City Council Introduction: **Monday**, October 18, 2010
Public Hearing: **Monday**, October 25, 2010, at **5:30** p.m.

Bill No. 10-134

FACTSHEET

TITLE: **STREET & ALLEY VACATION NO. 10015,** requested by Assurity Life Insurance Co., to vacate the right-of-way stub on the north side of Old Cheney Road located approximately 480 feet west of the centerline of South 27th Street.

STAFF RECOMMENDATION: A finding of conformance with the Comprehensive Plan.

ASSOCIATED REQUESTS: Change of Zone No. 10019 (10-133) and Use Permit No. 15D (10R-271).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/06/10
Administrative Action: 10/06/10

RECOMMENDATION: A finding of conformance with the Comprehensive Plan (7-1: Taylor, Cornelius, Esseks, Partington, Lust, Francis and Sunderman voting 'yes'; Gaylor Baird voting 'no'; Larson absent).

FINDINGS OF FACT:

1. This street and alley vacation request was heard before the Planning Commission in conjunction with the associated Change of Zone No. 10019 (10-133) and Use Permit No. 15D (10R-271).

2. This is a request to vacate the right-of-way stub on the north side of Old Cheney Road located approximately 480 feet west of the centerline of South 27th Street, which is no longer needed by the City. The vacation of this right-of-way stub will promote redevelopment of the site and allow for the property owner to maintain the access and driveway.

3. The staff recommendation to find the proposed right-of-way vacation to be in conformance with the Comprehensive Plan is based upon the "Analysis" as set forth on p.3, concluding that the street stub does not connect to a planned internal street system at this location. The staff presentation is found on p.5-6.

4. The testimony on behalf of the applicant is found on 6-11.

5. Testimony in opposition, particularly the associated change of zone and use permit amendment, is found on p.11-13 and the record consists of a request for a 60-day deferral of the entire proposal, eight letters in opposition and a petition in opposition signed by 14 residents of Lone Tree at The Ridge (See p.27-41 of the Factsheet for Bill #10-133, Change of Zone No. 10019). The issues of the opposition include lack of notification and failure of the applicant to work with the neighborhood earlier in the process; access to the site; increased traffic through the neighborhood, specifically on Canterbury Lane, and safety issues; noise and light pollution; and lack of need for another pharmacy and other retail uses in the area.

6. The applicant's response to the opposition is found on p.14-15.

7. On October 6, 2010, the majority of the Planning Commission voted 7-1 to agree with the staff recommendation to find the proposed right-of-way vacation to be in conformance with the Comprehensive Plan (Gaylor Baird dissenting and Larson absent). (See Minutes, p.18).

8. On October 6, 2010, the majority of the Planning Commission also voted 6-2 to approve the associated Change of Zone No. 10019 and 7-1 to approve the associated Use Permit No. 15D, with conditions, as amended.

9. The appraisal by Clint Thomas of the Housing Rehab & Real Estate Division of the Urban Development Department is found on p.24, recommending that the vacated area be sold to the abutting property owner for $22,000.00, which amount has been paid by the petitioner. Thus, the provisions of Chapter 14.20 of the Lincoln Municipal Code have been satisfied.

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: October 11, 2010

REVIEWED BY:_____ **DATE**: October 11, 2010

REFERENCE NUMBER: FS\CC\2010\CZ.10019+

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for October 6, 2010 PLANNING COMMISSION MEETING

PROJECT #: Street and Alley Vacation No. 10015

PROPOSAL: To vacate the right-of-way stub that is no longer needed by the City.

LOCATION: Generally located west of the northwest corner of S.27th Street and Old Cheney Road.

LAND AREA: Approximately .10 acres more or less

CONCLUSION: The vacation of this right-of-way conforms to the Comprehensive Plan. The street stub does not connect to a planned internal street system at this location.

RECOMMENDATION: Conforms to the Comprehensive Plan

GENERAL INFORMATION:

LEGAL DESCRIPTION: See Attached

SURROUNDING LAND USE AND ZONING:

North: R-1	Office Park District	Parking Lot
South: R-1	Residential	Domiciliary Care Facility
East: O-3	Office Park District	Office Building
West: B-2	Planned Neighborhood Business District	Vacant

ASSOCIATED APPLICATIONS: UP15D and CZ10019

COMPREHENSIVE PLAN SPECIFICATIONS:

The street is not shown on the Functional Street and Road Classification plan. (p102)

"Encourage mixed-use redevelopment, adaptive reuse, and in-fill development including residential, commercial, and retail uses. " (P. 10)

"The community actively encourages public-private partnerships, strategic alliances and collaborative efforts....as a means to accomplish its future economic objectives." (P. 30)

"Encourage renovation and reuse of existing commercial centers. Infill commercial development should be compatible with the character of the area and pedestrian oriented." (P. 36)

Within Lincoln's future growth Tiers I, II and III, a public right-of-way (ROW) width of 120 feet for any potential future arterial street is considered the standard for this Plan.(114)

HISTORY: The street stub was platted as part of the Southwood Center Addition in 1992.

UTILITIES: None

TOPOGRAPHY: The right-of-way stub slopes to the south.

TRAFFIC ANALYSIS: Old Cheney road is an arterial street. The proposed vacation is for a street stub. There are no proposed plans for an internal street system in this development. Circulation through the development will be provided by driveways. Although there is a median break directly south of this street stub, Public Works has stated that a signal will not be installed at the location of the existing right-of -way stub, so the requirement of a stub for the median break will not be necessary

ANALYSIS:

1. Lincoln Municipal Code Chapter 14.20 requires the City to establish the proper price to be paid for the right-of-way, as well as any amounts necessary to guarantee required reconstruction within the right-of-way. These values must be established and deposited with the City Clerk prior to scheduling the vacation request with the City Council.

2. The proposed vacation will promote redevelopment of the site and allow for the property owner to maintain the access and driveway instead of the City.

3. As part of the redevelopment of this site (UP15D) the developer has agreed to dedicate right -of-way in Conformance with the Comprehensive Plan Standards and to the subdivision standard 60' from centerline on both 27th and Old Cheney Road. This right-of-way dedication will protect the area where LES has facilities. The applicant will also be building a right-hand turn lane on Old Cheney, to the driveway (former street stub), which will be facilitated by the 60' of right of way. (See attached Exhibit A)

BEFORE THE VACATION REQUEST IS SCHEDULED ON THE CITY COUNCIL AGENDA THE FOLLOWING MUST BE COMPLETED:

1.1 The provisions of Chapter 14.20 of the Lincoln Municipal Code are met.

Prepared by:

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DATE: September 23, 2010

APPLICANT:	Olsson Associates Nate Buss 1111 Lincoln Mall, Suite 111 Lincoln, NE 68508
OWNER:	Assurity Life Insurance Co PO Box 82533 Lincoln, NE 68501
CONTACT:	Mark Hunzeker 600 Wells Fargo center 1248 O Street Lincoln, NE 68508 402-475-1075

CHANGE OF ZONE NO. 10019,
USE PERMIT NO. 15D
and
STREET & ALLEY VACATION NO. 10015

PUBLIC HEARING BEFORE PLANNING COMMISSION: October 6, 2010

Members present: Cornelius, Taylor, Esseks, Larson, Partington, Gaylor Baird, Lust, Francis and Sunderman (Commissioner Larson left during this public hearing).

