street on the west, south of Pioneers running over to approximately 81st Street. This is currently the home of Nebraska Nurseries and as such is a heavily treed site; the land gently slopes from the northeast to the southwest down toward some ponds at the south end of the property. The existing ponds are in the Antelope Creek drainageway.

This site is approximately 67 acres. The proposal represents a modification of a plan that has previously been submitted and approved (Antelope Commons). The land currently is zoned R-3; to the east of the site is R-3 single family; to the south and west is R-3; immediately to the west across the street is O-3; and to the north of Pioneers is R-1 single family.

The proposed development includes 90 single family dwellings; 44 townhomes; a seniors/independent living facility and assisted living facility; two small two-story, multi-family 16-unit apartment complex; commercial office area on the waterfront; the northwest corner is a B-2 area that will be a commercial/mixed use area. The intent is to maintain the site in its current condition as much as possible; there are over 1100 trees on-site that can be relocated; and they intend to maintain the grade and as many trees as possible.

Generally speaking, this application attempts to create a small village concept featuring a variety of housing choices. Additionally, they are attempting to create a commercial mixed use area with light commercial shops on the first floor with residential or office on the second floor. The attempt is to create an area that would provide services to the residential neighbors and the surrounding residential neighbors. The type of services would be ice cream shop, deli, garden center, Hallmark Card Store, etc. The commercial features include an entry sculpture or water feature with a water feature at the south end of the site which will be a focal point.

Photographs of the type of commercial/business development for the B-2 area were also submitted. The two-story, pedestrian oriented buildings will be set back 20' to allow a lot of green space in front of the buildings to provide for outdoor tables, umbrellas, benches, sculpture, etc. The parking spaces are behind the buildings in an attempt to keep it a pedestrian area.

The entire site is tied together with walkways and pathways that allow people to move comfortably through the site. Walkways will go across the pond and tie in with the trail.

Brisk indicated that they have met with the residents to the east of the property; and the property immediately south and across the street south of Pioneers. They have modified the plan as a result of the meetings with the neighbors. The size of the lots for the residential area on the east side has been increased, decreasing the density and making the lots larger and more compatible with the homes east of that area. They will do some planting on the west to screen the residential areas. As they begin to put in streets and utilities, they will relocate trees. The trees will be marked and the residents will be allowed to select the trees that they want and where they will be relocated. Behind the independent living, they plan to do a berm with landscaping and trees. Pioneers Blvd. and Lucile Drive and the parking area that subdivides the townhomes from the commercial area will be screened with a berm and trees.

Kubly added that because of the 1100 existing trees, the developer wants to maintain the look that exists. They do not desire a standard street tree planting plan, but request to utilize more trees and make them appear to be there in nature. The median has been planted by Mr. Speidell and it is maintained. The plantings will be intensified with a lot of ground cover to make it look very natural and very wooded. The existing Pin Oaks do not have the iron disease. The plant material does not belong to the nursery business but to the developers of the land.

Carlson asked the applicant to discuss the ponds and their relationship to Antelope Creek. Kubly responded that the ponds were constructed with the help of the NRD some 5-7 years ago. The NRD contributed some funding to get this done for Speidell in his original plan. The ponds are flood detention for Antelope Creek. There is some silt protection and these ponds prevent the silt from getting further downstream. The ponds are currently used for fishing for the Bright Lights program.

Steward recalled that one of the original notions of the single family part of this project from Speidell was a permit to allow second structures in addition to the main structure, or the ability to take care of an elderly parent. Do you have any thoughts or plans in that direction? Brisk indicated that this developer has not taken that same approach. All of the lots are single family.

Hunter inquired whether there was any concern about the closeness of ingress and egress to the single family residences. Brisk stated that they have talked with staff, resulting in the proposal of a right-in right-out with triangular median which would prevent a left hand turn from Pioneers into that area, or would also prevent a left hand turn out of that area. When there is a right-in right-out, the distance from Lucile is 300', which they did not believe to be too close and that it was probably not a problem. There had been some discussions as to whether this developer will get a cut-through effect to avoid a traffic light, but with a business oriented area, the developer believes that to be of minimal concern.

Schwinn noted that the staff report includes a number of conditions. Brisk stated that they have read the conditions and they have no issue or concern. They will be meeting with staff to get some clarification, particularly with the flood control issues.

3. Mike Morosin, past President of the Malone Neighborhood Association, testified in support. He is glad to see the development utilizing the ponds. These are the headwaters of Antelope Creek and the Malone neighborhood is the recipient. He is hopeful other developers will take the time to take a look at all these tributaries and detain that water and slow it down. He appreciates that they will look at the flood control issues.

Opposition

1. Ken Kontor, 4210 So. 78th Street, corner of 78th & Pioneers, across the street from the proposed B-2 zoning, testified in opposition. He received notice of this application and hearing on November 20th, so he has only had nine days to research it. The reason he is opposed is because of the fact that "it is the best way to go right now". His number one concern is that on 78th Street he has a hedge that acts as a buffer between his home and Pioneers Blvd. Two weeks ago, the people from Planning were taking pictures at his home and they were looking at the possibility of removing the hedge. His hedge is 7' and he does not want it removed. Another concern is that two of his bedrooms are on the south side of his home. Therefore, he is concerned about the lighting in the parking lot. The developer does not know what type of lighting will be installed in the parking lot. Is there a PUD on this project? The step from R-3 to B-2 is a concern. He believes this is an awfully big leap and open-ended. He wants to know what the uses are going to be. He is concerned about the quality of the B-2 area. His neighbor, Bill Allen, 8000 Pioneers, could not attend today, but he is also in opposition. Kontor wants the opportunity to sit down with the developers to look at maintaining the quality on the other side of Pioneers Blvd.

Bayer suggested that that meeting could occur in the next two weeks.

Ray Hill of Planning staff advised that the people out looking at Kontor's hedge were not from the Planning Department. It may have been someone from Public Works investigating the widening of Pioneers Blvd. Bayer asked whether the City puts a new hedge in if they remove the existing. Dennis Bartels of Public Works advised that typically on a street widening project, if the hedge is in the existing right-of-way, there would be no obligation to replace it. The city will either purchase the right-of-way or a construction easement to get into vegetation. If that were the case, the city would be obligated to pay the cost of damages to the vegetation. We like to pay the property owner enough to replace it, but that in theory is taken care of in the price of the fee simple right-of-way or the construction easements. Typically, on private property, the city does not replace but would be obligated to pay the property owners for damages if the owner wished to replace it.

