City Council Introduction: **Monday**, January 27, 2014
Public Hearing: **Monday**, February 3, 2014, at **3:00** p.m. Bill No. 14-14

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 13020,** from AGR Agricultural Residential District to R-4 Residential District, requested by Broadmoor Development Company, on property generally located at Highway 2 and Ashbrook Drive.

STAFF RECOMMENDATION: Approval.

ASSOCIATED REQUESTS: Annexation No. 13004 (14-13) and Special Permit No. 13043 (14R-44).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/02/13
Administrative Action: 10/02/13

RECOMMENDATION: **DENIAL** (5-3: Corr, Beecham, Weber, Scheer and Cornelius voting 'yes'; Hove, Sunderman and Lust voting 'no').

FINDINGS OF FACT:

1. This proposed change of zone request and the associated Annexation No. 13004 and Special Permit No. 13043 were heard at the same time before the Planning Commission.

2. This is a request to change the zoning from AGR Agricultural Residential District to R-4 Residential District to allow development of the proposed Broadmoor Ashbrook Apartments Community Unit Plan (Special Permit No. 13043) to allow up to 220 dwelling units on property generally located at Highway 2 and Ashbrook Drive.

3. The staff recommendation to approve the change of zone request is based upon the "Analysis" as set forth on p.5-6, concluding that the Comprehensive Plan designates this area for future Urban Residential land uses, and R-4 zoning allows a range of uses that comply with that designation. This change of zone request complies with the Zoning Ordinance and the Comprehensive Plan. The staff presentation is found on p.7-9.

4. The applicant's testimony is found on p.9-11, pointing out that the Comprehensive Plan supports multi-family development at this location because it is adjacent to Highway 2 and not conducive to single family development. The associated proposed community unit plan under this change of zone request is infill development, which is also supported by the Comprehensive Plan.

5. Testimony in opposition is found on p.12-19, and the record consists of 29 letters in opposition.

6. All documentation, letters and comments submitted on this proposed development are attached to the Factsheet for Special Permit No. 13043 (Bill #14R-44).

7. On October 2, 2013, the majority of the Planning Commission disagreed with the staff recommendation and voted 5-3 to recommend denial of this change of zone request, finding that R-4 is too much density and that they would consider R-3 (See Minutes, p.22-24).

8. On October 2, 2013, the Planning Commission voted 8-0 to recommend approval of the associated Annexation No. 13004 (Bill #14-13) and voted 5-3 to deny the resolution approving associated Special Permit No.13043, which was final action by the Planning Commission.

9. The applicant requested that this proposal not be scheduled on the Council agenda until this time in order to have an opportunity to make contact with the adjacent neighborhood groups to try to achieve some resolution over the dispute of density and multi-family apartments on this change of zone and special permit requests.

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: January 21, 2014

REVIEWED BY: Marvin Krout, Director of Planning **DATE**: January 21, 2014

REFERENCE NUMBER: FS\CC\2013\CZ13020+

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for September 18, 2013 PLANNING COMMISSION MEETING

NOTE: This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

PROJECT #: Annexation No. 13004
Change of Zone No. 13020

PROPOSAL: To annex approximately 15.81 acres of land, and ***change the zoning from AGR Agriculture to R-4 Residential***

LOCATION: Highway 2 and Ashbrook Drive

LAND AREA: Annexation No. 13004 - 15.81 acres more or less
Change of Zone No. 13016 - 15.81 acres more or less

CONCLUSION: This tract is within the future service limit and served by the full range of City services, and complies with the Annexation Policy as stated in the Comprehensive Plan. Also, the Comprehensive Plan designates the site for future Urban Residential Land uses, and R-4 Residential zoning allows a range of uses that comply with that designation. These requests comply with the Zoning Ordinance and are consistent with the Comprehensive plan.

RECOMMENDATION:

AN#13003	**Approval**
CZ#13016	***Approval***

PROPOSED CITY COUNCIL DISTRICT ASSIGNMENT: District #2.

GENERAL INFORMATION:

LEGAL DESCRIPTION: For both AN#13004 and CZ#13020, a part of Lot 89 I.T., located in the SW 1/4 of Section 15-9-7 of the 6th P.M., more particularly described on the attached legal description.

EXISTING LAND USE: Vacant

ASSOCIATED APPLICATIONS:

SP#13043 - a special permit for the Broadmoor Ashbrook Apartments community unit plan.

SURROUNDING LAND USE AND ZONING:

North:	Residential	R-3
South:	Highway 2, Vacant	AGR
East:	Residential	AGR
West:	Vacant	AGR, O-3

COMPREHENSIVE PLAN SPECIFICATIONS:

Pg 1.9 - The Future Land Use Map designates this site for urban density residential land uses.

Pg. 1.10 - This site is shown in Tier I, Priority A on the Growth Tier Map.

Pg 7.2 - Guiding Principles

-Distribute and preserve affordable housing throughout the community to be near job opportunities and to provide housing choices within existing and developing neighborhoods.

- Make available a safe residential dwelling for all citizens. Provide a wide variety of housing types and choices for an increasingly diverse and aging population.

-Provide flexibility to the marketplace in siting future residential development locations.

- Strive for predictability for neighborhoods and developers for residential development and redevelopment.

Pg 7.4 - Strategies for Neighborhoods and Housing

- Discourage residential development in areas of environmental resources such as endangered species, saline wetlands, native prairies, and in floodplain corridors.

- Encourage preservation or restoration of natural resources within or adjacent to development.

- Incorporate interconnected networks of streets, transit, trails, and sidewalks with multiple connections within and between neighborhoods and commercial centers to maximize access and mobility to provide alternatives and reduce dependence upon the automobile.

Pg 7.8 - Vacant Land - Currently, there are roughly 350 acres of vacant residentially-zoned land in the existing built-out portion of the City. Some of the land is in the floodplain and lots scattered throughout the City. The Plan envisions a portion of this land will be utilized by 2040 since it has access to urban services today.

Pg 12.14 - The ANNEXATION POLICY of the 2040 Comprehensive Plan:

Annexation policy is a potentially powerful means for achieving many of the goals embodied in the Plan's Vision. Annexation is a necessary and vitally important part of the future growth and health of Lincoln. The annexation policies of the City of Lincoln include but are not limited to the following:

The provision of municipal services must coincide with the jurisdictional boundaries of the City – in short, it is not the intent of the City of Lincoln to extend utility services (most notably, but not necessarily limited to, water and sanitary sewer services) beyond the corporate limits of the City.

The extension of water and sanitary sewer services should be predicated upon annexation of the area by the City. City annexation must occur before any property is provided with water, sanitary sewer, or other potential City services.

The areas within Tier I Priority A that are not annexed serve as the future urban area for purposes of annexation per state statute and are appropriate for immediate annexation upon final plat. These areas have approved preliminary plans.

To demonstrate the City's commitment to the urbanization of land in Tier I Priority B, the City should annex land that is contiguous to the City and generally urban in character, as well as land that is engulfed by the City. Land which is remote or otherwise removed from the limits of the City of Lincoln will not be annexed.
Annually the City should review for potential annexation all property in Priority B for which basic infrastructure is generally available or planned for in the near term.

Annexation generally implies the opportunity to access all City services within a reasonable period of time.

Voluntary annexation agreements may limit or otherwise outline the phasing, timing or installation of utility services (e.g., water, sanitary sewer), and may include specific or general plans for the private financing of improvements to the infrastructure supporting or contributing to the land uses in the annexed area. The annexation of large projects may be done in phases as development proceeds.

The character of existing residential areas should be respected as much as possible during the annexation process. When low density "acreage" areas are proposed for annexation due to the City's annexation policy, additional steps should be taken to ease the transition as much as possible, such as public meetings, advance notice and written explanation of changes as a result of annexation. In general, many aspects of acreage life may remain unchanged, such as zoning or covenants. However, any annexation of existing residential areas will include some costs which must be the responsibility of property owners.

Annexation to facilitate the installation of improvements and/or possible assessment districts is appropriate if it is consistent with the annexation policies of the Plan listed above.

Plans for the provision of services within the areas considered for annexation shall be carefully coordinated with the Capital Improvements Program of the City and the County.

SPECIFIC INFORMATION:

UTILITIES & SERVICES:

A. **Sanitary Sewer:** Sanitary sewer is available in the area and can be extended by the developer to serve this development.

B. **Water:** Water is also available in the area and can be extended as well.

C. **Roads:** The development proposes to take access off Ashbrook Drive, a local public street. Ashbrook is improved, and no additional improvements are anticipated as a result of this development.

D. **Fire/Police Protection:** After annexation, fire and police protection will be provided by Lincoln Fire Rescue (LFR) and the Lincoln Police Department.

ANALYSIS:

1. This request consists of two applications involving the same 15.81 acre tract of land. The first is an application to annex the parcel, and the second seeks to re-zone the tract from AGR to R-4. Both applications are associated with SP#13043 for the Broadmoor Ashbrook Apartments community unit plan. That permit is dependent upon the City Council approving both of these requests.

2. The Future Land Use map of the Comprehensive Plan designates Urban Residential Land uses for the subject property. The requested R-4 zoning allows for a range of uses consistent with that designation.