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone, conditional approval of the amendment to the use permit, and a finding of conformance with the Comprehensive Plan on the street vacation.

Staff presentation: **Christy Eichorn of Planning staff** explained that this proposal includes a change of zone from O-3 Office Park to B-2 Planned Neighborhood Business, an amendment to an existing use permit (the area of the use permit being amended is primarily in the area being rezoned from O-3 to B-2), and street and alley vacation to vacate the street stub that is just east of the B-2 area.

The applicant is essentially asking to move from O-3 to B-2 in order to convert approximately 33,000 square feet of office use to retail use. And within the 33,000 square feet, approximately 13,300 square feet would be used for a pharmacy and approximately 7,480 could potentially be used for restaurant purposes.

The applicant has submitted a revised traffic study. The change in the revised traffic study (increase of 20 PM peak hour trips) does not change any of the comments or conditions listed in the staff report.

Eichorn noted that one specific question regarding traffic was the description of the 10% of the PM peak hour trips that would go out onto Canterbury. The staff report indicates that half of those trips would go north and half would go south. It has also been determined that those trips would be coming from the neighborhood.

Eichorn then discussed the waiver of the front yard setbacks from 20' to 10' on S. 27th and on Old Cheney Road. When the application was first submitted, it was showing a 20' setback, but because they are required to put in a right hand turn lane on Old Cheney Road, the staff requested that they move the sidewalk off the curb on 27th Street. The applicant has offered to do that and provide a public access easement. The city would prefer that to be dedicated right-of-way, which occurs through a platting process. The City has agreed to reduce the setback from 20' to 10' in order for the City to get dedicated right-of-way for potential future intersection improvements.

If the City is gaining some right-of-way and then there is also a waiver granted, and if the City then decides to expand S. 27th Street, Gaylor Baird is concerned about potentially ending up with a

situation where the sidewalk is abutting the parking lot without any green space. Eichorn explained that to be why the staff was asking for an additional 10' of right-of-way on 27th Street. How much that would get expanded and how much room would be needed would be a question for Public Works staff. The intent was to have an additional 10' of right-of-way on Old Cheney Road as well as on S. 27th Street to get the sidewalks off of the curb and to give the City room to do improvements to that intersection, if needed, as well as to move the sidewalk, if needed.

Lust sought confirmation that if the City expands South 27th Street, this extra 10' is enough to keep the sidewalk from being right on the street. Eichorn's response was that the Comprehensive Plan suggests that we need to have at least 60' of right-of-way on Old Cheney Road and on South 27th Street, and we don't have that today. That's what the 10' gives to us. The direction that we have from Public Works is that they need an additional 10 feet of right-of-way to have enough space for potential improvements to the intersection. Gaylor Baird believes that will eventually squeeze the green space. Eichorn agreed that if they move the sidewalk further west, that would be true.

Proponents

1. John Badami, Architect with **DLR Group,** testified on behalf of the applicant. They are proposing this development in three phases. The first phase would be a new CVS Pharmacy building to the south (about 13,225 sq. ft.), and attached to that CVS would be a retail building of about 8,500 sq. ft. The existing office building currently on the site would be demolished. After study through the owner, they have found that that building, once designed for a single use occupant, would be difficult to rent. There are also asbestos issues which would make it very difficult to renovate. After doing the number crunching to rehabilitate that building, they have found it would not be feasible.

Phase two would be a future office and retail building to the west (11,740 sq. ft., two story building). The side of the building facing Old Cheney Road would be the retail side, and then as you go to the back of the building, you would enter on the lower level, which would be commercial side.

Phase three would be another future office building (8,670 sq. ft.), along with the existing office building to the north. The existing Bank of the West and another office building to the north would remain in place.

Badami pointed out that there is a considerable amount of grade change (about 20') from the corner of 27th Street and Old Cheney Road down to Canterbury Lane. The retail is at the corner of Old Cheney Road and South 27th Street, with the commercial spaces at the lower grades.

Badami then showed 3-D images of the site, indicating that there will be quite a bit of screening and landscaping, which was a concern to the residents of Southwood. Assurity is willing to provide ample screening above and beyond what is required.

Lust inquired about the space in front of the future office/retail. Badami explained that they are required to have some type of retention pond for water runoff so it would be green space.

The applicant has agreed to provide screening all along the new development at the request of the neighbors.

Badami believes there are several positives to this project. The developers are Lincoln residents and have done business in Lincoln for over one hundred years. Assurity has a track record of doing projects in the right way. They do have an interest in working with the neighbors to make this a positive development to the neighborhood and future tenants.

Badami also suggested that this project supports the principles of new urbanism proven to be key in successful developments of neighborhoods, such as College View, Havelock, Fallbrook and Village Gardens. Some of the principles include walkability, providing services and business within 10 minutes of home and work; mixed use and diversity; mixed housing with a range of types, sizes and prices in close proximity; increased density with more buildings, residences and shops close together to make efficient use of services and resources. The benefits to the residents and neighborhood include higher quality of life and better places to live and work; higher and more stable property values; less driving; close proximity to retail services; pedestrian friendly neighborhood; and more efficient use of tax money. The benefits to the City include stable appreciating tax base; less spent per capita on infrastructure and utilities; less traffic congestion due to walkability design; and better overall community image and sense of place.

Badami believes that this development will be beneficial to the neighborhood and the city. Assurity is interested in working with the neighbors to make sure this is a successful development.

Lust noted that two of the concerns that the neighbors have expressed are the increased light and noise pollution from this development. What steps architecturally is the developer taking to mitigate those issues? Badami stated that there are requirements for lighting next to neighborhoods and the developer will comply with all requirements to be sure that light pollution is mitigated as much as possible. As far as noise, the advantage is the topography of the site. The new buildings and the landscaping will help to buffer against sound and traffic along Old Cheney Road and 27th Street.

Francis asked Badami to show the traffic access from 27th Street and Old Cheney Road into the new development. There has been some concern about access to Canterbury. Badami stated that there are two existing points of access along Canterbury and there is a third access proposed. The access from 27th Street will be just north of West Gate Bank along with the other existing access. The Old Cheney Road access is existing today. All of the driveways proposed are already in existence. Although Sunderman pointed out that the access points closest to 27th Street and Old Cheney Road will go away.