Carlson inquired about the impact on the setbacks in the event of street widening. Bartels advised that the Pioneers Blvd. project is in this year's approved budget and the plans are being prepared by the Design Section of Public Works. There is no firm commitment as to when it will be built, but the funding is approved. With this project, the developer is dedicating right-of-way 50' from the centerline and this is sufficient to build the pavement. If this development occurs before the city's project, the grading plan should meet the city's future right-of-way grades as much as possible. If this development occurs after the city's project, the setback should not be a problem. Bartels does believe, however, that the anticipated widening will fit in. Carlson sought confirmation that even with the request for waiver there will be 50' of right-of-way. Bartels concurred and believes Public Works would require the grading plan to start at the 50' line to have minimal effect on the private property.

Bartels stated that he had raised concerns about the driveway. From a Public Works traffic engineering point of view, they prefer to minimize the number of driveways and entrances off an arterial street with the goal of keeping better traffic flow on the major streets. Public Works would prefer that all access be taken from Lucile or 80th Street in this circumstance. One question Bartels has raised is the offset. He does not know the relationship of the driveway to 78th Street. Right turn in and out is a better situation than a full access driveway. The applicant had indicated a willingness to make the right turn in and out.

Response by the Applicant

Brisk has talked with the opposition. The developer did send letters to everyone on the north side of Pioneers this summer, and they did talk about the parking lot across the street. They have not gotten into the specificity of the light fixture but will talk about down-lighting for that area to maintain the pedestrian measure. The types of businesses will be operating from 8:00 a.m. to 10:00 p.m. The intent is to berm that area between this developer's property and Pioneers Blvd. and they will plant shrubbery in that area to help screen the cars in that parking area from Mr. Kontor's lot.

Steward assumed that it would be reasonable to note that this applicant is apparently planning upper story living in the office structures, so from the standpoint of acceptability, that corner needs to be a quiet commercial corner to make this strategy work. Brisk concurred.

There was no further public testimony. These applications will have continued public hearing and action on December 13, 2000.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 13, 2000

Members present: Taylor, Schwinn, Hunter, Newman, Duvall, Carlson, Krieser, Steward and Bayer.

Planning staff recommendation: Approval of the change of zone and conditional approval of the special permit, use permit and preliminary plat.

Kay Liang of Planning staff submitted a letter from Ken Kontor and Terry Allen expressing concerns about the effects of the uses allowed in the B-2 district. They would like to meet with the developer again and requested further continuance of the public hearing.

Proponents

1. Kent Brisk, Essex Corporation, appeared on behalf of Landscapes Unlimited, the developer. He provided new information only. The developer has reviewed the rather lengthy staff comments and agrees with the staff analysis, except for part of #13: "...The grade of 80th Street approaching Pioneers Blvd. does not meet standards for a 2% platform." The developer is requesting to comply with the newly adopted Design Standards which would provide for a 3% platform. That is the only change the applicant is requesting.

The applicant has met and made a presentation to Ken Kontor and Terry Allen. Their concerns are their property values. Brisk does not believe they are concerned with what this developer talks about, but rather, they feel that based on what happened in another development in the area, they were told certain things that did not happen. In the B-2 area, the developer is looking at things like a deli and card store that won't get expanded to other things. These property owners want the developer to limit the kinds of things that will go into the B-2 area. Brisk is only one of the principals and could not make that representation without talking with the other partners, so he has agreed to talk further with the property owners later on. Brisk stated that the developer would agree to disagree as to whether this development will affect the property values of those property owners.

Brisk assured that the developer intends to meet again with Kontor and Allen; however, Kontor is out of town and they won't be able to reconvene until next week.

Bayer stated that he has talked with Ken Kontor and one of his concerns is whether or not the second story or upper story of the office structures would be used for residential. Kontor got the impression at the meeting that there was no guarantee that the second story would in fact be residential. Brisk responded, stating that the application shows the upper level of these structures being reserved for either office lots or residential lots, with a maximum of 35 units in the form of apartments in the six various buildings. While the developer hasn't concluded totally that they are going to be residential, they could be executive suites, accounting offices, etc.

Bayer inquired whether Arboretum Drive will connect into Lucile Drive. Brisk responded in the affirmative. Bayer is not sure that is possible based upon the information that the Commissioners

have, because there is a strip of land shown there. Brisk is aware of that strip of land which is owned by the owners on the other side of the street. He acknowledged that the this developer and that property owner need to talk about getting that access. They have not yet had that conversation.

Opposition

1. **Mike Rierden** appeared on behalf of **Lincoln Federal Savings Bank**, the owner of the strip of ground on the west side of Lucile Drive and the owner of a great deal of the residential development to the south and that which is currently being developed today. Lincoln Federal believes this is an excellent layout. Lincoln Federal likes the residential layout, the townhomes, the assisted living, and the office to the south. However, the primary concern of Lincoln Federal is the B-2 on the corner of Lucile and Pioneers. Their concern is with the various types of uses that are allowed in B-2 and Lincoln Federal does not believe they may be compatible with the residential uses that exist or are planned to be built. A more compatible commercial district such as O-3 might be more appropriate.

Rierden then referred to the strip of ground and access. There was a problem with the section lines for Lucile Drive because they did not line up. Lucile Drive did not line up with the street to the north. Lincoln Federal was required to meander Lucile Drive to the west which left the strip of ground as an area which had to be taken care of as an outlot. Rierden recalled that there was some discussion when Speidell owned this property about that access, but he does not believe there were any specifics agreed upon. Public Works thought there might be a public access easement in there. In any event, Lincoln Federal's concern is the B-2. Lincoln Federal was required to have one point of access on Pioneers and it has been a policy of Public Works not to have any further access points or driveways on Pioneers. Arboretum Drive is connecting to Pioneers. We do not want this to have an adverse impact on the timing for installation of a traffic signal at Lucile Drive and Pioneers. We want to see a traffic signal placed at that intersection as soon as possible. He does not know whether this Arboretum Drive would have an adverse impact, and if it does, Lincoln Federal is opposed to this access point because they need that traffic signal.