3. The subject tract is located within Tier 1, Priority A (Developing) of the Comprehensive Plan's growth tier map. The Plan states that Tier I reflects the "Future Service Limit," which consists of 34 square miles of land where urban services and inclusion in the city limits are anticipated within the 30 year planning period. This area should remain in its current use in order to permit future urbanization by the City.

4. These requests were reviewed by City staff including Public Works and Utilities, Health, Lincoln Fire Rescue, Police and Planning, and no objections to annexation were noted. If annexed, the full range of City services can be provided.

5. The Annexation Policy of the Comprehensive Plan outlines a set of criteria by which annexation requests should be evaluated. The subject tract is bounded by the city limit on three sides and so is contiguous, and can be provided the full range of City services, and meets the policy requirements for annexation.

6. The subject property is located within the Southeast Rural Fire District #1. Under State law, the District can petition for compensation from the annexing municipality for lost revenue based upon the amount of service area annexed. For voluntary annexations such as this one, any costs due to the district are to be borne by the developer. In this case, staff has conducted the financial analysis and there would be no money due the District due to their lack of bonded indebtedness.

7. Staff has been asked by neighbors in the area of this request whether R-4 zoning is appropriate for this site or not. The biggest difference between R-3 and R-4 zoning relates to the density that is allowed as part of a community unit plan under the Design Standards. Comparing the R-3 and R-4 zoning districts, the Design Standards allow 6.96 units per acre in R-3 versus 13.93 units per acre in R-4, where overall density is calculated using the total acreage of the land involved.

   R-4 zoning and the higher density allowed when compared to R-3 may not be appropriate in all cases, and the specific circumstances in each case are important. In this request, the total area involved is 15.81 acres, but approximately one third of the site is undevelopable due to wetlands, floodplain, and the dam breach area, and these areas

remain open. Also, the tract is adjacent to Highway 2 (a major arterial street), and has direct access to it via Ashbrook Drive which functions similar to a collector street in this area.

Additionally, this request provides another housing option in an area bounded by a church to the west, attached single-family dwellings in a CUP on the north, an older AGR-zoned CUP on the east with lots that more closely resemble an R-1-zoned neighborhood, and an office complex development to the southeast. So while R-4 zoning may not be appropriate located in the middle of an R-3-zoned neighborhood surrounded by single-family dwellings, it is compatible with the surrounding zoning and land uses at this location given the existing development pattern.

8. Both requests comply with the Zoning Ordinance and are consistent with the Comprehensive Plan.

Prepared by:
Brian Will, 441-6362, bwill@lincoln.ne.gov

September 4, 2013

APPLICANT: Bob Stratton
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Olsson Associates
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Lincoln, NE 68508
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ANNEXATION NO. 13004,
CHANGE OF ZONE NO. 13020
AND
SPECIAL PERMIT NO. 13043

PUBLIC HEARING BEFORE PLANNING COMMISSION: October 2, 2013

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

Staff recommendation: Approval of the annexation and change of zone requests; and conditional approval of the community unit plan special permit.

Ex Parte Communications: Corr disclosed that she did have a conversation with a co-worker who lives in the Pine Lake development, Sandy Peters.

Staff presentation: **Brian Will of Planning staff** presented the proposal on the three related applications: annexation, change of zone and special permit. The property is located a Highway 2 and Ashbrook Drive. With regard to the annexation, the property in question is currently surrounded but still outside the corporate limits. This property needs to be annexed to facilitate the proposed development. To achieve the requested density of 220 apartment units, the change of zone is required from AGR to R-4. Will focused on the key issues with this proposal.

Will showed the site plan submitted by the applicant showing five apartment buildings, parking areas, and garages. One of the first issues discussed by staff with the applicant relates to access. The site plan shows a circular driveway with two access points off Ashbrook Drive. Ashbrook Drive does go north and there is a potential route up Old Cheney Road as well as street connections through Edenton Woods to Northshore Drive, then continuing north and east to 84th Street. The issue related to access is whether the access shown is adequate, and in general terms, the more access points the better. To that end, there is a petition from the Pine Lake Association on today's agenda requesting to vacate the stub street, Pine Ridge Lane. When Pine Lake was originally approved, it had multiple stub connections to the edge of the development. In the broader context of reviewing these applications, staff is supportive of that vacation. This proposal does not accommodate making that connection, and it is not practical. Based on what is before us today, the staff is recommending approval. As an alternate connection in light of the street being vacated, staff had suggested that another connection could potentially be made through Eiger Drive. Staff was not suggesting a public street or private road, but a driveway would be adequate. That property is not controlled by this developer, but by Pine Lake Association. The staff report requires a condition of approval that this developer modify their site plan to show a driveway from their parking lot to the edge of the property so that some day a connection can be made. That connection comes down Eiger Drive and makes an important connection back out to 84th Street. It can be difficult making a left hand turn onto Highway 2 at Ashbrook Drive today. That connection is not in place; the easement has not been granted; but it is a condition of approval.

Will then addressed the issues pertaining to the Pine Lake dam, floodplain and dam breach area. There is floodplain to the north and the dam breach area, which are sensitive and need to be protected. The plan as shown shows minor encroachment into that and we have raised that issue and it will be need to be approved by the State.

In addition, there is some grading shown in the floodplain which will require a floodplain permit. There are multiple review comments from Public Works and those comments are included as conditions of approval in the staff report.

With regard to open space, Will explained that the northen 1/3 of the parcel is not being developed, so the floodplain and the dam breach area is not going to be developed and will remain as open space. The western strip along the dam on the western edge of Pine Lake is also open space. There is another outlot set aside as open space as well.

With regard to the issue of density, the question is whether R-3 or R-4 zoning is appropriate. Will pointed out that the community unit plan is by special permit, which is how apartments are allowed in the residential zoning; however, design standards specify the maximum amount of density that is allowed. Under R-3, the maximum of 110 dwelling units would be allowed. R-4 would allow 220 dwelling units, which is what is being requested today, maxing out the R-4 density. As staff looked at this location in the broader context, it is a property adjacent to Highway 2, a major arterial. To the southeast is the Southeast Rural Fire station and then the Pine Lake Plaza office development; to the west we have the Berean Church; and then the townhomes and attached single family residential development to the north. While it may not be appropriate to locate the R-4 density in the middle of a consistently R-3 neighborhood, there are locations where staff believes it does make sense and this would be one of those cases. Based upon the land use pattern and based upon the proposed site plan with 1/3 of the site being unable to be developed and essentially open space, the staff is recommending approval of the annexation and change of zone to R-4, and conditional approval of the community unit plan special permit.

Lust asked staff to address the concerns about increased traffic. Will stated that staff does not view what is being proposed as rising to the level of significant. He thinks the applicant does have a specialist in traffic that has done some analysis and may be giving some testimony in that regard.

Hove inquired how the dam breach area is determined and whether it can change. Will stated that it is determined by the State of Nebraska Department of Natural Resources. **Jared Nelson of Public Works** stated that the dam breach area is delineated when the dam is built; it assumes a worst case scenario such as a rain storm event in excess of the 100-year storm; it could change if the conditions downstream were to change; it could also change if the conditions upstream of the dam changed such as raising the dam and it impounded more water. The State of Nebraska evaluates the dam breach areas on a case-by-case basis. Because this development was proposed just downstream of the dam, Public Works asked that the state agency review it and approve it.

Beecham inquired whether the density calculations of R-3 and R-4 are based on the entire site or just the developable portion. Will stated that it is calculated on the entire area of the site.

Even though some of the property is not developable, all of the land is counted towards the density.

Corr wondered whether that is a standard. Will responded, "yes". This case is a little unique in the sense that it is a CUP only for apartments. Sometimes there is a mix of uses. There are two design standards that apply. One is the overall number of units you can have. If the developer is going to cluster the units and set aside some areas, they cannot cluster all 220 units into one acre. Overall there is a maximum density per acre. This proposal is at the maximum overall and what would be allowed in cluster density.

Proponents

1. Tom Huston, 233 S. 13th Street, Suite 1900, appeared on behalf of the applicant, **Broadmoor Development**. Broadmoor Development is based out of Omaha and develops multi-family properties primarily in Nebraska and Iowa, with three in Lincoln – Highpointe Apartments at 48th and Old Cheney; Old Cheney Apartments at 27th and Old Cheney, and Holmes Lake Apartments at 70th and Holmes Lake Drive.

The property that is the subject of this application is currently an irregular tract comprised of 15.88 acres. Huston's client has the property under contract. The developer has been in discussion with the Berean Church, which owns the 2.8 acre remnant directly west of this site, and Broadmoor owns the .2-acre site on the west side of Ashbrook Drive. These remnants were separated when the street was dedicated. This developer has an agreement with the Berean Church to exchange those remnants, with net increase to this developer of 2.6 acres. Huston suggested that this is not an issue of maximizing the density because if the developer controlled 18.4 acres, there would be over 250 apartments that could be built. The application is for 219 because that is the way the building is laid out.