Esseks confirmed the location of the traffic light for the benefit of those wanting to go north on 27th Street.

Gaylor Baird stated that it is not clear to her where it is safe for a pedestrian to walk within this development. Badami acknowledged that this has been discussed. He believes there are ways to integrate good pedestrian traffic through the development and they do need to have further

discussions with the neighborhood on that issue. Gaylor Baird urged that this is really important, especially if it is being argued that it is helping neighbors to the west. It has to be safe, easy, clear and delineated in the site plan.

2. Mark Hunzeker appeared on behalf of **Assurity Life Insurance Company and CVS Pharmacy.** This site is at 27th & Old Cheney Road, both of which are major arterials. The site is designated commercial in the Comprehensive Plan and it has been that way for over 30 years. The staff report does an excellent job of reviewing the Comprehensive Plan support for this project at this location. This proposal is to revise an existing use permit, which provides for an existing office building and an additional office building, not yet constructed, as well as commensurate parking.

The existing building is about 40 years old and it is not feasible to redevelop or reuse that structure. It was not constructed to be a multi-tenant building and there are multiple issues with respect to asbestos, ADA and other physical obsolescence type problems that make it uneconomical to redevelop.

This is a proposal for 33,000 square feet of retail space on the site in lieu of that amount of office space. The total square footage is nominally reduced under the overall use permit. This is a retail area that would serve the neighborhood. The amount of retail space is somewhere around 50 to 60 percent of the size of Clocktower – we are not talking about a lot of space, but it is very conveniently located and should serve many of the same types of functions. Mixed use and neighborhood oriented convenience type retail is encouraged in the Comprehensive Plan.

Hunzeker also pointed out that the traffic study shows insignificant changes in site trips over the currently approved use permit, and Public Works has found the study to be acceptable.

The developer did send out a notice and had a neighborhood meeting on September 27th (later corrected to September 20th). Notices were mailed to property owners well beyond the area required to be notified in a change of zone or use permit. At that meeting, the developer offered to meet with and discuss ways to improve the project from the neighbors' perspective, after which they had two contacts. They met with Don Nelson and with the Lambrechts, who own the four-plex immediately abutting the site to the west. They never heard back from Mr. Nelson. The developer has agreed to a list of things which the owners of the four-plex felt were important, and those items have been incorporated into a motion to amend.

Hunzeker then discussed the proposed amendments to the conditions of approval on the use permit:

> 2.10 Revise the drive off of Old Cheney Road to be no more than two lanes and 25' wide, unless it can be shown that additional width is necessary. If the drive remains wider than 25' it shall be striped as a two-lane drive.

Hunzeker believes there is agreement with staff that the additional width for the driveway on Old Cheney Road is necessary so he is suggesting to add that language, and if the drive remains wider than 25', that it would be striped as a two-lane access rather than two lanes outbound and one in.

2.11 Remove ~~the southern most~~ one access to Canterbury Lane.

The staff requested that the southernmost access point to Canterbury Lane be removed. The additional access point was proposed because Public Works usually does not want a dead-end parking lot. The developer does not object to the idea of removing an access point to Canterbury Lane, but they we need to agree upon which one.

2.13 Add a note that says alcohol sales is permitted in the B-2 zoning district (except in the western 1/3 of the building on Lot 7) as long as all conditions under 27.31.040 are met.

They have agreed to except the western one-third of the building on Lot 7 from alcohol sales. In response to a concern by the neighbor (Lambrecht), the developer has agreed to keep any sort of restaurant or any kind of licensee that would sell alcohol of any kind in the eastern 2/3rds of this building, putting the licensed premise at least 160' away from the property line of that neighbor.

2.17 At such time as the building and associated parking on Lot 7 are constructed:

A. Place a combination of landscaping and fence, to be evenly distributed horizontally; however, it may vary in height so as to screen at least sixty percent (60%) of the surface area of a vertical plane extending along the entire length of the property line and from the ground elevation to a height of ten feet (10') above the adjacent ground elevation.

B. Prepare and implement a landscape plan for the area along the west property line on the Assurity side of the fence which exceeds minimum city standards.

C. In the area between the SW corner of the Assurity property and the parking lot, plant a grouping of shrubs which will deter pedestrians from traversing the site from south to north between the parking lot and Canterbury (i.e. barberry bushes).

D. In the area immediately abutting the west side of the parking lot, provide a 100% screen from ground level to 3 feet to prevent car headlights from shining in windows of the fourplex. This could be accomplished by a low fence, or evergreen bushes such as yews, or junipers.

E. Parking lot lighting to have cutoff fixtures, directed away from the west property line (as required by City Design Standards).

F. Any licensed alcohol sales in the building on Lot 7 will be located in the east two-thirds of the building.

Hunzeker offered Condition #2.17 as a new condition to reflect the negotiations and agreement the developer has reached with the Lambrechts. This incorporates a standard of landscaping and screening which has been shown on the Canterbury side. That landscaping and screening will be extended along the west property line in order to protect that four-plex. Condition #2.17.F. addresses the alcohol issue.

2.18 No gasoline sales are permitted.

Hunzeker noted that there was a concern raised in one of the e-mails as to the possibility of gasoline sales, and the developer has agreed that there will be no gasoline sales on the site.

2.19 Conditions #2.13, #2.17 and #2.18 were negotiated with the neighbors and shall not be administratively amended but may be amended by Planning Commission.

Condition #2.19 provides that all the conditions of approval negotiated with the neighbors cannot be administratively amended, but only amended by public hearing before Planning Commission.

Hunzeker submitted that the built environment in a city like Lincoln is dynamic. We are undergoing changes constantly. Lifestyles, consumer preferences, and technology all change over time. This site has served its purpose as an insurance company home office and it is time to reuse this site for a purpose more in line with existing conditions. We are only talking about 33,000 square feet of retail and restaurant use. That is a very modest component of a site that encompasses over 100,000 square feet of office space and other kinds of uses. It is actually about half the size of the 1970's vision of a neighborhood shopping center. It is about 10-15% of what we now consider to be a neighborhood scale center. The developer believes that the addition of retail space to this site, with the mixed uses proposed, make sense without imposing unduly upon existing residential areas. If we are serious about the concept of mixed use and pedestrian friendly development patterns, we need to be able to redevelop sites like this in order to utilize that concept. Hunzeker urged that this project makes a lot of sense and it is not by any means an aggressive use of the site. If you compare the land area to the floor area, you would find that the ratios are pretty low compared to some of the newer sites in this community.

Esseks sought confirmation of where alcoholic beverages may be sold on the site. Hunzeker pointed to the map – it will be in the CVS building and in part of the office building. At its closest point, it will be about 90' from the property line, but they are agreeing that the western 1/3 of the office building cannot be used for that purpose , thus pushing that line to be 160' from the property line.