Steward inquired whether Lincoln Federal is available for negotiations about the access. Rierden agreed that they would be available for discussion.

Steward inquired of staff as to a logical zone designation to accommodate neighborhood type commercial on the ground floor and residential above, other than B-2. Jason Reynolds of Planning staff stated that the R-T Residential Transition district does not allow business on the ground floor with dwellings above as a permitted use. Some of the office districts, however, do permit dwellings, i.e. O-3 Office Park allows office buildings as well as single, two-family and multiple dwellings, and requires a use permit. Dwellings are permitted above the first story of a building in the O-2 Suburban Office District, as well as O-1; however, O-1 is generally restricted to the area right around the Capitol. Reynolds believes that B-1 and B-3 would also allow the residential above the commercial uses.

Carlson inquired whether there is an option in the B districts to specifically designate the kinds of retail uses that the developer might want to have. Reynolds suggested that that could be accomplished within the use permit in the B-2. Individual uses are identified on the lots.

Bayer asked staff how it is possible to go forward with a recommendation without the access to Lucile Drive being resolved. Liang suggested that it is definitely something that needs to be researched. Bayer thinks it needs to be deferred. Staff would agree.

Response by the Applicant

With regard to the B-2 uses, Brisk stated that they did research the alternatives with what they are trying to do in that area. The intent is to provide neighborhood business types of uses in the Lucile Drive area. He believes that B-2 is really set up for exactly what they are doing. The Comprehensive Plan provides for the establishment of local retail shopping facilities which will provide for planned and controlled consumer services for new areas. The whole flavor of what this developer is trying to do is to provide neighborhood centers for shopping for the entire general neighborhood. To go into an office setting really takes us out of the types of things that we are trying to develop for uses for that neighborhood. When the developer talked with staff originally, they were trying to indicate the character of the things that they are interested in providing, with two-story masonry buildings. It is the developer's understanding that the renderings submitted do establish what the developer has to provide as far as quality is concerned. Brisk advised the Commissioners that this developer has retained some ownership and it is in this developer's best interest to maintain the quality of what happens in the B-2 area. At this time, however, they have done no marketing and there are no tenants that are in line to take over that space.

Steward stated that he certainly concurs with the intent, but he believes there is reasonable concern on the part of other neighbors as to what may happen if this is zoned B-2 and the permission characteristic of someone other than this developer converting that property according to that zone. If there is intent to have neighborhood business and residential or neighborhood service office use on the second floor, then this does the city a service. But the B-2 zoning district provides other opportunities and therein lies his concern. Brisk stated that the developer does have envelopes laid out so they are restricted in the size of building which starts to limit the kinds of things that would go into that area.

With regard to the types of uses in B-2, Reynolds offered that it would be possible for the applicant to add a note on the plan delineating uses which are forbidden. That could be changed in the future; however, and not necessarily administratively.

Bayer thought a deferral might be an excellent opportunity to resolve some of the use issues, such as how to protect the neighbors on all sides.

Steward moved to defer until January 10, 2001, seconded by Hunter and carried 9-0: Taylor, Schwinn, Hunter, Newman, Duvall, Carlson, Krieser, Steward and Bayer voting 'yes'.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 10, 2001

Members present: Hunter, Krieser, Carlson, Duvall, Newman, Schwinn and Bayer; Taylor and Steward absent.

Kay Liang of the Planning staff submitted a letter from the Army Corps of Engineers dated January 2, 2001, advising that the applicant must submit a permit application to address the four questions set forth in the Corps of Engineers letter dated November 17, 2000.

Proponents

1. Kent Brisk, Essex Corporation, testified on behalf of Landscapes Unlimited. This hearing was postponed on December 13, 2000, to address the issue of access to Lucile Drive. This applicant does have an access easement. The applicant has met with Lincoln Federal which had control of that land (Outlots E and F adjacent to Lucile Drive) to discuss that access as well as the maintenance of that area which would actually be along the east side of Lucile Drive. At the same time, this applicant and Lincoln Federal have developed an understanding regarding the B-2 area, which Mr. Rierden spoke of at the last hearing. Lincoln Federal and Nebraska Nurseries have entered into a letter of understanding which would restrict the permitted uses in the B-2 area.

2. Michael Rierden appeared on behalf of **Lincoln Federal**. He stated that even though Lincoln Federal lost somewhat of their leverage because there is a public access easement, this developer is still willing to work with Lincoln Federal. Rierden submitted the letter agreement in which the applicant limits the types of uses under the B-2 that they would be looking for.

Brisk added that the applicant has eliminated about 20 uses that are not advantageous to the nature and character of the development as well as the neighbors. Brisk acknowledged that there were other objections by Mr. Kontor. Mr. Kontor has been provided with a copy of the agreement with Lincoln Federal.

In regard to the Corps of Engineers, Brisk stated that he has responded to the Corps of Engineers. The applicant has also met with the Planning staff regarding all comments and, with exception to the waiver requests, they will comply with the staff conditions of approval.

Carlson wondered whether the issue with the Corps of Engineers could be dealt with between now and when this project appears on the Council agenda. Brisk assured that the applicant will deal with the Corps' letter. Liang pointed out that the questions in the Corps' letter refer to the 404 permit. The applicant needs to submit the required information.

Opposition

1. Ken Kontor, 4210 So. 78th Street, testified in opposition. He has met with Mr. Brisk once and has had two telephone conversations, but he still has concerns about the parking lot across the street from his home on 78th & Pioneers. He has asked the question repeatedly about the lighting and he has not received an answer. He is opposed from that standpoint because there will be additional lighting with the widening of Pioneers Blvd. His second issue is the use of the loft space on the B-2 zoned area. Two meetings ago the question was asked as to the use and the answer was "residential", which means the businesses would have to be an 8:00 a.m. to 5:00 p.m. scenario. But after further discussion and at the December meeting, it was indicated that these could be offices as well as

residential. This is a concern to him as far as the type of businesses. The letter agreement with Lincoln Federal is a step in the right direction, but a major concern is the use and sale of alcoholic beverages. The B-2 is not appropriate for the neighborhood and quality of life.