Huston also submitted that Broadmoor has experience in this kind of product – it is non-subsidized rental opportunity that their experience in Lincoln indicates that more than 60% of the residents will be age 60 and over, consisting of retirees, empty nesters and young professionals. The developer had its first communication with the Pine Lake Association Board back in February before any design decisions were made. They then met with the general membership in April, and subsequently submitted this application to the City in July. As a result of those conversations with the neighbors, the developer came up with a variety of changes to try to address their concerns. For example, Pine Ridge Lane had originally been shown as a connecting street, and it was eliminated because of the potential traffic that would be generated going through the neighborhood. The city requires connectivity to neighborhoods, the connection to Pine Ridge Lane was eliminated and the developer is seeking a waiver of the city design standards for that purpose.

In addition, the side yard setback is required to be five feet. This developer has increased that to a 50 ft. no build zone and moved the properties to the west, resulting in moving the buildings down the hill, decreasing the visibility from Pine Lake and created a buffer/landscaping area with 100% landscape screen. A wrought iron fence was designed around the site in response to the neighborhood to impede any pedestrian trespassing. The developer has also agreed to implement a "no dog" policy because of the concerns of the neighbors. The developer has also

agreed to look at the possibility of some additional screening to the north in response to the neighborhood.

Huston stated that it is understood why the property should be annexed because it is an island. It is no longer rural; it is in the urban area and not appropriate for AGR zoning. The issue is the CUP and the density.

Huston suggested that the decisions on density are not made in a vacuum, but based upon sound land use principles in the Comprehensive Plan. The Comprehensive Plan also supports the land use in that it is adjacent to Highway 2 and is not conducive to single family development. Typically, multi-family is used to buffer single family between high intensity uses including roadways like Highway 2. The Comprehensive Plan identifies Highway 2 as a transportation enhancement corridor, which is an opportunity to increase density according to the Comprehensive Plan. This site is an infill development which has been identified as an opportunity at no cost to the city. The Comprehensive Plan focuses on the factors of higher efficient use of roadways and land.

Huston also pointed out that the parking on-site exceeds the city requirements; the street connection was moved at the request of the neighborhood; and the staff concluded that the R-4 zoning is appropriate based upon existing land use patterns.

Huston agreed that traffic is an important issue. He believes the site will work better once the intersection is signalized. The staff report indicates that this intersection will eventually be signalized. The CIP identifies this intersection for improvements in 2016. If this development is approved, the earliest construction would start in the spring of 2014, which is probably about an 18-month construction process through 2016 and 2017. Huston believes the timing will work. According to the impact fee schedule, this developer will be paying approximately $440,000. A traffic signal at this intersection will probably cost $150,000 to $170,000. Thus, there will be plenty of impact fee revenue to pay for the signal.

Huston then submitted a motion to amend Condition #1.1.4 of the special permit which deals with the potential for a connection road through the outlot owned by Pine Lake Association. This is a way to make sure there is access for eastbound traffic to get to 84th Street without having to go onto Highway 2. It would not happen without cooperation and consent of the Pine Lake Association. The existing language in the staff report for Condition #1.1.4 required construction of this driveway under any circumstances. The motion to amend puts a time frame on it. Huston believes that the staff is in agreement with this amendment:

~~1.1.4 Add a general note which states "Sidewalk and road extension of Pine Ridge Lane is waived provided that the developer is responsible for the construction of the driveway (with a sidewalk) to Eiger Drive once an access easement is obtained. However, the obligation to construct this improvement is contingent on the property being in open space use. If the property is approved for additional development, then the developer is not responsible for the improvement."~~

1.1.4 Add a general note which states, “Sidewalk and road extension of Pine Ridge Lane is waived provided that the Permittee is responsible for the construction of the driveway (with a sidewalk) to Eiger Drive if an access easement across Lot 42, Pine Lake Addition (“Lot 42") is obtained. If the owner of Lot 42 refuses to grant the access easement, the obligation to construct the driveway expires upon the 10th anniversary of this special permit. The obligation of the Permittee to construct this driveway is contingent upon Lot 42 being used as open space. If Lot 42 is approved for additional development, then the Permittee is only responsible for the construction of the driveway on the project site for which this CUP is approved.

Huston then submitted that by moving the buildings west, they are taking advantage of the height differential. Huston believes the existing trees are 20 feet tall. From an environmental perspective, the developer will not be building in the floodplain or floodway; two corners are in the dam breach impact zone but that is being worked out with the State. Huston also observed that the exchange with Berean Church will provide an additional 2.6 acres that will be subject to a conservation easement with the City. The reason for this negotiation with the Berean Church is to square the boundary lines, and it make sense to include that remnant within the conservation area for this development.

Hove asked about the fence. Huston stated that it would run the entire perimeter. They are trying to redirect pedestrians away from the lake out of concern for the neighbors. The 50’ buffer is the entire span of the east border. There will be no construction activity in the wetlands or the tree stand. There will be no impact to the wetlands.

2. Shane King, Traffic Engineer with **Olsson Associates,** 1111 Lincoln Mall, shared trip generation numbers as follows:

220 units: 110 during am peak hour (20 enter and 90 leave)
140 during pm peak hour (90 leave and 50 enter)

The general principles of circulating traffic show that people select the path they feel is safest and with the least delay. Under the current condition, it is more difficult to make a left turn from the minor leg during peak hours. At this location along Highway 2, those delays are reduced with a traffic signal. The peak hours vary intersection-to-intersection, typically 7:45 to 8:45 a.m. and 5:15 to 6:30 p.m.

Beecham asked how a traffic engineer comes up with that calculation. King advised that the Institute of Transportation Engineers has a trip generation manual which is used nationwide. The rates are set forth, identifying the land use, and then it uses a variable (in this case the number of units). Based on past data collection, it provides an average rate per dwelling unit. It also has a ratio for entering and exiting.

Sunderman wondered if King could guess how many trips will go north through the neighborhood. King suggested that to truly identify something like that would require more of an origin/destination study accomplished by polling some people. Given the constraint of certain movements on a minor leg, it is difficult to project.

Opposition

1. Bill Austin, 301 South 13th Street, Suite 400, appeared on behalf of the **Pine Lake Association,** along with Bill Janike, President of Pine Lake Association. Pine Lake Association is not opposed to the annexation of the 15.1 acres. Pine Lake Association is not opposed and understands that this tract will and should be developed in some form of urban density, but Pine Lake Association is opposed to the R-4 zoning coupled with the CUP that would allow this property to be shoe-horned in with some 220 dwelling units on 10 usable acres of the tract. While R-4 may be in conformance with the Comprehensive Plan, Austin posed the question: The Comprehensive Plan says that this property is supposed to be zoned to urban residential density. That can be anything from R-1 to R-8. What makes sense for this piece of property? It is incumbent upon the applicant to convince the Planning Commission that R-4 is appropriate for this property. Merely because the developer wishes to maximize profits is not a reason to maximize density. Austin stated that he has not heard anything today that would convince him that R-4 is appropriate for this tract.

Austin went on to state that until about 10 years ago, the Pine Lake area directly to the east was a separate governmental entity, SID #2, developed in the 1960's. At that time, Pine Lake was developed as AA zoning, now AGR zoning, 1-acre tracts, with density combined to allow a number of amenities including the golf course and the lake. It is all single family large lot dwellings. The land immediately to the west was sold to Livingston Development in 1998, for about $300,000, zoned AGR. Since that time, the property appears to have benefitted from a greenbelt designation, giving it a tax basis of $50,000 in special agricultural valuation.

Austin submitted that zoning is intended to apprise the neighbors of what the future adjacent development might entail. It was originally thought that this property would be developed as large lot single family dwellings. The city grew and Pine Lake is now inside the corporate limits and it is designated as urban density residential. Reasonable people might assume that this pattern of development would continue; however, neighbors would not anticipate or contemplate a proposal asking not only for R-4, but coupling it with a CUP, the provisions of which would support high density 3-story apartments. R-4 is intended to provide a stable area of 3-5 dwelling units per acre. Under the provisions of this CUP, there will be 13.93 dwelling units per acre. If the property were zoned R-3, it would be allowed 6.96 dwelling units per acre, or 110 units. These design standards were not contemplated with the idea of maximum development. They were intended to take a look at abutting land uses, open space, and the size of the buildings. The design standards do not say that the city will grant the calculated maximum density. There is nothing that justifies the R-4 zoning in this circumstance. This is not a PUD. This proposal virtually maximizes the density that could be available. It is not compatible with the development around it. The R-4 and CUP are inconsistent with the R-3 and AGR zoning surrounding it. The open space is a dam breach area, flood corridor area, floodplain, and wetlands. This has none of the amenities contemplated with a true CUP with a mix of uses and residential.

The staff report even states that the R-4 higher density may not be appropriate in all cases and Austin challenged the Planning Commission to find in paragraph 7 a rationale that convinces them that R-4 is appropriate versus R-3. The fact that you have to cluster the units is not a basis for asking for higher density. The extra acres gives the advantage of clustering. The fact

that this is adjacent to Highway 2 is not a good reason. There are all sorts of properties that are adjacent to Highway 2 that are not zoned R-4. This is too many units. R-3 zoning is appropriate and a development of 110 units would be appropriate here, avoiding the traffic concerns.