Lust also expressed concern about pedestrian friendliness, and noticed that Condition #2.15 requires meeting the pedestrian circulation standards. What does this mean? Hunzeker agreed that there is a requirement to meet the city's pedestrian circulation standards. There are a number of ways to make pedestrian connections. For example, if we take the Public Works option and eliminate the one curb cut, the entire area could be green space, enabling people to get to the retail level. There will be a requirement to stripe pedestrian walkways through the parking lot to get to CVS and the retail building. There are fairly specific requirements that have been met by other projects that he is confident can also be met with this site. They have no objection to meeting those standards.

Francis wanted to know whether this prevents the next owner from not putting in a gas station. Hunzeker indicated that to be the purpose of Condition #2.13.F. This amendment would prohibit that. Anybody who wanted to do that would have to come back to the Planning Commission for an amendment. Hunzeker also suggested that the site is too valuable for retail space to do that.

Having been through a process to put a gas station on this site was not easy, and once the use permit is developed, it would be even harder to do. Assurity intends to hold this property in their real estate portfolio and they do not intend to sell it. The CVS site is a leased site. Assurity does not want a gas station there and he believes the potential is extremely remote.

Opposition

1. Don Nelson, 2430 S. Canterbury Lane, since August of 1984, testified in opposition. He is either the first closest or second closest single family residence. The first that the neighborhood learned of this project was three weeks ago in the Lincoln Journal Star, and they were shocked because this site was the location of a titanic decades-long struggle over the 80's and 90's gas station project. The controversy was ultimately decided by the Supreme Court and the City of Lincoln taxpayers paid a significant amount which resulted in this small office park. He suggested that the Commission consider that both the city and taxpayers have a vested interest in the current land use.

The neighbors had hoped to be contacted early if redevelopment plans were proposed, and this proved not to be the case. Quite the contrary occurred. Only on September 11th were the property owner notifications sent out, and incredibly the Seven Oaks Homeowners Association, which is not even part of this area, was notified. His neighborhood, the Southwood Homeowners Association, had no such notification. The Association has finally been notified and they have had their first meeting. There were several conditions that he thought would have to take place before he could meet again with Mr. Hunzeker.

The Southwood neighbors feel like they have been kept in the dark and shortened the amount of time to analyze the project and organize their thoughts and put forth a cogent argument for the status quo. Moreover, they sort of feel like the victims of this titanic struggle going on nationwide between Walgreens and CVS. We have seen neighborhood wishes pushed aside elsewhere in Lincoln as well as in Omaha as these two corporations expand and reach into the neighborhoods.

Nelson suggested that the city itself has a vital interest in this property. The Lincoln Fire and Rescue Station is directly across the driveway on South 27th Street. The City owns the still vacant northeast corner of 27th & Old Cheney Road. The intersection itself was the 19th most dangerous in 2008 and he is told that it has advanced considerably up that list since then, although the data has not yet been updated.

Nelson believes that this paperwork raises many questions that point to the need to slow the approval process down so that twelve or so elements and issues can be carefully evaluated.

Nelson pointed out that the lots slope severely from east to west and from north to south. This development will move massive amounts of soil from high to low areas and a deep retention pond is proposed. This needs more consideration.

The lighting of the project will require unique technology as some of the project elevations will be close to the same as the window elevations in many nearby homes. Moreover, the signage needs to look more like Ft. Collins, Colorado, or Scottsdale, Arizona, in order to conform to the characteristics of the adjacent neighborhood. 24-hour signs should be forbidden.

Nelson also believes that there remain many important questions surrounding the ingress and egress. The four or five foot incline up to Old Cheney Road on the north side can prove very problematic during rush hours and inclement weather. Will the existing median cut be closed? His call to the city department remains unanswered. Street parking is problematic. The street is a bus route and has severe sight limitations. Parking is banned on the south and east side of the curb. Snow and ice can make the steep climb nearly impossible from the west and almost impassible.

Another problem is that only approximately one-third of the eventual buildout uses are known.

Nelson urged the Planning Commission to put this application on hold so that the affected businesses and residents can be part of the process that should have taken place over the past few months. Many of these problems and questions need far more discussion and thoughtful resolution.

Nelson stated that he has not had an opportunity to review Mr. Hunzeker's motion to amend, but it does sound to be toward the direction that he is recommending. However, he reiterated his request that the Planning Commission either slow down the project or postpone a decision until the neighbors have a chance to talk some of these things out.

Taylor asked Nelson when he was contacted. Nelson stated that the first knowledge he had was when the general public read it in the newspaper on a Saturday morning about three weeks ago; and then the first contact he had was when he received Mr. Hunzeker's letter with an invitation to a meeting at the library on South 14th Street, which took place on September 27th (later corrected to September 20th).

Lust wanted to know who was not contacted. Nelson suggested that in a measure of fairness, the developers should have contacted either the neighborhood association or the nearby neighbors two months ago. They should have made contact with the official homeowners association at the time the process was launched. Someone made the decision to contact a homeowners association that is across the street from this project.
Lust confirmed with Nelson then that he is not disputing that the neighbors in the area got individual letters inviting them to the information meeting. Nelson agreed, but they didn't have any information ahead of that meeting in order to go to the meeting and react intelligently. The only people that got the letter were 50-60 neighbors or more. When the homeowners association (Southwood) met, not a single member of the association board had gotten a letter or were aware of the project.

2. Steve Groshans, 2431 S. Canterbury Lane, right next to the four-plex, since June 1989, testified in opposition to changing the zone. In the 21 years he has lived there, the traffic on S. Canterbury Lane has increased just from the office buildings that are there. He is against any additional entrances or exits on S. Canterbury Lane. It comes down a hill and curves and is difficult in the winter. He requested that the Planning Commission put this proposal on hold. He is sure that the Southwood Homeowners Association can work something out with the people that own this building. They let this building deteriorate to the point that it is too expensive to rehabilitate. They have not even talked about the construction trucks that are going to need to get in and out of the site to tear that building down. They will go out on S. Canterbury Lane.

There will be traffic into this site until 2:00 a.m. He is not against them tearing down the building and putting in a new office building, but is opposed to the zoning change. He was not notified. He understands that this project has been in the works for a year.