2. Bill Allen, 8000 Pioneers Blvd., directly across the street, abutting Kontor on the east, testified in opposition to the B-2 zoning. They are fearful of a West Van Dorn situation.

Staff questions

Bayer inquired whether the letter agreement between the applicant and Lincoln Federal is binding. Rick Peo of the City Law Department stated that it is a potentially binding agreement between the parties. They might want to have covenants to insure those same provisions so they run with the land. The City Attorney would be opposed to incorporating the agreement into the use permit as to the restriction of uses. It would appear to be contract zoning and there is not a record as to why certain uses are prohibited or not prohibited. It is a private arrangement that should not be incorporated into the use permit. Design covenants as to the site plan and the types of building designs is a representation from the developer that could be incorporated.

Bayer thought that covenants have been made a condition of approval in the past. Peo advised that covenants have been attached and recorded, but it is a private arrangement between the parties.

Response by the Applicant

With regard to the B-2 area, Brisk suggested that it really goes to the heart of this development. This is a mixed use development type area. The intent of this project was more of a European design--new urbanism which had areas for retail, mixed housing, commercial type uses, with a predominance of public space. That is what we are trying to do as well as maintain that environment that is heavily treed and landscaped. The agreement attempts to provide the characteristic of what is trying to be achieved and the nature of pedestrian design and a pedestrian friendly development.

With regard to the parking lot lighting, Brisk stated that at this stage they have not designed the parking lot lighting. They will be required to meet certain foot candles and the developer will also have as big a concern about the lighting with the residential townhomes behind the parking lot, so that will be a sensitive issue.

Brisk acknowledged that they have left the liquor uses in. The B-2 zoning talks about a sit-down sale and drink or even a carry-out--consumption on premises and off-premises.

Ray Hill of Planning staff offered that there is a provision in the design standards for parking lot lighting that deals with light intensity and talks about illumination levels. There would probably be more light generated from the street lights than this parking lot once they comply with the lighting standards.

Hunter referred to the uses in the business area, and wondered whether there is any other way to zone that would restrict it down to the point where some of the uses could be done by special permit. Hill advised that a change of that nature would require readvertising and notification. Hunter again asked if there was no way to zone this differently than B-2 to allow for most of the uses and some of the others

by special permit. Peo was not familiar with the uses this applicant is proposing, but the B-2 is probably the only way to get the businesses. Office zoning eliminates the business uses. O-3 allows office and residential. This property was previously approved as a PUD which was terminated.

Public hearing was closed.

CHANGE OF ZONE NO. 3213

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 10, 2001

Carlson moved approval, seconded by Schwinn.

Hunter can see the tone of the structure of this development--it is clear looking at the site plan and it really is a beautiful development, but her concern is that the B-2 zoning is so broad in terms of where the development goes. If they sell the property it could be restructured otherwise.

Motion for approval carried 7-0: Hunter, Krieser, Carlson, Duvall, Newman, Schwinn and Bayer voting 'yes'; Taylor and Steward absent.

SPECIAL PERMIT NO. 1813

THE PRESERVE ON ANTELOPE CREEK COMMUNITY UNIT PLAN

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 10, 2001

Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Carlson.

Carlson commended the owners for continuing to move forward on this project which is a new idea. He is excited. He thinks people will line up to move into a neighborhood like this. I can walk to office space. I can walk to retail space. It's an old idea come back new. If anything, this, to him, illustrates why we need to take a second look at the code and find out why it is so hard to get a superior idea through the process. This is a great idea and it is going to be a good development.

Newman does not want to be insensitive to the people from the neighborhood because there are very serious misgivings to any change whatsoever; however, she thinks the developer has tried to react responsively and she is hopeful they can satisfy the neighbors.

Carlson further commented that the concerns about the B-2 zoning are completely valid and maybe we need a mechanism for more safeguards.

Motion for conditional approval carried 7-0: Hunter, Krieser, Carlson, Duvall, Newman, Schwinn and Bayer voting 'yes'; Taylor and Steward absent.

USE PERMIT NO. 125

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 10, 2001

Hunter moved to approve the Planning staff recommendation of conditional approval, with amendment to add the Conceptual Master Plan renderings as part of the use permit, seconded by

Krieser and carried 7-0: Hunter, Krieser, Carlson, Duvall, Newman, Schwinn and Bayer voting 'yes'; Taylor and Steward absent.