Austin also pointed out that the staff report even mentions that a second access would still be desirable. Despite the traffic engineer's statements, Austin suggested that the fact of the matter is that there will be 300-400 cars on this site, and taking this traffic into the neighborhood is inappropriate.

Lust asked if 110 dwelling units is acceptable to the Pine Lake Association. Bill Janike, President of Pine Lake Association indicated that they would not object to the R-3 zoning.

Lust wondered whether there is a number between 110 and 219 that is acceptable. Austin stated that he would be concerned about how to get to any other number in between. Even a CUP with R-4 showing 125-130 units could be amended in the future. The protection is the actual zoning designation.

Corr confirmed that Pine Lake Association is okay with 110 apartments. Janike stated that every discussion by the board is that we know this property will be developed. We object to the R-4 but do not object to R-3. Corr made sure it was understood that R-3 would still allow apartments. Austin believes the Association understands that. By raising the development to 40', it will be just a little higher than the two-family dwellings on the other side of the dam. Maybe they could do two stories with 110 units.

Janike stated that there are 130 homes in Pine Lake. The discussion amongst the Board has been that we know this is going to be rezoned and we will not object to R-3 zoning. We object to the density of R-4.

Beecham asked whether Pine Lake has discussed the stop light. Janike acknowledged that the Board has discussed the possibility. With 400 parking spaces, having seen how streets open up and how people travel, we know that when people want to go to a certain place, such as WalMart or to Omaha, they don't get on Highway 2 and go southeast to go north. They go through Pine Lake. The Pine Lake residents go through Edenton South to get to 84th Street or 70th Street. He is convinced that a stop light will not solve that problem. People will go the quickest and shortest way they want to go and they will not go to Highway 2, whether there is a stop light or not.

The first homes were built in the Pine Lake area in the early 1960's.

2. Bill Janike, President of the Pine Lake Association, submitted a resolution passed by the Board of Directors of Pine Lake Association expressing opposition to the proposed development, and, specifically, that,

> The request for R-4 Residential zoning with the attendant ability to construct 219 dwelling units would allow development at a greater density level than is reasonable and appropriate for the subject property. A development of 219 dwelling units it out of

character with the development of adjacent properties that are zoned AGR and R-3 Residential. The development at the proposed density would cause an undue burden upon the roadway system within and adjacent to the proposed development.

Janike further pointed out that Pine Lake does not belong to the Pine Lake residents. Pine Lake is a part of the City of Lincoln, but also unique in some ways. The roads are narrower than in many neighborhoods. There are no street lights or sidewalks. There is a lake with a road that goes over the dam at the west end of the property – that is a narrow road that currently is at capacity. Pine Lake wants to continue to be welcoming to people who want to walk the area. There are trails and common areas. The Pine Lake residents want to continue to be welcoming and not restrictive; however, when you have a lake and narrow roads without street lights or sidewalks, there is some risk and some danger that needs to be considered.

Janike then referred to the "Taking Charge" survey reported upon by the Lincoln Journal Star on September 20th. The top concerns of the 1200 participants are safety and security and livable neighborhoods. Janike believes that the Association's concerns are legitimate with the R-4 zoning. R-3 is acceptable.

3. Jeff Petersen, Executive Pastor of **Lincoln Berean Church,** testified in opposition. The Berean Church has enjoyed a wonderful 51-year history with the City. 32 years ago, the Berean Church (Church) moved from downtown Lincoln to a dirt road on 70th street in a milo field. The Church is now the neighbor immediately to the west of this proposal and feels like "the partner left out of the conversation". No one from City Planning has spoken to anyone with the Church. Pastor Petersen stated that the Church is not rising to oppose the development because they desire to be a good neighbor; they understand there are very complex issues; they are supportive of the neighbors to the east, Pine Lake Association; new neighbors to the east (Ashbrook Drive) also have legitimate concerns; and the Church cares that Livingston has had this property and wants to see it developed. The Church does, however, have some concerns.

Petersen highlighted the Church's concerns. On any given weekend, there are between 4,000 and 5,000 people who will be on the Church campus, bringing traffic dynamics to bear. The Church is growing every year, and our city is growing. Eventually, the Church's master plan allows for potential growth to a weekend of 14,000 people on the campus.

The issues of the Church include safety related to the intersection at Highway 2, which is used by the Church on a daily and weekly basis. Turning left off Ashbrook Drive onto Highway 2 is simply unsafe. They have been seeking a stop light for some time.

About 8 years ago, the city came to the Church explaining that neighborhoods have to have two connections to arterial roads. At that point, Hunters Ridge was being developed and there was concern for egress access for Hunters Ridge. What was decided by the city was to take the Church's property and create Ashbrook Drive. In 1999-2000, the Church built and paid for a four-lane access/driveway. Then the city came and said that they need to build Ashbrook Drive for Hunters Ridge to have a southern egress. The Church did not desire to lose the land because it would bisect their land, but the Church wanted to be a good neighbor and worked it out with the City. A big concern was cut-through traffic. People will go the easiest and safest way. When Ashbrook Drive went through, the egress was through the Church's property.

Adding 220 units, with really only one access on the west at Highway 2, will bring the traffic through the Church's property, that being the easiest and safest way. This is already taking place. The city did try to work with us to mitigate this concern. Safety, security and maintenance are issues to the Church. The Church could put up gates and close the property, but they have a rich and long history of being in this area and want to be open to the community. They do not want to send the message that says the Church is closed. No solutions have been brought forward to mitigate this concern. Nothing has even been discussed in terms of mitigating the Church's concerns.

Pastor Petersen acknowledged that the developer has been very good in meeting with the Church. The Church inquired about a maintenance escrow but the developer was not interested.

Beecham inquired as to the days and time of the activities going on at the Church throughout the week. Pastor Petersen stated that on any given weekend, there are about 4,000-5,000 people on the campus. There are Saturday night services at 7 p.m. The senior high youth ministry meets on Sunday night, adding about 300-400 drivers. He believes the highest volume is Sunday and Wednesday night. The Women's Ministry meets on Tuesday evenings; College Ministry on Thursday evenings; and an addiction recovery program on Friday evenings. There is traffic flowing in and out of the property seven days a week. On Wednesday's people start arriving about 5:00 p.m. and leave around 9:00 or 10:00 p.m.

With regard to the property to the west of the Church, Beecham asked whether the Church has any plans for that property in the next 10-20 years. Pastor Petersen advised that they currently have a nature trail that is undeveloped. A lot of the expectation for the future will be parking in the outer lots. The Church lost a lot of the road and property on the west side when the city made improvements to the intersection of 70th and Highway 2.

Scheer inquired as to the anticipated growth of the church from 5,000 or 6,000 to 14,000. Does that mean that the Church will have either more, or more and continuous kinds of activities and services, or is it more and possibly bigger? Will the facilities grow? It does have an impact on the future traffic patterns. Pastor Petersen indicated that the Church outgrew the facility immediately, so in 2007, they opened the newest auditorium and did it in a big footprint so that they could grow into it. The youth complex also has considerable unused space. The greater the size, the greater the complexity of issues. It is a 7-day ministry center and will continue to grow.

Weber noted that Ashbrook Drive crosses the Livingston property. Pastor Petersen said that they did work with Livingston and had an easement. The city built the connector and it all became Ashbrook Drive, and the city now has the easement that crosses the Livingston property. There are some wetland dynamics that the road needed to follow instead of going straight.

4. Jonathan Hoesch, 8101 Dougan Circle, testified in opposition. He moved from Texas a year ago. He chose Pine Lake because it is such a beautiful single family area. Increasing this traffic will be very dangerous and cause a lot more problems. He is concerned about safety with children getting into the lake area. A fence is not going to provide any kind of determent. There

will be more sound and traffic. In his opinion, a traffic light is not going to help. If you put the maximum of anything into a situation, you are going to have issues. Hoesch had assumed that the subject property would be developed as townhomes or single family homes in R-3 zoning, but going beyond that will be a big question mark for him. Access to the lake and the liability issue is a big concern.

5. Nick Cusick, 6400 Westshore Drive, testified in opposition. He has been a resident of Pine Lake since 1967. He is not opposed to development of this property. He is pro-growth. He recognizes what Lincoln can and needs to become. The Chair of the Pine Lake Association was in charge of the asphalt placed on the dam road in approximately 1980. The road was asphalted without a permit against the wishes of the engineer on staff and it has lived there ever since. It is very dangerous. It seems as though the requirement by the staff for the developer to build out the connection to a potential future street or road or pathway or trail presumes that that will ultimately be built. He is opposed to that. He also believes that the Southeast Rural Fire District is opposed. It would be a nightmare for a traffic pattern onto Highway 2 and Eiger Drive. That recommended connection is inappropriate.

Cusick was curious about the concessions of the developer to allow for the 50' setback and various screenings. How did we get from 35' to 40' in height? Was it necessary to allow for that exception? We have all seen promised landscape screenings that became dead or not maintained or unmanageable or unsightly. Nothing here guarantees that the trees will live and be maintained, resulting in nothing more than an eyesore for Pine Lake.