3. Pam Manske, 6435 Lone Tree Drive, about one-half mile further south of the proposed development and a bit west of 27th Street, testified. She lives in the townhomes which buffer the east edge of The Ridge. She purchased her home in February. In order to leave her neighborhood, there are only two ways out and she goes right onto 27th Street. There are a lot of accidents and traffic at the 27th & Old Cheney Road intersection. This feels like spot zoning. She submitted some letters and signatures from neighbors in her area. However, she stated that the Lone Tree neighbors have decided not to oppose the project because they have seen the things that the city has done to allow CVS at 16th & South, and in the Dundee neighborhood in Omaha. They are of the opinion that it is going to happen because the Comprehensive Plan calls for commercial zoning here. Since 1977, we have seen this site be an office building and it is hard to believe that we need to have retail zoning at every corner every mile. She believes CVS could go to Bishop Heights, Williamsburg, the B-5 at SouthPointe, or 27th & Yankee Hill. There is also zoning to the west where Culvers is located at 14th and Old Cheney Road. It seems like the Comprehensive Plan has allowed for a lot of zoning for this type of use, but we have a retailer who wants to locate here, and a Planning Director that will approve it. The Lone Tree neighbors are not opposed but they want assurance that the P zoned lot to the east will not also become retail. "It just feels like strip zoning and we're feeling very boxed in."

4. Jon Ludwig, 2402 Jameson South, which is up the hill from Canterbury, testified in opposition to the rezoning of this area. There are eight pharmacies within a one-mile radius of that location. Do we need another? He is not against the retailer – he just does not believe it is needed. We need to watch out for our local businesses, such as Stockwell Pharmacy, as well as the people who live here. There is one way to oppose a project – not doing business there. He would rather see the office buildings rather than retail.

<u>Staff questions</u>

Eichorn explained the issue about the homeowners association not being notified. The Planning Department does notify the property owners within 200' of the property boundaries. The Department also looks at areas surrounding or near the proposed development, and that is how Seven Oaks would have gotten notice. The individual property owners are notified based on the County Assessor's records. We do not notify renters. With regard to homeowners associations, the Department uses a list of homeowners associations that have asked to be notified. The last contact that we had for Southwood was in 2001 and it appears that individual was leaving the neighborhood and asked to be removed, but did not give us an alternative person to contact. When that happens, they fall off the list. The Department is, however, currently looking at ways to be proactive in the future about keeping a more comprehensive list of homeowners associations. The homeowners associations will need to provide us their boundaries and a contact name.

Eichorn indicated that the staff agrees with the amendments to the conditions of approval on the use permit proposed by the applicant. The landscaping requirement under Condition #2.17.A is the same requirement that the staff had requested along Canterbury Lane to buffer the residences from the retail on the corner. Condition #2.17.E pertaining to the parking lot lighting cutoff fixtures, is already a requirement of the parking lot design standards. We do have design standards for landscaping including parking lot screening, as well as screening between commercial and

residential areas. We have lighting design standards to keep light trespass away from residential areas. We have pedestrian design standards as well.

Esseks inquired whether there is anything the Planning Department would like to do if this were delayed two weeks – anything that should be more carefully looked at or new issues examined. Eichorn did not believe there would be any advantage to the Planning Department with a delay. Nothing has changed since the staff report was written, so from the Planning Department's perspective, she does not believe there would be any changes.

Gaylor Baird asked whether the revised traffic study addressed the concern in the staff report about stacking of cars from 27th Street blocking access to the proposed site. Eichorn suggested that Public Works would have to address that question.

Sunderman believes that the parking lot and lighting standards have been updated relatively recently. Eichorn stated that the lighting standards were adopted two or three years ago, and the landscape design standards about 4 ½ years ago. The sign ordinance, which is another design guideline, was more recently updated.

If the amendments to the conditions are approved, Sunderman asked what someone would have to do to be allowed a gas station. Eichorn advised that the new Condition #2.19 provides that to change anything listed as a condition negotiated with the neighbors would need to come to the Planning Commission. It could not be revised administratively.

Lust noted that the neighbors have expressed concerns about strobing signs. What would the sign ordinance allow? Eichorn stated that they would be allowed one free standing sign per building and a center sign. The free standing sign can be up to 15' tall and 50 sq. ft. if in the front yard setback, and up to 100 sq. ft. if outside the front yard setback. They would be allowed one center sign oriented toward Old Cheney Road and one toward 27th Street, and those could potentially be 150 sq. ft. in area and up to 35' tall. The sign requirements are the same for O-3 and B-2 zoning.

Response by the Applicant

Hunzeker corrected the record – the neighborhood meeting was held September 20th (rather than September 27th), and they met with Don Nelson on the site on September 24th, and did not hear from him further. They met with the Lambrechts on September 29th, and in a matter of hours they had reached an agreement. Hunzeker believes the applicant has made an effort here. Unfortunately, these plans don't materialize out of thin area and we did not want to hold the neighborhood meeting without having a plan to show. We did that as soon as we possibly could. We are on a time line in accordance with our lease which requires us to move as quickly as possible. CVS, which is in process of trying to invest upwards of 30 million dollars in Lincoln, has indicated that they would like to have this store open by the beginning of the 4th quarter next year. Whether or not that can happen, there are a lot of variables, but we were trying very hard to meet our obligations under the lease and maintain as good contact as we could with neighbors.

Hunzeker also suggested that the grading on this site, while significant, is not fairly characterized as "massive". The site grading required to build two-level buildings with walkouts is not massive. They are ready-made walkouts. There will be significant moving of dirt to level those pads, but it is not what he would consider massive.

Hunzeker also pointed out that the median cut on Old Cheney Road has been there and is there and has nothing to do with this site. In the event it became necessary, Public Works has the right to change median openings. They are probably going to change the median on 27th Street that is there for the Fire Department. There is a median opening to the north which is available for this site.

Hunzeker disputed the suggestion that we should not do anything here because only about one-third of the users are known. That is always the case. It is very rare when all of the intended users are known at this stage of the game.

Lust inquired as to the occupancy of the current office building. Hunzeker believes it is 35%.

Partington believes that the site plan layout and relative location of the pharmacy and office buildings makes sense. The proposed amendments would address most of the concerns he would have as a resident. But it appears that the people living in the neighborhood don't feel like they have been informed. Would you be concerned about a two-week delay to meet with these people? Hunzeker stated that he would be willing, if he had the flexibility to do that, but they don't. It's a minimum of 2 ½ weeks between now and the time this would come up before the City Council. It's been 2 ½ weeks since they had the first meeting with the neighbors and they have had no response. On September 20th, we offered that if they wished to meet to please let us know. Hunzeker pointed out that the developer has made a concerted effort and responded to the concerns of the closest owner of property to this site. They made an effort to go directly to Mr. Nelson as well, but never heard back from him. We are doing what the closest property owner has requested. He does not believe they have been unfair about notification. They used a list supplied by the Planning Department and they specifically asked for a broader list than required so that they would not be accused of trying to keep someone in the dark. They have not tried to avoid interaction with the neighbors.

CHANGE OF ZONE NO. 10019
ACTION BY PLANNING COMMISSION: October 6, 2010

Esseks moved approval, seconded by Lust.