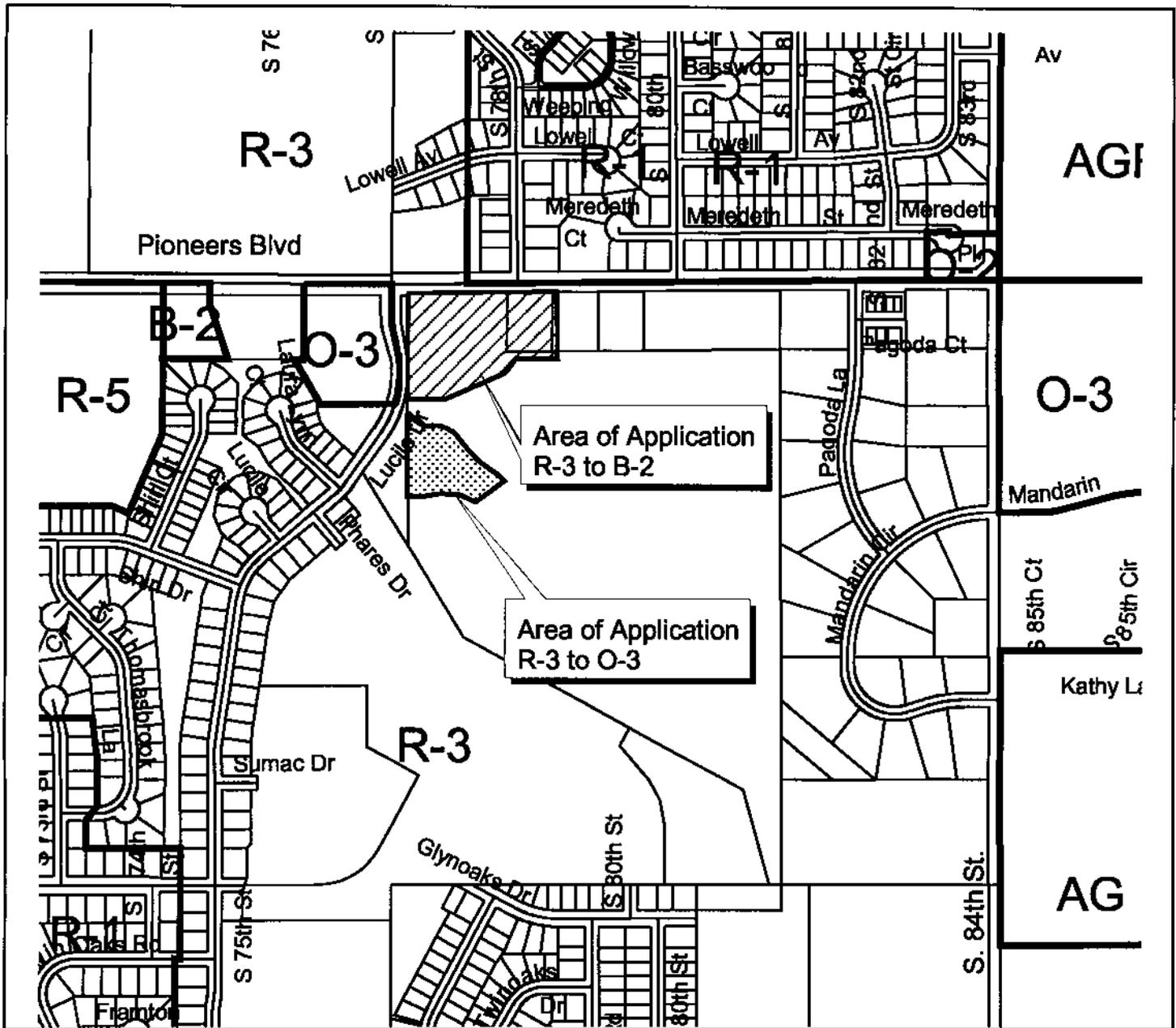
PRELIMINARY PLAT NO. 99027

THE PRESERVE ON ANTELOPE CREEK

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 10, 2001

Hunter moved to approve the Planning staff recommendation of conditional approval, as revised, seconded by Carlson and carried 7-0: Hunter, Krieser, Carlson, Duvall, Newman, Schwinn and Bayer voting 'yes'; Taylor and Steward absent.

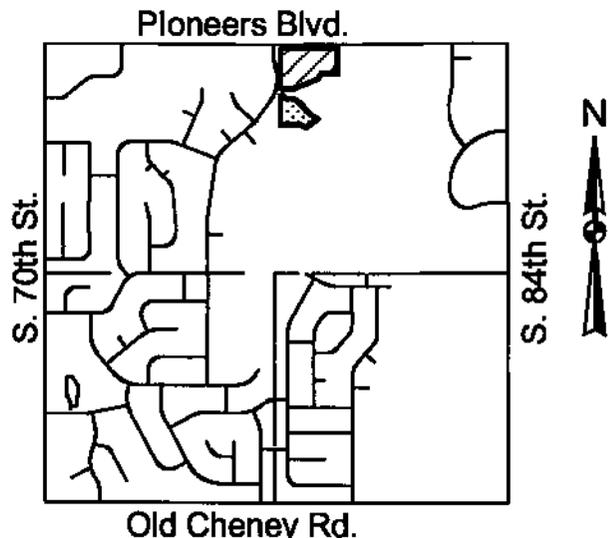
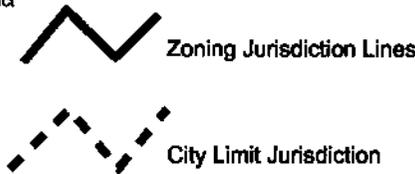


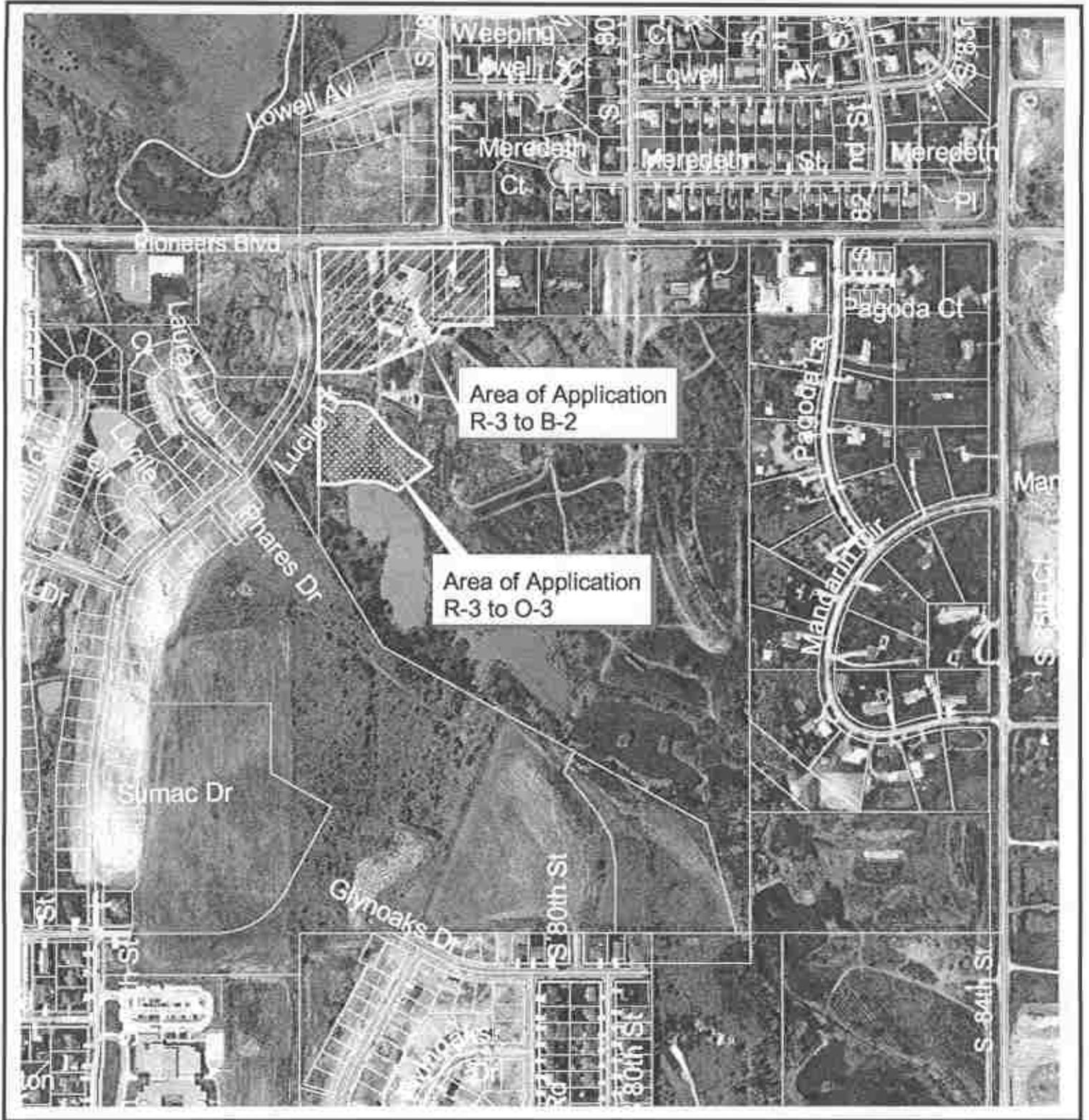
**Change of Zone #3213
80th & Pioneers Blvd.**