Beecham asked Cusick to address the horse stables. Cusick does not anticipate any change. They are fully occupied. The neighborhood was established as a horse community and there are riding trails all the way around the community through all kinds of areas.

Hove asked how the apartment dwellers would access the dam road if there is a fence and the 50' buffer. Cusick stated that there was discussion previously about the path of least resistance. If going north on Ashbrook Drive, connecting up through the development to the north, one possible likely quicker route is to take the connection on the north side of the waterway below the dam and connect directly across the dam onto Westshore Drive and onto Eiger Drive. He believes that would be the path of least resistance for the apartment dwellings. They would go north from the Broadmoor Development on Ashbrook Drive as opposed to going south to the highway; and then instead of continuing north and weaving through the neighborhood or going through the Berean property, they would cut across and head back to the south and go on Westshore Drive. The dam road is the extension of Westshore Drive between Westshore Drive and Northshore Drive. Given the traffic issues and the potential solutions, if Cusick was a developer, he would question whether it is a good investment to develop this as a multi-family unit location.

6. Joel Geyer, 7805 Northshore Drive, testified in opposition. He discussed the sense of humanity and the lifestyle of the Pine Lake area. There are no sidewalks in this community so people walk in the street, and they can do so because there is not that much traffic. He is a capitalist and if he had the money to invest, he suggested that the developer has put together a very compelling package; however, he is not in favor.

Will the apartments be part of the "sense of community" or are we going to build berms and fences so that they do not mingle? He does not think so. Geyer talked about the picnics and how the neighbors gather and help each other out. The kids are riding their bikes to the lake area on the dam road. It is a community where people know each other and help each other. He suggested that the people who move in and out of apartments are not invested like the Pine Lake residents. He invested in Pine Lake because of the quality of life and the community. What we have here is a tension between capitalism and community.

7. Bob Moodie, 6510 Ashbrook Drive, appeared on behalf of the homeowners in **Edenton Woods.** in opposition. Edenton Woods consists of the homeowners along Ashbrook Drive up through the intersection on Bo Creek Bay and Bo Creek Court and extending up Ashbrook Drive to Edenton Park. 41 units are already constructed, with another 29 units planned, platted and under construction on Camellia Court. Approximately 15 people stood in the audience in support of Moodie's testimony.

Moodie shared photographs of traffic at the intersection on Sunday when the Church is letting out, showing how much traffic backs up in the left turn lane and in the right turn lane. When traffic backs up in this manner, it does divert itself and he saw two cars pull out of the traffic and do u-turns and proceed back up north through the neighborhood.

Moodie also shared a map showing the traffic patterns he perceives with the proposed development. People traveling through the Berean Church parking lot will then head north on Ashbrook Drive connecting with Stevens Ridge Road working out to 70th Street, or they will work their way out on 77th Street up to Old Cheney Road, or finally they will turn on Northshore Drive, taking them into the Pine Lake area, where they will either proceed on Northshore Drive or will go across the dam road to Eastshore Drive and exit there. Traffic is a problem. The staff seems to dismiss these traffic concerns in their report with the mere suggestion that it is not going to be excessive. There will be 350-400 cars all wanting to leave and enter at the same time. The u-shaped drive is a legal fiction to get around the notion that you have to have more than one exit and entrance. The S-shaped curve restricts vision and there is also a hill which crests.

Moodie submitted that traffic should be enough of an issue to deny the change of zone and the special permit, but at the very least before approving it, there needs to be a much better traffic analysis.

Moodie also suggested that this is a very bad example of land use planning. He showed other areas with many other multi-family developments either in the planning stage or construction stage or already constructed. This proposed development is not needed in this area for multi-family dwellings. The other areas were planned, platted and developed with the idea that streets could be installed or approved to accommodate them; they were planned with multi-family in the core, then mixed use dwellings around it, then single family dwellings after that, so that anyone buying into these neighborhoods knows what they are investing in. That is not what happened in this case. This property owner did not do a master plan.

Moodie then suggested that the better argument is, why should it be done? That is the question that the Commission should consider in deciding whether this should or should not be allowed.

This proposed development asks the Moodie and his neighbors to sacrifice the investments that they have already made. Moodie requested that the Planning Commission deny the zoning change and the special permit. In the meetings that were held, Edenton Woods residents acknowledged that development has to take place; Edenton Woods is zoned R-3. They would have a hard time arguing against R-3, but they would need to see the plan.

Moodie submitted a letter from the officers of the Edenton South Neighborhood Association in opposition.

Beecham inquired how far the traffic backs up. Moodie took the pictures about in the middle of the S-curve, and the traffic was backing up 10 and 12 cars deep on the left hand side and the traffic backs up on the right hand side as well, and at times even further.

Beecham noted that there is a park bordering Ashbrook Drive. Moodie stated that the park was designed to be a neighborhood park. He believes the traffic may overwhelm the park is this development is approved.

7. Jim White, 6339 Bo Creek Court, testified in opposition. He lives on the property which backs up to the creek that flows through the area proposed. When it rains, all the rain from Edenton South comes rolling down well into his back yard. He is worried about the runoff and the environment. If you take that hill away, it will never come back. The wildlife that we witness will never come back.

8. Mike Poskochil, 6725 Eastshore Drive, east side of Pine Lake, testified in opposition. He pointed out that there are two sites currently within ½ mile of this site zoned R-3 under construction for apartments at 84th and Highway 2, the corner of 84th and Cheney Ridge next to Lincoln Christian; and Faith Bible Church on the south (also zoned R-3 and currently owned by the Schleich family and zoned for apartments). There are other apartment sites in this area which have been built recently. R-3 zoning is being used for apartments within ½ mile of this site.

Poskochil does not believe that the “no dog” policy is enforceable by the city on private property. Who will enforce the fencing? As far as living next to Highway 2, Poskochil pointed out that Artisan Meadows is next to Lowes and they abut Highway 2. He believes that this property has a great use under R-3 zoning, like the property abutting to the north. All of the parking lots for Berean Church are on the east side and the traffic will flow on Ashbrook Drive.

In the late 1990's, Poskochil walked the site with the present owner to assess the value of the land being purchased. At that time, it was priced based on single family lots and/or townhome lots. He was not involved in any matter beyond the value. The applicant had owned the property for 15 years. At any time the owner could have applied and annexed under R-3. In this case, it is a situation where someone must have made more money than the neighborhood thinks that they should. Traffic and safety are big issues. He lives on the lake. He is concerned about the liability because there is no way to enforce trespassing.

9. Bob Olson, 8001 Dougan Circle, since 1997, testified in opposition. The traffic concerns and the crush of humanity on that side of the neighborhood is plain obnoxious because it does

not fit with anything going on in the area. He showed photographs of the dam road and reiterated that Pine Lake does have a lake and a beach. The road is single surface asphalt. It is not meant for heavy traffic. The whole neighborhood consists of beautiful homes at least 30 feet apart. They do not need any more people on the beach. Pine Ridge Lane goes to the stables. If that is opened up with 400 people just over the hill, it will be their escape route. Pine Lake is on a quarter section of land. This proposal is on 16 acres, or one-tenth of the area of Pine Lake. Pine Lake consists of 131 homes. The proposed development will have 90 more units than Pine Lake. There are 300 residents in the entire Pine Lake neighborhood.

10. Pam Gannon, 6501 Eastshore Drive, testified in opposition She has been on the Board of the Pine Lake Association over the years and was there when they entered into the annexation agreement with the City. Pine Lake has worked to make sure they have their two access points (as required by the City). The access point at Northshore Drive is the main concern. This area is not the normal area because it is a highway. Traffic is constantly busy. It is hard to get onto Highway 2. She cannot even be in the front of her house on Sunday morning when the traffic from the church is so steady and you cannot cross the street. Opening up Northshore Drive has really changed the dynamics. The Association is responsible for the liability of the lake, but what recourse do they have if there are people using the lake and beach other than Pine Lake residents? They prefer not to call the police. They do not want to be exclusive but be responsible homeowners, be good neighbors, and maintain the quality of life.

Gannon reiterated that the Pine Lake residents know that the subject property needs to be developed, but she requested that the Commission be respectful and look at the R-3 as being much more viable for all the neighbors.

<u>Staff questions</u>

Lust confirmed that there will be an additional 2 acres on this parcel pursuant to the land swap with Berean Church. Will stated that the staff has not seen those plans. With the addition of 2 acres, Lust wanted to know whether the R-3 allows additional dwelling units. Will stated that it could. Corr suggested that 2 additional acres would allow about 18 more units (118 in R-3). Will stated that the applicant will need to amend the boundary of the special permit if that additional two acres is included. Corr then suggested that if the property is zoned R-4, the additional 2 acres would allow an additional 36 units (256 in R-4).

Beecham asked for an explanation of the greenbelt designation. Will stated that this refers to the rate at which the county assessor applies property taxes, something lower than without the greenbelt status.

Beecham inquired whether anyone at the NRD or City has addressed potential environmental concerns about this development. Will observed that Public Works reviews the application relative to the grading and drainage plan and runoff. The city does not review in terms of wildlife.

