City Council Introduction: October 13, 2014
Public Hearing: October 20, 2014, 3:00 p.m.

Bill No. 14R-263

FACTSHEET

TITLE: **MISCELLANEOUS NO. 14002**
(First Amendment to Protective Covenants)

BOARD/COMMITTEE: N/A

APPLICANT: Lincoln O Street Properties, LLC,
on behalf of Falgers, Inc.

STAFF RECOMMENDATION: Approval

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: N/A

REASON FOR LEGISLATION:

To modify the 1975 Protective Covenants to align closer with the underlying B-1 Local Business District on Parcel A by adjusting the front yard setback along Eastridge Drive and by adjusting the parking requirements; to require additional landscape screening on Parcel A; and to relocate the sidewalk along Eastridge Drive and O Street on Parcel A. The Protective Covenants apply to property legally described as Lots 1 and Lots 6 through 12, Block 4, Eastmont Second Addition, located in the NW 1/4 of Section 28-10-7, Lincoln, Lancaster County, Nebraska, generally located at Eastridge Drive and O Street (6201 "O" Street).

DISCUSSION / FINDINGS OF FACT:

1. This is a request to amend protective covenants on property at 6201 O Street. The owner of the property is proposing to redevelop the site by expanding the existing building, reconfiguring the parking lot and adding landscaping.

2. The property was subjected to protective covenants in February 1975, in consideration for rezoning the property from the then A-1 and A-2 Single Family Zoning Districts to F Restricted Commercial and G Local Business Zoning Districts. The Protective Covenants provide that any amendments to the protective covenants must be approved by resolution of the City Council.

3. The property is currently zoned B-1 Local Business District and the proposed amendments to the protective covenants are more aligned with the current provisions of the B-1 District.

4. This amendment to the Protective Covenants only applies to Parcel A.

5. The analysis by the Planning staff in support of the proposed amendment is attached (p.2-3), finding that approval of this amendment will support redevelopment of the site and should have minimal impact on the surrounding properties.

6. A copy of the original Protective Covenants dated February 13, 1975, is attached for your reference and comparison with the amendments proposed in the Council resolution (p.6-12).

7. This application does not require review and approval by the Planning Commission.

8. The Planning Department has provided notice of this public hearing to property owners the same as is required by the Lincoln Municipal Code for zoning and subdivision applications, as well as to neighborhood and homeowner associations in the area.

FACTSHEET PREPARED BY: Jean Preister, Administrative Officer

DATE: October 6, 2014

REVIEWED BY: Marvin Krout, Director of Planning

DATE: October 6, 2014

f:\DevReview\Factsheets\CC\2014\MISC14002

MEMORANDUM

TO: City Council

FROM: Marvin Krout, Planning Director

SUBJECT: Amendment to Protective Covenants at 6201 'O' Street

DATE: October 1, 2014

CC: Jerry Nelson, Applicant
Planning Commission

This is a request to amend Protective Covenants for property located at Eastridge Drive and 'O' Street. The owner of 6201 'O' Street is proposing to redevelop the site by adding onto the existing building, reconfiguring the parking lot, and adding landscaping. The proposal requires the amendment of Protective Covenants that were adopted in 1975 by the City Council.

The Protective Covenants were approved in 1975 and apply to properties fronting on Eastridge Drive and Lyncrest Drive (see attached map). The Protective Covenants further regulate development beyond the requirements of the underlying zoning district. The Protective Covenants prohibit certain uses, establish stricter parking ratios, provide increased setbacks, and limit floor area, signs and access permitted at the time. Protective Covenants are not used in this manner today. Currently the City would use a Conditional Zoning Agreement to address these items.

Per the language in the Covenants, the City Council is authorized to enforce the provisions and may terminate or modify the Covenants at any time by resolution. Although the use of Protective Covenants is unusual today, they continue to serve a purpose at this location by providing an increased buffer between 'O' Street commercial area and single-family residential uses. The B-1 zoning would currently not regulate development on this site to the extent of the Protective Covenants.