Zoning:

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

One Square Mile
Sec. 10 T9N R7E





**Change of Zone #3213
80th & Pioneers Blvd.**



Sheet 2 of 2

Date: Dec. 5, 2000

Photograph Date: 1999 018

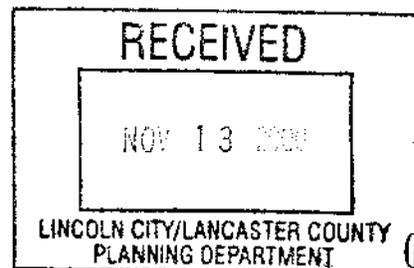
Lincoln City - Lancaster County Planning Dept.

LEGAL DESCRIPTION: PROPOSED (B2) ZONING

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 54 OF SAID QUARTER SECTION, THENCE N00°10'44"W ON THE WEST LINE OF SAID LOT 54, A DISTANCE OF 259.81 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF PIONEER BOULEVARD; THENCE S89°19'30"W ON SAID LINE, A DISTANCE OF 179.65 FEET TO THE POINT OF BEGINNING; THENCE S00°49'59"E, A DISTANCE OF 291.51 FEET; THENCE S89°48'08"W, A DISTANCE OF 183.77 FEET; THENCE S37°33'31"W, A DISTANCE OF 76.97 FEET; THENCE S66°33'19"W, A DISTANCE OF 289.31 FEET; THENCE N89°46'35"W, A DISTANCE OF 166.69 FEET TO THE WEST LINE OF LOT 57 OF THE AFORESAID NORTHEAST QUARTER OF SECTION 10, SAID LINE ALSO BEING THE EAST LINE OF OUTLOT "A", PIONEER SUBDIVISION, A SUBDIVISION AS PLATTED AND RECORDED IN LANCASTER COUNTY, NEBRASKA; THENCE N00°16'08"E ON SAID LINE, A DISTANCE OF 460.18 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF PIONEER BOULEVARD; THENCE N89°21'18"E ON SAID LINE, A DISTANCE OF 635.93 FEET; THENCE N89°19'30"E ON SAID LINE, A DISTANCE OF 20.51 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 252,195 SQUARE FEET OR 5.789 ACRES MORE OR LESS.

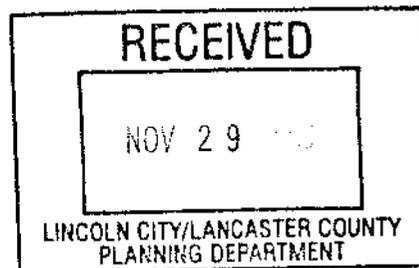


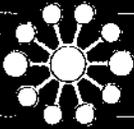
LEGAL DESCRIPTION; PROPOSED (O3) ZONING

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 54 OF SAID QUARTER SECTION, THENCE N00°10'44"W ON THE WEST LINE OF SAID LOT 54, A DISTANCE OF 259.81 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF PIONEER BOULEVARD; THENCE S89°19'30"W ON SAID LINE, A DISTANCE OF 200.16 FEET; THENCE S89°21'18"W ON SAID LINE, A DISTANCE OF 635.93 FEET TO THE WEST LINE OF LOT 57 OF THE AFORESAID NORTHEAST QUARTER OF SECTION 10, SAID LINE ALSO BEING THE EAST LINE OF OUTLOT "A", PIONEER SUBDIVISION, A SUBDIVISION AS PLATTED AND RECORDED IN LANCASTER COUNTY, NEBRASKA; THENCE S00°16'08"W ON SAID LINE, A DISTANCE OF 519.31 FEET TO THE POINT OF BEGINNING; THENCE S43°36'30"E, A DISTANCE OF 37.54 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 95.82 FEET AND A CENTRAL ANGLE OF 46°31'36", AN ARC DISTANCE OF 77.81 FEET (CHORD = 75.69', CHORD BEARING = S 66°52'18" E) TO A POINT OF TANGENCY; THENCE NORTH 89°51'54" EAST, A DISTANCE OF 16.99 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 144.27 FEET AND A CENTRAL ANGLE OF 52°16'35", AN ARC DISTANCE OF 131.63 FEET (CHORD = 127.11', CHORD BEARING = S 63°59'49" E) TO A POINT OF TANGENCY; THENCE SOUTH 37°51'31" EAST, A DISTANCE OF 48.41 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 420.40 FEET AND A CENTRAL ANGLE OF 19°46'13", AN ARC DISTANCE OF 145.06 FEET (CHORD = 144.34', CHORD BEARING = S 47°44'38" E) TO A POINT OF REVERSE CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 292.55 FEET AND A CENTRAL ANGLE OF 15°30'27", AN ARC DISTANCE OF 79.18 FEET (CHORD = 78.94', CHORD BEARING = S 49°52'30" EAST); THENCE SOUTH 55°16'54" WEST, A DISTANCE OF 154.09 FEET; THENCE NORTH 66°20'00" WEST, A DISTANCE OF 78.47 FEET; THENCE NORTH 86°37'54" WEST, A DISTANCE OF 84.78 FEET; THENCE SOUTH 79°07'47" WEST, A DISTANCE OF 70.38 FEET; THENCE NORTH 89°43'52" WEST, A DISTANCE OF 73.06 FEET TO THE WEST LINE OF THE AFORESAID LOT 57; THENCE N00°16'08"E ON SAID LINE, A DISTANCE OF 362.97 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 95,529 SQUARE FEET OR 2.193 ACRES MORE OR LESS.