Hove asked for the number of apartments that are zoned R-4 in the area. Will talked about apartment developments in R-3 zoning:

84th and Old Cheney Road - 200 units on 8.9 acres, R-3 zoning (22.5 du/acre)

Savannah Pines (40th & Pine Lake Road) - 232 apartment units on 6 acres, R-3 zoning (38 du/acre)

Highpointe (45th and Old Cheney Road) - 182 units on 12.7 acres, R-3 zoning (14 du/acre)

Rockledge (part of a larger PUD at 84th & Old Cheney Road) - 210 units over 9.6 acres, R-3 zoning (22 du/acre)

Van Dorn Meadows (70th & Van Dorn) - 324 units over about 22 acres, R-3 and R-4 zoning (15 du/acre)

The Springs at Heritage Lakes - 270 units over 11 acres, R-5 zoning (22 units per acre)

Grand Terrace (84th & Highway 2) - 200 units on 11.3 acres, R-3 zoning (18 du/acre)

For comparison, what is being proposed today is 220 units over 15.8 acres (14 du/acre). Looking at the relative density, a lot of the other complexes are part of a larger CUP with single family and attached single family, where the excess density supports those apartments. Most of them would not be allowed as stand alone apartment complexes in R-3 zoning.

Beecham wondered why the parcel being proposed for annexation was not included previously. Will advised that annexation is usually requested by the owners of the property or by the city. This applicant neither asked for nor was there a reason on the part of the city to annex.

Putting aside the change of zone and CUP, Lust asked whether the city staff supports the annexation. If it were a stand alone annexation, Will did not know. The staff would need to discuss that. Usually there is some intended purpose. Taking the change of zone and special permit away, it may not meet that purpose.

Beecham asked whether there have been any comments from the Southeast Rural Fire Department. Will state that there are none.

Response by the Applicant

Huston stated that his client does not envision this development as a huge detriment to any neighborhood. His client has three projects in Lincoln with similar density, on major arterial streets, and they function very well. They have a community. They have residents that have been there a long time. This applicant does not want to have a detrimental impact on anyone. If there was a master plan, we would not be dealing with this parcel. The only guide that we have is the Comprehensive Plan, which does focus on increasing density. That is the only issue. The Comprehensive Plan also focuses on infill development. There are no additional

infrastructure costs. This proposal maximizes and uses the infrastructure that exists with the most efficient land use available.

Huston went on to state that this applicant is also trying to be cognizant and respectful of the neighborhood. In broad terms, Broadmoor has been a long time investor in the city and wants to continue that investment to enhance some opportunity for other people. The Comprehensive Plan goal is housing diversity - provide all types of housing in any given neighborhood.

Huston agrees that there are traffic considerations, but he does not believe it will be to the extent that some fear. This developer has a lot of faith that a new traffic signal will be the magnet to attract traffic out onto Highway 2. This intersection is the ½ mile line between 84th and 70th and is appropriate for signalization. Huston submitted that the traffic light will answer a lot of the questions.

With regard to the proposed connecting road, Huston pointed out that this developer does not have to build it, just show on the site plan how it can be located at some point in the future. It does not happen without the consent of a lot of different people.

As far as infiltration of traffic north and east, again, Huston believes that the traffic light will draw traffic out. Those are publicly dedicated streets. We cannot prevent people from driving on them. The applicant supports the vacation of Pine Ridge Lane.

Huston also suggested that we all knew this would happen when the Comprehensive Plan was adopted. The Planning Commission and City Council have acknowledged that. But that does not mean that we have to ignore the guidelines and objectives stated in the Comprehensive Plan.

Lust stated that one of the things that has some sway with her is, why does this need to be R-4 when everything around it is R-3? Huston suggested that it is more important to focus on the number of units per acre. It is a fair comparison. You can do a CUP with all the surrounding ground, and because of drainage ways and private streets you can capture a lot of density. The staff's analysis focuses on the number of units per acre. R-3 is half of R-4. His client builds multi-family properties. He does not build townhomes. This site is appropriate because of the Comprehensive Plan.

Corr expressed concern about the increased height adjustment, with the staff report stating that the tops of the apartment buildings are not significantly higher than the homes in Pine Lake. What does "significantly higher" mean? Huston offered that the garages will be located at a level 27 feet below the dam road level. That is a significant grade differential. If you do the math, if there is a rooftop that is 40', obviously there is potential that it could be 13' above the base level of the dam road.

Corr asked why the dog ban is for only three years? Huston did not have an answer, other than it is difficult for the city to support and enforce. The applicant would be willing to consider a longer policy. However, Broadmoor does have a retired couple with a small house dog and we don't see how that presents an issue.

Beecham inquired about the visual of the fence. Huston stated that a wrought iron decorative fence has been suggested. It is not designed to keep people in or out but to provide some barrier. He assured that it will not be a wooden stockade fence or something that requires a lot of maintenance or looks ugly.

Hove inquired whether the applicant has any documentation on the average stay of residents in the apartments. Huston does not believe a specific count is available but Broadmoor has had many long term residents that stay in their units 10 plus years. The demographic shows 60% being 60 years of age and over, which indicates long term stable tenants.

ANNEXATION NO. 13004
ACTION BY PLANNING COMMISSION: October 2, 2013

Sunderman moved approval, seconded by Hove.

Sunderman pointed out that this 16 acres is pretty much surrounded by the City and Highway 2, so it is appropriate to be in the city.

Lust agrees that the annexation is really noncontroversial.

Motion for approval carried 8-0: Corr, Beecham, Weber, Scheer, Hove, Sunderman, Cornelius and Lust voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 13020
ACTION BY PLANNING COMMISSION: October 2, 2013

Sunderman moved approval, seconded by Cornelius.

Sunderman believes R-4 zoning is appropriate for this area because it is separated from the Pine Lake area. There are no direct connections. R-3 to the north is wetlands and floodway that will separate and buffer; to the west is the church which is a heavy user of the facilities. His concern basically is traffic but he does not believe the traffic will affect the neighborhood that much. He believes most of the traffic concerns come from the church when they exit and leave or arrive, and Sunderman believes the traffic issues will take care of themselves when Highway 2 is signalized. If he were headed east, Sunderman would go Highway 2 west down to 70th Street to Pine Lake and then around. He drove this area and had no problems. If he were going west, Sunderman would definitely take Highway 2. He would not go through the neighborhood. He just does not think there is enough traffic to make a difference.

Scheer heard comments about there being tension between capitalism and community, and tension between timing and the Comprehensive Plan. He thinks there is tension on this site because of the Comprehensive Plan and the goals that are built within the Comprehensive Plan. He would support this motion if the only goals in the Comprehensive Plan were things like land use, future growth, density, etc. He would oppose this motion if the only goals were things like one community, quality of life, healthy communities, and environmental stewardship. Scheer stated that he can't get past how those items within the Comprehensive Plan affect this site and how we are trying to determine what the appropriate capacity for development is on this

site. When he looks at this site, it is 10 usable lots, not 15. He would love to be able to review this as 10 acres in terms of a R-3 analysis. 219 units on this property seems overkill, but something in the range of 125 units seems appropriate. That's how he can resolve the tension within the Comprehensive Plan and what the Planning Commission is supposed to be trying to determine. He will not support the change to R-4, but could support something more than R-3.

Corr commented that she followed a similar approach to Scheer. She has a hard time including the approximately 5 acres that is not developable in the density calculations. It just seems like we are packing so much into this little piece of land. She sees Pine Lake as zoned R-1, which is the least dense, and this applicant is requesting R-4. That's a huge jump, especially when other areas around it are zoned R-3. She cannot support the R-4.

Beecham stated that she still has real concerns about this area regarding the traffic. This area needs to be reviewed for a potential traffic light. And hearing from the Berean Church only increases her concerns. In regard to the Comprehensive Plan, Beecham believes it is important, but it is not the law. The Comprehensive Plan is a guideline. It does not mean that one size fits all. When the Comprehensive Plan talks about infill, it also talks about preserving character of existing neighborhoods. Pine Lake is an existing neighborhood; it is about 50 years old; she would have problems putting R-4 next to R-1 in this area because she thinks it will impact the characteristics of Pine Lake. She cannot support the R-4, but she would be open to R-3. She likes the idea of putting the development closer to the edge and not in the middle of a neighborhood.

Weber agreed that the density is a little bit much for the area and he could support R-3.

Cornelius stated that he is very in the middle of what Scheer said and what Sunderman said. He found the analysis of the traffic to be pretty good. He does not think that the impact of the traffic of a higher density development would be so very great, especially in terms of the traffic on a Sunday evening. He considers the sheer of uses – he would like to see a slope rather than a steep drop-off. While he was surprised to hear the neighbors say they would be happy with R-3, he finds that that is less of a sheer for himself. He will not support the motion.

Hove observed that this has been a very emotional issue for a lot of people. He has a hard time with "not in my back yard." We all need to welcome each other. He is sensitive to the traffic issues, but he thinks that we, as developers and planners, have to look at what's best for the city and he intends to support the motion.