The proposed redevelopment on 6201 'O' Street (Parcel A shown on Appendix A) proposes the following amendments to the Protective Covenants.

1. Modifying the parking ratio from 1 space per 200 square feet to 1 space per 300 square feet;
2. Reducing the setback along Eastridge Drive from 25 feet to 20 feet; and,
3. Clarifying that signs are permitted along the 'O' Street frontage

Lincoln City-Lancaster County Planning Department
555 S. 10th St., Rm. #213 • Lincoln NE 68508
Phone: (402) 441-7491 • Fax: (402) 441-6377

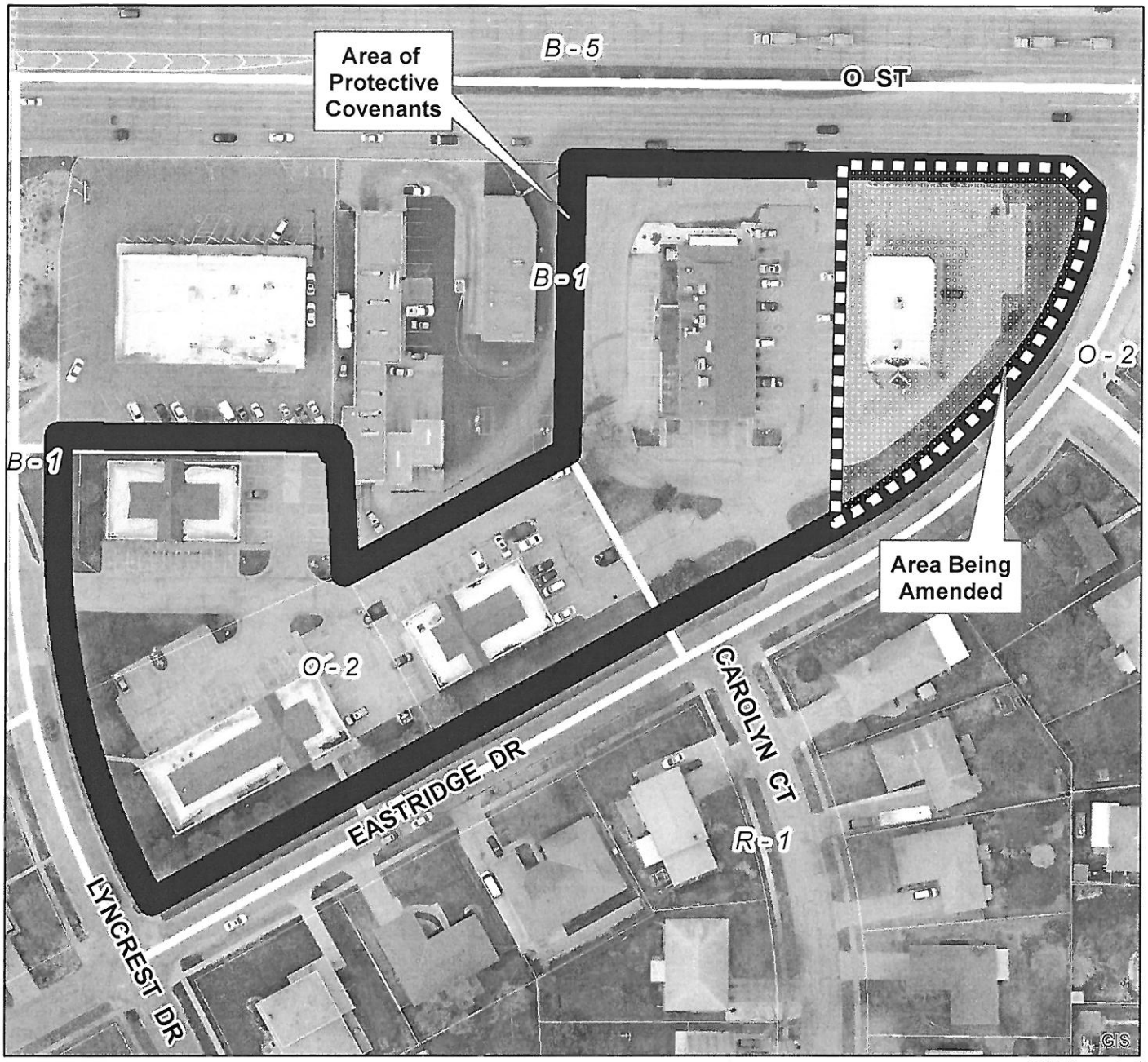
The property is currently zoned B-1, Local Business District. The amendments that the applicant is seeking are more aligned with the current provisions in the B-1 zoning district. The parking ratio in B-1 is 1 space per 300 square feet of floor area, and the front yard setback in B-1 is 20 feet.