ESSEX CORPORATION

11606 NICHOLAS STREET
SUITE 100, OMAHA, NE 68154

402-431-0500
FAX - 431-0345

January 4, 2001

Gerald H. Maddox
Lincoln Federal Savings Bank
1101 "N" Street
Lincoln, Nebraska 68508

~~CONFIDENTIAL~~
SPECIAL PERMIT NO. 1813
USE PERMIT NO. 125
PRELIMINARY PLAT NO. 99027
THE PRESERVE ON ANTELOPE CREEK

RE: The Preserve on Antelope Creek
Lucile and Pioneers Boulevard

Dear Mr. Maddox:

This letter is intended to identify the agreement between the parties regarding the above referenced property.

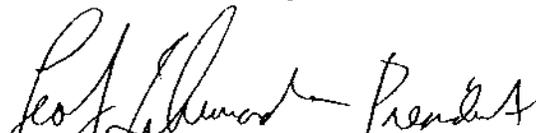
The Permitted Uses of the B-2 Planned Neighborhood Business District on the above referenced property shall be restricted as follows: Attached are pages 27-71 and 27-72, Chapter 27.31, Lincoln Municipal Code, Zoning, December 1998 (Exhibit A). The "Uses" lined through on Exhibit - A are not permitted uses on the subject property. Additionally, those uses generally defined as "fast food" restaurants will also not be permitted. Other restaurants considered to be "sit down" and/or "Deli" shall be permitted.

The parties agree to work together to achieve a solution satisfactory to the signage requirements for Edenton North already located on Outlot-F (Exhibit-B) and the proposed entrance feature to The Preserve on Antelope Creek proposed in the northwest corner of Lot 57.

Nebraska Nurseries shall become responsible for the maintenance but not improvements of Outlots E and F (Exhibit-B) in return for access rights to its property.

The character of the buildings proposed in the B-2 zone proposed by Nebraska Nurseries shall be of the character and quality shown in the attached photos.

Parties to this letter agree to the stated conditions on 01-09, 2001.



Lincoln Federal Savings Bank



Nebraska Nurseries, Owner/Developer
The Preserve on Antelope Creek

Chapter 27.31

B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT

Sections:

- 27.31.010 Scope of Regulations.
- 27.31.020 General Purpose.
- 27.31.030 Permitted Uses.
- 27.31.040 Permitted Conditional Uses.
- 27.31.050 Permitted Special Uses.
- 27.31.060 Accessory Uses.
- 27.31.070 Parking Regulations.
- 27.31.080 Sign Regulations.
- 27.31.090 Height and Area Regulations.
- 27.31.100 Use Permits; Procedures and Requirements.

This district is intended to provide a developing area for planned retail uses to serve neighborhoods. This district includes a use permit provision to provide for the integration of the business area with adjacent residential areas and thus reduce the adverse impact on residential areas through enhanced design.

27.31.010 Scope of Regulations.

The regulations set forth in this chapter, or set forth elsewhere in this title when referred to in this chapter, are the regulations in the B-2 Planned Neighborhood Business District. (Ord. 12571 § 165; May 8, 1979).

27.31.020 General Purpose.

The regulations for the B-2 Planned Neighborhood Business District set forth in this chapter are established to permit the development of local retail shopping facilities and related activities which will provide for planned and controlled consumer services on a neighborhood level, promote healthful economic growth, create a desirable environment, best complement the general land use pattern of the community, and assist in implementing the established goals and policies of the community. (Ord. 12571 § 166; May 8, 1979).