Esseks is sympathetic to the positions of the neighbors, but he does not see what would be achieved by further delay. It looks as though there has been a lot of interaction between the applicants and some neighbors, and the applicants have tried to meet with more neighbors. Our community needs a reputation to be able to handle well-developed applications expeditiously. He thinks it is a good site. The Comprehensive Plan provides for commercial use here. We are told that a lot of shopping occurs when people come home from work. Design steps have been taken to buffer the neighbors from light and noise pollution. There are limits on alcohol sales and there is prohibition on gasoline stations. The southwest area of the site is already zoned B-2. It is not the role of the Planning Commission to determine which commercial uses should go into each area, and Esseks does not believe this set of uses looks threatening to the community. The City's sidewalk standards will be applied. It looks as though the signs are not facing the residential area but rather the major arterials.

Gaylor Baird stated that she would rather delay the proposal. This site plan is not sufficiently flushed out. It is a sensitive site that requires more time and attention. The zoning ordinance in which the Commissioners have been tutored talks about B-2 as a zoning district that requires the

use permit for the purpose of providing a really delineated site plan that assures integration between residential and commercial areas that are adjacent. The use permit is also supposed to reduce adverse impacts and to allow for a clear picture of what the enhanced designation is in the B-2. We have had people testify that they support changing the use but not necessarily the zone. If we are going to make this big shift from office to business zoning, then we need to give this closer scrutiny. If this is to be a neighborhood center, she does not see the case that it is pedestrian friendly. Proximity is not pedestrian friendliness. Proximity to residents does not equate to being walkable, so she would like to see further details on how this is made pedestrian friendly. She does not think there is great integration between the residential and commercial. It is completely auto-oriented as it is now. It is not designed for walkability. Walkability needs to be clearly delineated on the site plan.

Gaylor Baird believes there are additional ways that this proposal comes into conflict with the Comprehensive Plan with some traffic issues that are still unclear. The stacking on 27th Street is a concern which has not been addressed. The compromise that has been achieved with the setbacks creates a situation that if the city exercises its right to expand 27th Street, we will have even more limited green space between the parking lot and sidewalk.

There are a number of people who want to delay this. Given the state of the site plan and the neighborhood objections, Gaylor Baird thinks it would be valuable to take two weeks. This site deserves more scrutiny. When you look at what exists today, you have an office building that was designed by a local architect that is representative of its period. You have to look at what the proposal implies for the character of our community. It now has a lush setting with lots of green space. If demolished, we are looking at a change aesthetically to the landscape of Lincoln. It will be largely pavement that could exist in any city in the country – it is not unique and does not contribute to a sense of place. Because we are looking at such a drastic change on this corner and such a change to the visual landscape, we are losing something. We need to give this more time.

Lust stated that she would respectfully disagree with a delay. While once again, she is very sympathetic with the neighbors, she did not hear anything from the neighbors that has not been addressed by the developer and the staff. Their concerns over noise pollution, light pollution, and traffic issues have already been addressed by the developer. If the homeowners association has issues that they still want to address with the developer, they have two and a half weeks to do that before the City Council hearing. Asking for more details on the site plan and the uses at this point is really not something that this body can demand because that's "putting the cart before the horse." We cannot ask the developer to complete the architectural design of the entire facility before they even have any indication that the city will change the zone. Instead, their use permit requires certain conditions before they can get a building permit. There is going to be more review of this development as it occurs, and the city has been very progressive in their development of pedestrian standards, signage standards, and lighting standards – all of those things have already been considered and are in the ordinance. This is step one. They still have to come back for a building permit that complies with all of the conditions that they have agreed upon and that already incorporate the wonderful things that the city demands. She sees no use in delaying approval of this project. She does not believe that it deserves further scrutiny from the Planning Commission.

Taylor indicated that ideally, he would like to see a delay, and ideally, he would like to see the green space continue. He does not believe this zone change means any of the uses will be open until 2:00 a.m. It is just package liquor purchased on the site and taken home. He thinks a lounge or bar would have to come back before the Commission. At this point, he does not see what benefit

a delay will serve. This will be heard by the City Council in the future giving the citizenry more time to organize.

Cornelius observed that the Planning Commission has been informed recently in some of their workshops that one of the purposes of the B-2 is to require a use permit, and a use permit is much more oriented toward being a site plan permit. We were shown a site plan today. He appreciates the lengths to which the applicant has gone to try to meet the neighbors' concerns. However, he is concerned about the integration between the development and the residential area directly to the north and to the west. He agrees with Commissioner Gaylor Baird that "proximity is not walkability." This does not look like a pedestrian friendly development, but rather a lot of parking surrounding some retail and office buildings. Perhaps given two weeks of time, they might be able to work something out that is more carefully integrated in terms of pedestrian accessibility with the neighboring residential development.

Sunderman stated that he will vote in favor. It's a good plan. They have addressed the issues quite well. It is similar to other developments on corners such as this. As far as walkability, he believes it is at least adequate. It will be better and friendlier, especially with the detention pond. He thinks traffic will work fine. As far as losing the building on the corner, he agrees that it is a nice building, but it is empty, and an empty building doesn't do anybody any good.

Motion for approval carried 6-2: Taylor, Esseks, Partington, Lust, Francis and Sunderman voting 'yes'; Cornelius and Gaylor Baird voting 'no'; Larson absent. This is a recommendation to the City Council.

USE PERMIT NO. 15D
ACTION BY PLANNING COMMISSION: October 6, 2010

Lust moved to approve the staff recommendation of conditional approval, with the amendments submitted by the applicant today, further amended to include Condition #2.18 as a reference in Condition #2.19, seconded by Francis.

Cornelius stated that, having registered his objections to the change of zone, and based on those objections and the thought that a deferral would perhaps be valuable, he will vote in favor of the use permit because, in general, he agrees that in many ways this is a decent addition to this area and it meets the standards required.

Gaylor Baird stated that she will vote against it because of the setback issue. It looks bad to have sidewalks pushed up against streets throughout our city.

Motion for conditional approval, with amendments, carried 7-1: Cornelius, Taylor, Esseks, Partington, Lust, Francis and Sunderman voting 'yes'; Gaylor Baird voting 'no'; Larson absent. This is a recommendation to the City Council.

STREET & ALLEY VACATION NO. 10015
ACTION BY PLANNING COMMISSION: October 6, 2010

Esseks moved to find the proposed vacation to be in conformance with the Comprehensive Plan, seconded by Francis and carried 7-1: Cornelius, Taylor, Esseks, Partington, Lust, Francis and Sunderman voting 'yes'; Gaylor Baird voting 'no'; Larson absent. This is a recommendation to the City Council.