The applicant also proposes to clarify signs that are permitted along 'O' Street. The Protective Covenants allow one, non-illuminated sign along the area 25' from the right-of-way line of Eastridge Drive. This amendment will not change that requirement. The amendment will clarify that signs are permitted along the 'O' Street frontage, per the sign code regulations for this district.

The applicant has worked with the Planning Department to develop a site plan and landscape plan with this amendment. The site plan shows the parking lot remaining outside of the front yard setback, requires double landscape screening when the site is across the street from residential dwellings, and relocates the sidewalks along 'O' Street and Eastridge Drive back from the curb to provide for a green parkway with street trees. The applicant has agreed to develop the site as generally depicted on the plans found in Appendix B (attached).

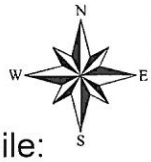
This amendment only impacts the covenants on Parcel A at the request of the owner. Changes to covenants on the other parcels would require consent from the other owners. Due to time limitations expressed by the applicant, no changes are proposed on the other parcels. The other parcels will still have to follow the 1975 requirements.

Staff are supportive of the amendment as proposed. Approval of this amendment will support redevelopment on this site and should have minimal impact on the surrounding properties.

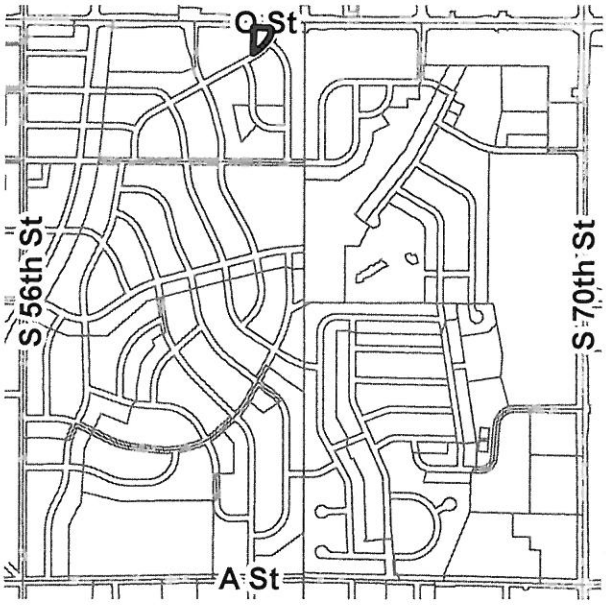


2013 aerial

Miscellaneous #: MISC14002
Eastridge Dr & O St

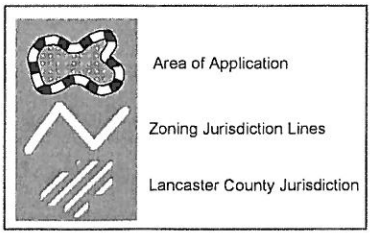


One Square Mile:
Sec.28 T10N R07E



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



File: F:\DevReview\PlannerPacket\MXD\Agendadrawings.mxd (MISC14002)

Architectural Innovations

September 23, 2014

Planning Director
Planning Department
City of Lincoln/ Lancaster County
555 South 10th Street
Lincoln, NE 68508

RE: MISCELLANEOUS ZONING CHANGE
6201 'O' STREET

Dear Mr. Krout,

On behalf of Lincoln O Street Properties, LLC, I am submitting a request for Miscellaneous Zone change for the property located at 6201 'O' street in Lincoln, Nebraska.