27.31.030 Permitted Uses.

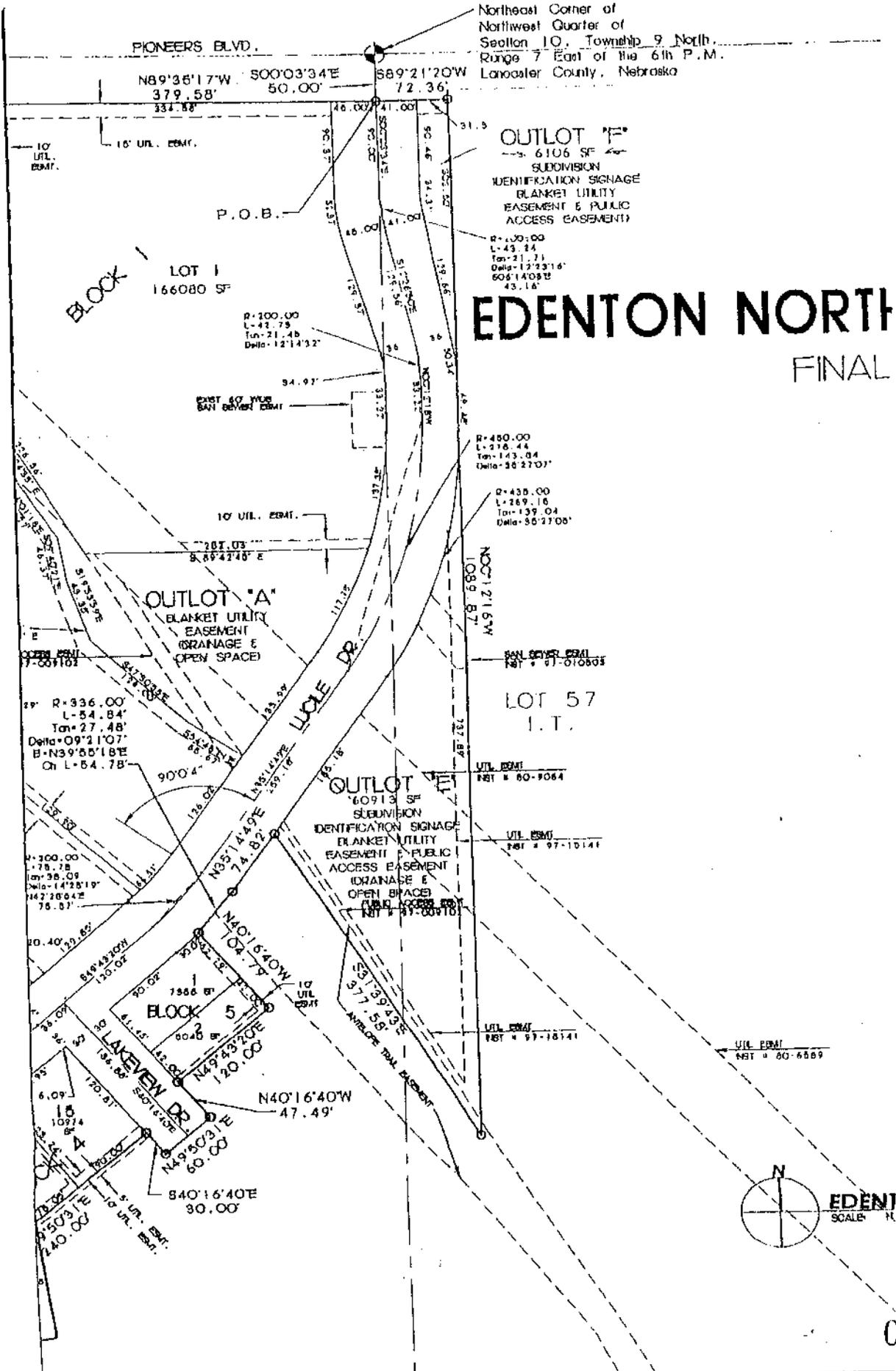
Any development, including building and open land uses, except farming and the sale of farm produce, shall be prohibited in the B-2 Planned Neighborhood Business District prior to the approval of a use permit in conformance with the requirements of this chapter. B-2 Planned Neighborhood Business District zoning shall not be permitted or granted upon any property having a total

area of less than five acres. A building or premises shall be used only for the following purposes in the B-2 Planned Neighborhood Business District:

- (a) Parks, playgrounds, and community buildings, owned or operated by a public agency;
- ~~(b) Public libraries;~~
- ~~(c) Public elementary and high schools, or private schools having a curriculum equivalent to a public elementary or public high school, and having no rooms regularly used for housing or sleeping purposes;~~
- ~~(d) Churches;~~
- (e) Nonprofit religious, educational, and philanthropic institutions;
- (f) Banks, savings and loan associations, credit unions, and finance companies;
- (g) Garden centers;
- (h) Barber shops, beauty parlors, and shoeshine shops;
- ~~(i) Private schools, including but not limited to business or commercial schools, dance or music academies, and nursery schools;~~
- ~~(j) Service stations;~~
- ~~(k) Hospitals and clinics for animals, but not open kennels;~~
- ~~(l) Self-service laundromats;~~
- (m) Receiving stores for dry cleaning or laundry;
- ~~(n) Dry cleaning or laundry establishments, provided that the floor area does not exceed 2,000 square feet exclusive of office and pickup space.~~
- (o) Messenger and telegraph stations;
- (p) Office buildings;
- (q) Restaurants;
- (r) Stores or shops for the sale of goods at retail, but not including motor vehicles;
- ~~(s) Undertaking establishments;~~
- (t) Photography studios;
- (u) Bicycle sales and repair shops;
- (v) Key shops;
- ~~(w) Ambulance services;~~
- (x) Clubs;
- ~~(y) Enclosed commercial recreational facilities;~~
- (z) Sale of alcoholic beverages for consumption on the premises, provided the locational requirements of Section 27.63.680 have been met or waived by the City Council;
- (za) Sale of alcoholic beverages for consumption off the premises, provided the locational requirements of Section 27.63.685 have been met or waived by the City Council;
- (bb) Tailor shops, shoe repair shops, upholstery shops, printing and photocopying shops, or other, similar business establishments. (Ord. 17320 § 2; April 20, 1998;

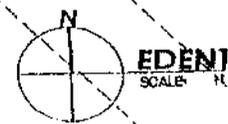
EXHIBIT - B

Northeast Corner of
Northwest Quarter of
Section 10, Township 9 North,
Range 7 East of the 6th P.M.,
Lancaster County, Nebraska



EDENTON NORTH

FINAL



ITEM NO. 4.1a,b,c,d: CHANGE OF ZONE 3213
 SPECIAL PERMIT 1813
 USE PERMIT NO. 125
 PREL. PLAT NO. 99027
 (p.181 - Cont'd Public Hearing - 12/13/00)
 12-12-00

To: Lincoln Lancaster County Planning Commission
 From: Ken and Joann Kontor resident 4210 S. 78th St. and Bill and Terri Allen resident
 8000 Pioneers Blvd.
 Re: CHANGE OF ZONE NO. 3213, PRELIMINARY PLANT NO. 99027, SPECIAL
 PERMIT NO. 1813, AND USE PERMIT NO. 125
 S. 80th Street & Pioneers Boulevard

Dear Commission Members:

We the above property owners object to change of zoning at this time. Today, we met with project developer, Mr. Kent Braasch. We expressed our concerns, which I express to you, that the B-2 rezoning is too open ended which could potentially create business establishments that are contraindicated with the quality of life in our neighborhood. We also indicate a concern with the potential erosion of the property values of our homes with which this rezoning creates.

Specifically, we wish to further address the buffer zone issue which requests a frontyard setback waiver and obtain a deed restriction to control the access points on 78th street.

Mr. Braasch agreed to take these concerns under advisement and discuss with his partners next week. After this discussion he agreed to meet with us again to address these concerns.

Therefore I ask that this agenda item be set aside until such meeting takes place for the benefit of all parties involved. Thank you.

Sincerely,


 Ken Kontor


 Terri Allen