Lust acknowledged that this has been a very hard decision for her. The Comprehensive Plan encourages denser development, and we knew when we went through that process over 18 months ago, that denser developments will have opposition. Every time there has been a major apartment complex proposed, we have had neighborhood opposition. But once the apartments have gone in, she believes people have found them to be good neighbors and the traffic has not increased. She was somewhat swayed by the argument that R-3 is more appropriate in this area, but she also believes that when we consider the credits developers typically get in the R-3 CUP, they typically end up with more dwelling unit density in the apartment area than what is being proposed here. The fact that this property is along Highway 2 actually makes apartment

dwelling units a good buffer to the commercial and traffic that is along Highway 2. While this was a difficult decision, and while she understands all of the concerns, she will support the motion.

Motion for approval failed 3-5: Hove, Sunderman and Lust voting 'yes'; Corr, Beecham, Weber, Scheer and Cornelius voting 'no'.

Cornelius moved to deny, seconded by Corr.

Corr wondered about amending the change of zone to R-3, but then that leaves the question of what the CUP looks like. We have no testimony from the applicant about how they would design the plan under R-3 zoning. We have mixed opinions from the neighborhood. Marvin Krout approached and suggested that amending the application to R-3 is premature at this time. The applicant could amend the application after this hearing if they so choose.

Motion to deny carried 5-3: Corr, Beecham, Weber, Scheer and Cornelius voting 'yes'; Hove, Sunderman and Lust voting 'no'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 13043
ACTION BY PLANNING COMMISSION: October 2, 2013

Cornelius moved to deny, seconded by Corr and carried 5-3: Corr, Beecham, Weber, Scheer and Cornelius voting 'yes'; Hove, Sunderman and Lust voting 'no'. This is final action, unless appealed to the City Council within 14 days.

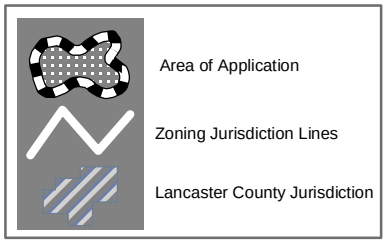
2010 aerial

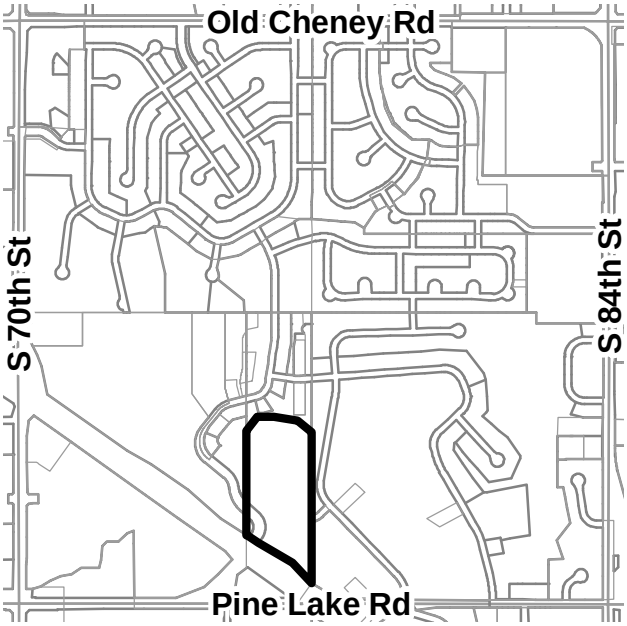
Broadmoor Ashbrook Apartments
Annexation #: AN13004
Change of Zone #: CZ13020 (AGR to R-4)
Special Permit #: SP13043 (CUP)

Zoning:

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

One Square Mile:
Sec.15 T09N R07E





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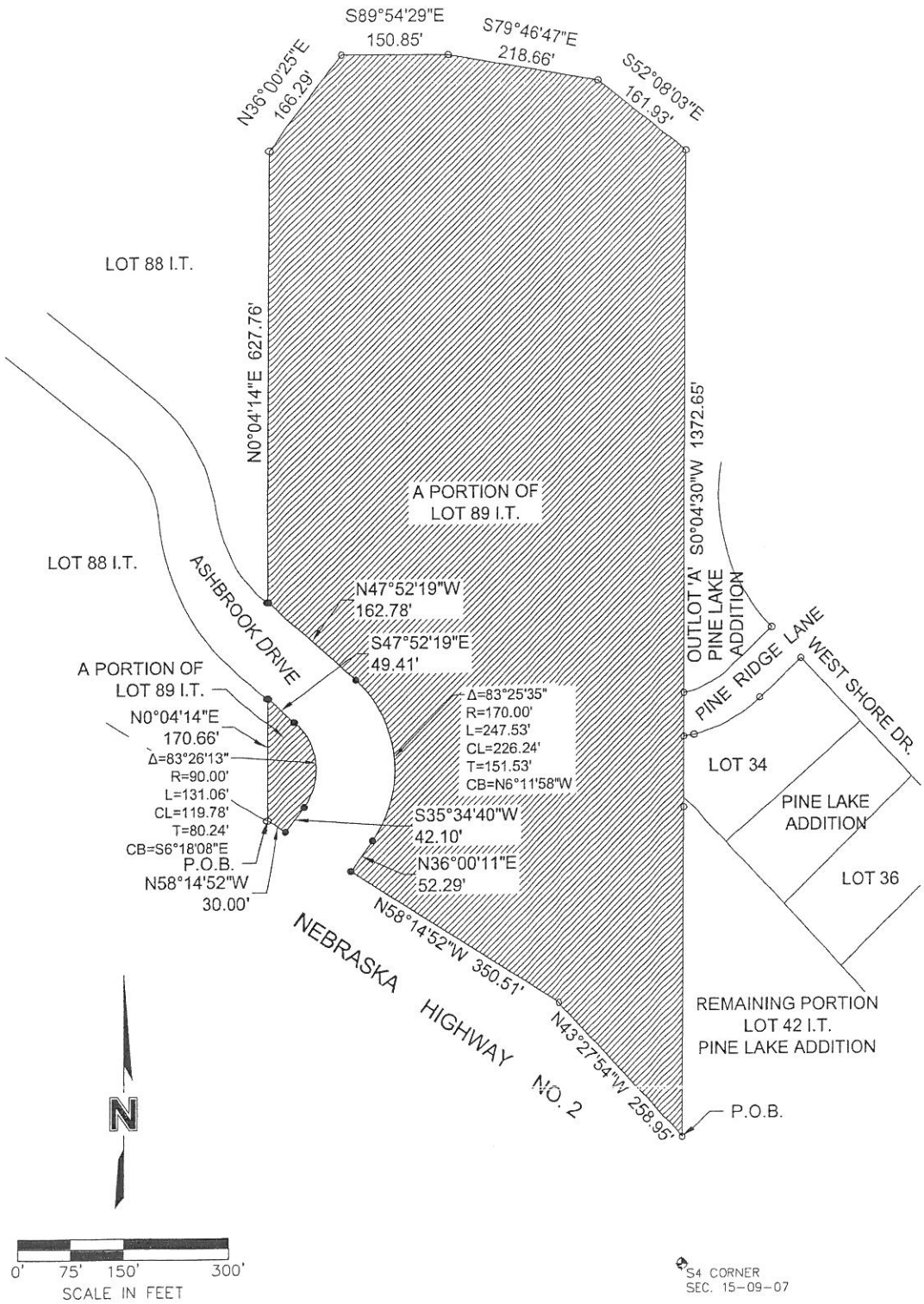

DWG: F:\Projects\012-1233_SRVY\MasterXrefs\Plats\Drawings\012-1233_CUP-ANNEX-COZ.dwg USER: mjohnson
DATE: Aug 15, 2013 9:41am XREFS:

PROJECT NO: 012-1233	COMMUNITY UNIT PLAN, ANNEXATION AND CHANGE OF ZONE EXHIBIT	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	B
DATE: AUGUST 15TH, 2013			