2007 aerial

Street & Alley Vacation #10015
S 27th St & Old Cheney Rd

Zoning:

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

m:\plan\arcview\Agendadrawings.mxd (SAV10015)

One Square Mile
Sec. 12 T09N R06E

N

Zoning Jurisdiction Lines

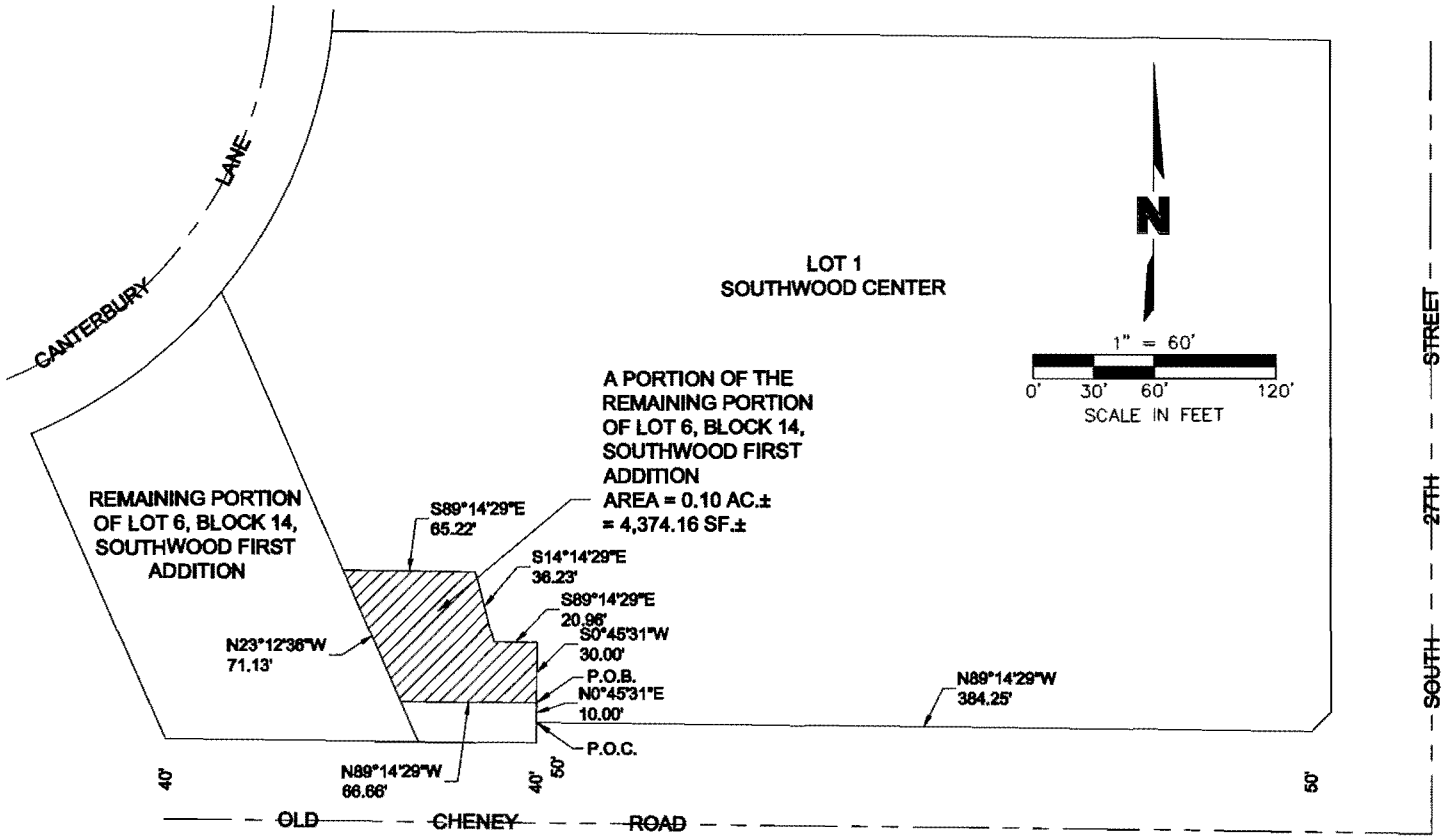
City Limit Jurisdiction

LEGAL DESCRIPTION
RIGHT-OF-WAY VACATION

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF A PORTION OF THE REMAINING PORTION OF LOT 6, BLOCK 14, SOUTHWOOD FIRST ADDITION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, STATE OF NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, SOUTHWOOD CENTER, SAID POINT BEING 50.00' NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER; THENCE NORTHERLY ALONG A EAST LINE OF THE REMAINING PORTION OF LOT 6, BLOCK 14, SOUTHWOOD FIRST ADDITION, SAID LINE BEING A WEST LINE OF LOT 1, SOUTHWOOD CENTER ON AN ASSUMED BEARING OF N00°45'31"E, A DISTANCE OF 10.00' TO A POINT 60.00' NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE N89°14'29"W ALONG A LINE 60.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 66.66' TO A POINT; THENCE N23°12'36"W, A DISTANCE OF 71.13' TO A POINT OF INTERSECTION WITH THE WESTERLY EXTENSION OF A SOUTH LINE OF LOT 1, SOUTHWOOD CENTER; THENCE S89°14'29"E ALONG A WESTERLY EXTENSION OF A SOUTH LINE OF SAID LOT 1, AND ALONG A SOUTH LINE OF SAID LOT 1, A DISTANCE OF 65.22' TO A WEST CORNER OF SAID LOT 1; THENCE S14°14'29"E ALONG A WEST LINE OF SAID LOT 1, A DISTANCE OF 36.23' TO A WEST CORNER OF SAID LOT 1; THENCE S89°14'29"E ALONG A SOUTH LINE OF SAID LOT 1, A DISTANCE OF 20.96' TO A WEST CORNER OF SAID LOT 1; THENCE S00°45'31"W ALONG A WEST LINE OF SAID LOT 1, A DISTANCE OF 30.00' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 4,374.16 SQUARE FEET OR 0.10 ACRES, MORE OR LESS.

Wednesday, September 15, 2010
F:\Projects\010-2031_SVYO\Documents\010-2031_ROW-VAC-LEGAL.doc



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DATE: Sep 15, 2010 3:00pm XREFS:

PROJECT NO: 010-2031	RIGHT-OF-WAY VACATION	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: MRJ		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	1
DATE: 09/15/2010			

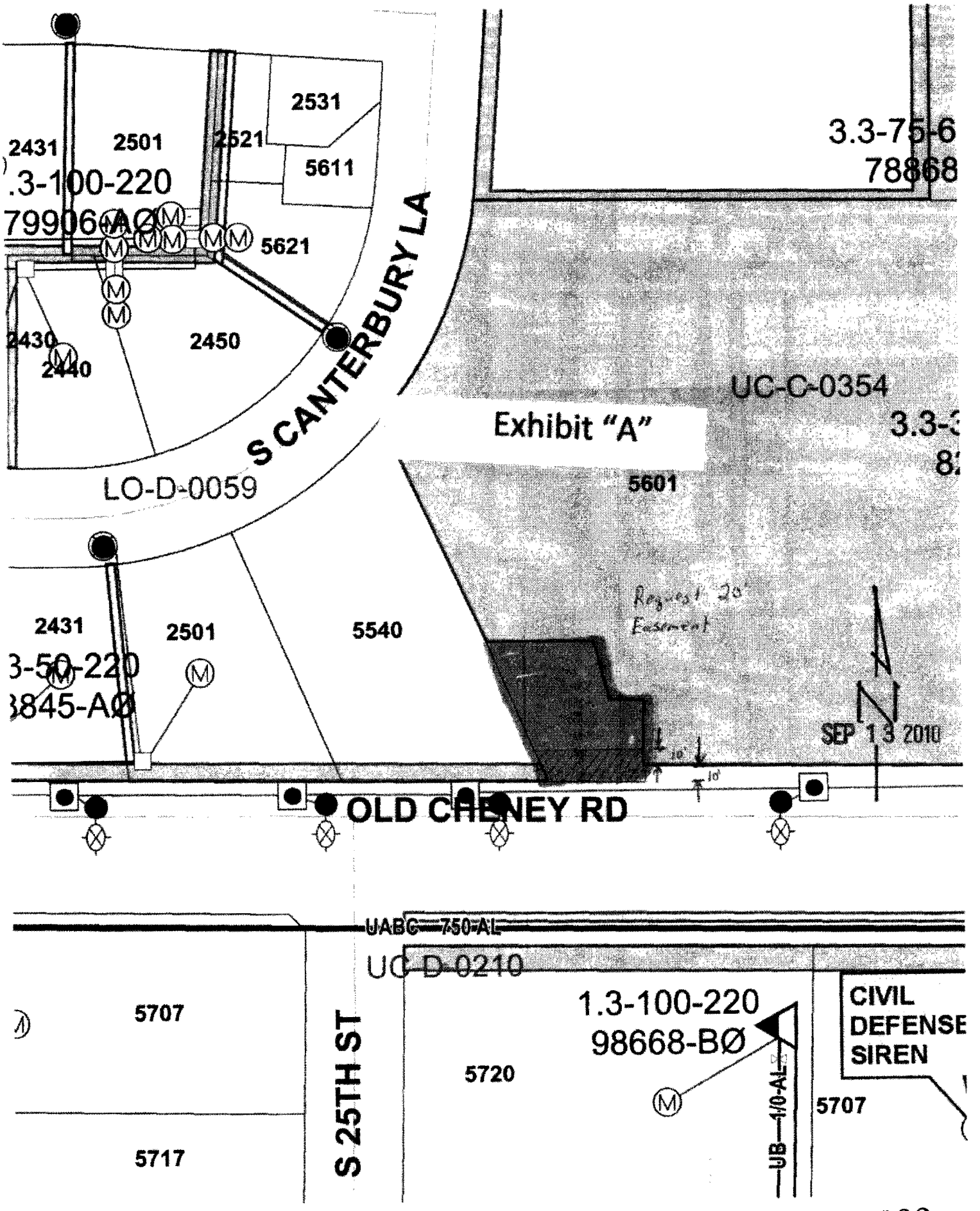
Exhibit "A"
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1.3-100-220
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Request 20' Easement
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OLD CHENEY RD
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UC-D-0210
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S 25TH ST
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UB—1/0-AL
5707
CIVIL DEFENSE SIREN

022

OLSSON ASSOCIATES

September 10, 2010

Mr. Marvin Krout, Planning Director
Lincoln-Lancaster County Planning Department
555 South 10th Street, Room 213
Lincoln, NE 68508

Re: Right-of-Way Vacation (Southwood Center Use Permit 15D)

Dear Mr. Krout:

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

1. Vacated Public Way Exhibit
2. Vacated Public Way Legal Description
3. Petition to Vacate Public Way
4. Application Fee ($150.00)

On behalf of the Owner/Developer, Assurity Life Insurance Co., we are requesting a right of way stub on Old Cheney Road be vacated. The ROW stub is located approximately 480 west of the Centerline of S. 27th Street on the North side of Old Cheney.

The ROW stub current abuts two properties owned by Assurity Life Insurance Co. Lot 1 Southwood center abuts on the east and north. Lot 6, Block 14, Southwood 1st Addition abuts on the west.

Please call, if you require further information or have any questions.

Sincerely,

Nat Buss

Nathaniel Buss

Enclosures
CC: File

023

1111 Lincoln Mall, Suite 111
P.O. Box 84608
Lincoln, NE 68501 4608
TEL 402.474.6311
FAX 402.474.5160
www.oaconsulting.com

INTEROFFICE MEMORANDUM

TO:	Mayor Beutler & City Council Members	FROM:	Clinton W. Thomas
DEPARTMENT:	City Council Office	DEPARTMENT:	Housing Rehab & Real Estate Division
ATTENTION:		DATE:	October 4, 2010
COPIES TO:	Teresa J. Meier Marvin Krout Rod Confer Byron Blum, Bldg & Safety Jean Preister, Planning	SUBJECT:	Street & Alley Vacation No. 10015 Right-of-way Stub

A request has been made to vacate a right-of-way stub located west of the intersection of 27th Street and Old Cheney Road. The area to be vacated is 4,374.16 square feet. The staff report indicates the street stub was platted as part of the Southwood Center Addition in 1992. This is incorrect. The area being vacated was actually acquired from Lincoln Mutual Life Insurance Company as part of the Old Cheney Road Widening project in 1991 for a value of approximately $20,000. It was simply shown on the Southwood Center plat as additional right-of-way. No easements are to be retained over the area being vacated.

While small areas such as this add value and density to the land to which they are assembled, it is considered most buyers would not pay 100% of the value they would realize in assembling the parcel. In this case, a value of 40% of the abutting land value seems appropriate.

The commercial zoning, which the surrounding property will have, is estimated to have a value of approximately $12.00 per square foot. As such, a value of $5.00 per square foot is deemed appropriate for the area to be vacated and assembled into the larger parcel. The calculations are as follows:

4,374.16 sq. ft. X $5.00/sq. ft. = $21,870.80 Called $22,000.00

Therefore it is recommended, if the area be vacated, it be sold to the abutting property owner for $22,000. This amount is considered appropriate and would recoup the City's investment in the street stub.

Respectfully submitted,

Clinton W. Thomas

Clinton W. Thomas
Certified General Appraiser #990023