LEGAL DESCRIPTION
COMMUNITY UNIT PLAN
ANNEXATION
CHANGE OF ZONE

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 89 I.T., LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 89 I.T., SAID POINT BEING A WEST CORNER OF THE REMAINING PORTION OF LOT 42, PINE LAKE ADDITION, SAID POINT BEING ON A NORTHEAST RIGHT-OF-WAY LINE OF NEBRASKA HIGHWAY NUMBER 2, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE NORTHWESTERLY ON A SOUTHWEST LINE OF SAID LOT 89 I.T., SAID LINE BEING A NORTHEAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N43°27'54"W, A DISTANCE OF 258.95' TO A SOUTH CORNER OF SAID LOT 89 I.T.; THENCE N58°14'52"W, ON A SOUTHWEST LINE OF SAID LOT 89 I.T., SAID LINE BEING A NORTHEAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 350.51' TO A SOUTH CORNER OF SAID LOT 89 I.T., SAID POINT BEING ON A EAST RIGHT-OF-WAY LINE OF ASHBROOK DRIVE; THENCE N36°00'11"E, ON AN WEST LINE OF SAID LOT 89 I.T., SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 52.29' TO A POINT OF CURVATURE OF A NON TANGENT CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 83°25'35", A RADIUS OF 170.00', AN ARC LENGTH OF 247.53' ON A WEST LINE OF SAID LOT 89 I.T., SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A CHORD LENGTH OF 226.24', A TANGENT LENGTH OF 151.53', AND A CHORD BEARING OF N06°11'58"W TO A POINT; THENCE N47°52'19"W, ON A SOUTHWEST LINE OF SAID LOT 89 I.T., SAID LINE BEING A NORTHEAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 162.78' TO A WEST CORNER OF SAID LOT 89 I.T.; THENCE N00°04'14"E, ON THE WEST LINE OF SAID LOT 89 I.T., A DISTANCE OF 627.76' TO A WEST CORNER OF SAID LOT 89 I.T.; THENCE N36°00'25"E, ON A WEST LINE OF SAID LOT 89 I.T., A DISTANCE OF 166.29' TO THE NORTHWEST CORNER OF SAID LOT 89 I.T.; THENCE S89°54'29"E, ON A NORTH LINE OF SAID LOT 89 I.T., A DISTANCE OF 150.85' TO A NORTH CORNER OF SAID LOT 89 I.T.; THENCE S79°46'47"E, ON A NORTH LINE OF SAID LOT 89 I.T., A DISTANCE OF 218.66' TO A NORTH CORNER OF SAID LOT 89 I.T.; THENCE S52°08'03"E, ON A NORTHEAST LINE OF SAID LOT 89 I.T., A DISTANCE OF 161.93' TO THE NORTHEAST CORNER OF SAID LOT 89 I.T.; THENCE S00°04'30"W, ON THE EAST LINE OF SAID LOT 89 I.T., A DISTANCE OF 1,372.65' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA 679,908.53 SQUARE FEET OR 15.61 ACRES, MORE OR LESS.

TOGETHER WITH:

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 89 I.T., LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 89 I.T., SAID POINT BEING THE SOUTHEAST CORNER OF LOT 88 I.T., SAID POINT BEING ON A NORTHEAST RIGHT-OF-WAY LINE OF NEBRASKA HIGHWAY NUMBER 2, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE NORTHERLY ON THE WEST LINE OF SAID LOT 89 I.T. ON AN ASSUMED BEARING OF N00°04'14"E, A DISTANCE OF 170.66' TO A WEST CORNER OF SAID LOT 89 I.T., SAID POINT BEING ON A SOUTHWEST RIGHT-OF-WAY LINE OF ASHBROOK DRIVE; THENCE S47°52'19"E, ON A NORTHEAST LINE OF SAID LOT 89 I.T., SAID LINE BEING A SOUTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 49.41' TO A POINT OF CURVATURE OF A NON TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 83°26'13", A RADIUS OF 90.00', AN ARC LENGTH OF 131.06' ON A EAST LINE OF SAID LOT 89 I.T., SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A CHORD LENGTH OF 119.78', A TANGENT LENGTH OF 80.24', AND A CHORD BEARING OF S06°18'08"E TO A POINT; THENCE S35°34'40"W, ON A EAST LINE OF SAID LOT 89 I.T., SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 42.10' TO A SOUTH CORNER OF SAID LOT 89 I.T., SAID POINT BEING ON A NORTHEAST RIGHT-OF-WAY LINE OF NEBRASKA HIGHWAY NUMBER 2; THENCE N58°14'52"W, ON A SOUTHWEST LINE OF SAID LOT 89 I.T., SAID LINE BEING A NORTHEAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 30.00' TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA 8,732.90 SQUARE FEET OR 0.20 ACRES, MORE OR LESS.

Wednesday, August 14, 2013
F:\Projects\012-1233_SRVY\MasterXrefs\Plats\Documents\012-1233_CUP-ANNEX-COZ.doc

DWG: F:\Projects\012-1233_SRVY\MasterXrefs\Plats\Drawings\012-1233_CUP-ANNEX-COZ.dwg USER: mjohnson
DATE: Aug 15, 2013 9:51am XREFS:

PROJECT NO: 012-1233	COMMUNITY UNIT PLAN, ANNEXATION AND CHANGE OF ZONE LEGAL DESCRIPTION	OLSSON ASSOCIATES	1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	EXHIBIT
DRAWN BY: MRJ				A
DATE: AUGUST 15TH, 2013				

OLSSON®
ASSOCIATES

August 21, 2013

Mr. Marvin Krout
Planning Department
555 South 10th St., Suite 213
Lincoln, NE 68508

Re: Broadmoor Ashbrook Apartments
Highway 2 & Ashbrook Drive
Annexation, Change of Zone, & Community Unit Plan (C.U.P)
Olsson Project No. 012-1233

Dear Marvin:

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

1. Special Permit Application
2. Change of Zone Application
3. Legal Description and Exhibit
4. Drainage study memorandum
5. Special Permit and Change of Zone Submittal Fee ($2,878.92 & $792.00)
6. 1 - potential secondary access exhibit, and correspondence with Pine Lake Association.
7. 1 – 8 ½ x 11 copy of the cover sheet, site plan, general notes, and density calculations

A. Requests.

We are submitting this request for Annexation, Change of Zone, and Special Permit (Community Unit Plan) on behalf of the developer, Broadmoor Development. Broadmoor Development has a purchase agreement with Livingston Investments Inc. for the property. The development site is legally described as: Lot 89 SW, located in Section 15, Township 9 North, Range 7 East of the 6th P.M., City of Lincoln, Lancaster County, Nebraska which is located at Ashbrook Drive and Highway 2.

B. Property.

028

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The property is currently zoned AG and is surrounded on three sides by developed properties, and Highway 2. A good portion of the north property is floodway, floodplain and wetlands, and will remain undeveloped. This open space creates and an ideal divide for the apartments from the townhomes and single family neighbors to the north and east.

We are requesting a change of zone to R-4 over the entire property containing 15.81 acres to obtain the requested density for the apartments. The allowable density for R-4 zoning is 13.93 units per acre. This calculates to 220 allowable units. This project, as designed, contains 219 units and a clubhouse facility. The Property is designated as "Urban-Residential" in the Future Land Use Map of the 2040 Comprehensive Plan. Increased density along major traffic corridors is a stated objective of that plan.

C. Meetings.

We have met with City Planning staff on several occasions to gain feedback on our proposed use and site plan. We have met with the Pine Lake Home Owners Association Board of Directors in early 2013. We met again with the Board and Neighborhood at an informational meeting at Berean Church on April 22nd, 2013. Concerns that were expressed by the neighbors at the meeting were related to the density of the development and the connection of Pine Ridge Lane to Ashbrook Drive.

The neighbors are concerned that the roadway connection will promote "cut through" traffic through their neighborhood, especially on Sundays when Berean Church traffic is exiting the Church property. They feel that the addition of 220 apartment units will exacerbate the potential problem. There is currently no traffic signal installed at the intersection of Ashbrook and Highway 2, and any eastbound vehicles have difficulty turning left onto Highway 2. The roadway connection would allow vehicles to connect to Westshore Drive, Eiger Drive, and then 84th Street, bypassing Highway 2. The neighbors also expressed concern regarding the density and the tenants from these apartments utilizing the Pine Lake neighborhood roads, and potentially trespassing on the lake association property.

D. Site Plan Modifications.

As can be seen from our site plan, we are proposing to not connect to the neighborhood through Pine Ridge Lane. There is a substantial grade difference across this property. By not connecting the roads, we can lower the apartment buildings and create a vertical separation between the apartments and adjacent residential neighbors. By not connecting the road, it also allows us to eliminate pedestrian and vehicle access to the neighboring Pine Lake association property. Broadmoor Development plans to build a perimeter wrought iron fence around the apartment area of the development. Broadmoor Development also proposes to increase the required landscape screening on the east side yard and proposes to increase the width of the

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side yard setback from 5' to 50'. Both considerations were included in the design in response to the neighborhood concerns.

In an effort to comply with the City's policy for connectivity, we have requested that the neighboring Pine Lake association grant a public access easement across the horse stable property as shown on the accompanying exhibit. Broadmoor has offered to construct, at its expense, a frontage road to provide traffic access to Eiger Drive located to the east. A 40' public access easement would allow a driveway and sidewalk to be constructed through to Eiger Drive. This drive would provide access to 84th street for east-bound traffic, and would also provide connectivity and a secondary access that is desired for life safety purposes. A copy of the letter to the Pine Lake Association President explaining our concessions and proposal is attached in our submittal documents.

E. Waivers.

A waiver to the Lincoln Municipal Code is requested for Block Length and subdivision connectivity. We are proposing to not extend Pine Ridge Lane across the property and connect to Ashbrook Drive. The justification for this waiver is detailed in paragraph "D" above.

We are also requesting that the maximum height of the apartment buildings be increased to 40' as we are providing increased setbacks from the neighboring properties per section 1.2 of the Community Unit Plan design standards.

If you require further information or have any questions, please call either myself at (402) 458-5632, or Tom Huston at Cline Williams Wright Johnson and Oldfather, L.L.P. at (402) 479-7134

Sincerely,

Mark C. Palmer P.E.

CC Tom Huston, Cline Williams Wright Johnson and Oldfather, L.L.P.
Bob Stratton, Broadmoor Development
Bennie McCombs, McCombs Commercial Realty

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