For the past couple of months we have been working on proposed changes to a 1975 zoning agreement previously termed 'Protective Covenants'. Paul Barnes of the planning department has assisted us in this endeavor.

The general concept of the changes are the following:

- Modify the agreement to align closer with the underlying zoning
- Increase the allowable building area to meet the needs of a new tenant.
- Provide increased landscape between the building and the adjacent residents
- Move the sidewalk to create additional landscape along the streets for a more pleasurable experience for pedestrians

Along with the proposed site plan and protective covenants documents, you will find a copy of the letter to the neighborhood association along with a list neighbors that the letter was mailed to directly.

We appreciate your consideration of these proposed changes.

Please contact me if you have any questions.

Sincerely,

Jeramie J. Nelson

620 N 48th Street • Suite 101 • Lincoln, NE 68504 • (402) 467-4328 • Fax (402) 421-7713
Email: jnelson@ailincoln.com • Visit us online at www.AILincoln.com

005

INST # 75-2040

2040

PROTECTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the undersigned, RAYMOND GOTTNER and MARY MAXINE GOTTNER, husband and wife, are the owners of the following described real estate, to-wit:

Lot 1, Block 4, Eastmont Second Addition, Lincoln, Lancaster County, Nebraska;

WHEREAS, the undersigned, IRVIN E. SCHAPPAUGH and EVA L. SCHAPPAUGH, husband and wife, and RAYMOND GOTTNER and MARY MAXINE GOTTNER, husband and wife, are the owners of the following described real estate, to-wit:

Lots 6, 7, 8, 9, 10, 11 and 12, Block 4, Eastmont Second Addition, Lincoln, Lancaster County, Nebraska;

WHEREAS, said owner, Raymond Gottner, has filed with the City of Lincoln, an application designated as Change of Zone No. 1321 to change the zoning district regulations on the above described real estate from the A-1 and A-2 Single Family Zoning Districts to the F Restricted Commercial and G Local Business Zoning Districts; as more particularly set out in said application; and

WHEREAS, as a part of said application the undersigned desire that certain conditions and restrictions in the public interest be imposed upon certain of the above described property as covenants upon said real estate over and above those required by said F Restricted Commercial and G Local Business District regulations; and

WHEREAS, it is in the public interest that the City of Lincoln, Nebraska, a municipal corporation, have the authority under such covenants to regulate and control the development of the above described real estate under the said conditions and restrictions to be imposed by the undersigned; and

WHEREAS, under conditions presently existing, the development of the above described real estate under the F Restricted Commercial and G Local Business zoning classification is appropriate and proper with the addition of the conditions and restrictions to be imposed by the undersigned as protective covenants upon said real estate; and

WHEREAS, the City of Lincoln, as a municipal corporation and governmental subdivision of the State of Nebraska, has the authority

006

and obligation imposed upon it by law to protect the public and to protect the environment and the development of the City of Lincoln in an orderly and meaningful manner in the interest of promoting and securing the public health, safety, and general welfare of the inhabitants of the City of Lincoln; and

WHEREAS, the aforesaid interest of the City of Lincoln runs to regulating the development of the above described real estate under the F Restricted and G Local Business zoning classifications; and

WHEREAS, the undersigned desire to make said protective covenants and their restrictions contained therein a matter of record and to provide for the future enforcement thereof by the City Council of the City of Lincoln, Nebraska;

NOW, THEREFORE, the undersigned, in consideration of the premises and the sum of One Dollar ($1.00) and other good and valuable consideration in hand paid, the receipt of which is hereby acknowledged, do hereby covenant and undertake with respect to all of the above described real estate, as follows:

1. That notwithstanding the uses which may be permitted under applicable zoning regulations, the following uses shall not be permitted under any circumstances on the real estate above described or any portion thereof:

(a) Service stations,

(b) Automobile washing facilities,

(c) Restaurants providing fast food carry-out services for consumption in automobiles on the business premises or for consumption off the business premises, or

(d) Sales establishments for new or used automobiles,

(e) Hotels or motels, or

(f) Billboard advertising signs (On-site signs advertising the business conducted on the premises shall not be prohibited).

2. That access to the above described real estate from Eastridge Drive shall be only as shown on the plot plan attached hereto as Appendix "A" and made a part hereof.

3. That there shall be maintained a permanent minimum twenty-five (25) foot building and parking lot development set-back from

the right-of-way line of Eastridge Drive, and a permanent minimum fifteen (15) foot building and parking lot development set-back from the the right-of-way line of Lynncrest Drive, all as shown on the plot plan attached hereto as Appendix "A" and made a part hereof.

4. That for the purpose of identifying the commercial and office uses existing upon the real estate above described, there shall be permitted one (1) non-illuminated sign not exceeding thirty (30) square feet in total area, to be located on said real estate within ten (10) feet of the driveway entrance thereto from Eastridge Drive. No other signs of any nature whatsoever shall be erected within the area twenty-five (25) feet from the right-of-way line of Eastridge Drive, or the area prescribed by applicable zoning regulations, whichever area is larger.

5. That there shall be permitted one building in that geographic area designed as Parcel "A", as shown on the attached Appendix "A"; that the total floor area for said building shall not exceed 4,500 square feet; that the height of said building shall not exceed one and one-half stories; and that no part of the roof slope on said building shall exceed a three-inch rise in a twelve-inch run.

6. That there shall be permitted one building in that geographic area designed as Parcel "B", as shown on the attached Appendix "A"; that the total floor area for said building shall not exceed 20,000 square feet; that the height of said building shall not exceed two and one-half stories; that no part of the roof slope for said building shall exceed a three-inch rise in a twelve-inch run; provided, that in the event there shall be no building located on said Parcel "A" or should the building constructed thereon have a total floor area of less than 4,500 square feet, then and in such event the total square foot area of the building to be constructed on said Parcel "B" may be increased in floor area equal to the difference between 4,500 square feet and the total building floor area developed in Parcel "A"; and provided, further, that in no event shall the total building floor area developed in said Parcels "A" and "B" exceed 24,500 square feet.

7. That there shall be permitted one building in that geographic area designated as Parcel "C", as shown on the attached Appendix

"A"; that the total floor area for said building shall not exceed 15,000 square feet; that the height for said building shall not exceed two and one-half stories; and that no part of the roof slope of said building shall exceed a three-inch rise in a twelve-inch run. inch run

8. That there shall be provided and maintained upon the real estate above described not less than one parking space for each two hundred (200) square feet or portion thereof of building floor area developed in geographic areas designated as Parcels "A" and "B", and that there shall be provided and maintained upon the real estate above described not less than one parking space for each one hundred sixty-seven (167) square feet or portion thereof of building floor area developed in that geographic area designated as Parcel "C".

9. That for all purposes in these Protective Covenants, "floor area" shall be determined by measuring from outside wall to outside wall of any building and shall include all interior structures, hallways, and areas for mechanical and maintenance facilities.

10. That the plot plan attached hereto as Appendix "A" is incorporated into and made a part of these Protective Covenants.

11. That there shall be permanently maintained upon the above described real estate permanent architectural screening around all mechanical and refuse disposal equipment and devices located outside of or upon building improvements.

12. That the foregoing covenants and restrictions on the part of the undersigned shall attach to and run with the real estate above described and shall be binding and obligatory upon the heirs, successors and assigns of the undersigned to all or any part thereof for a period of twenty-five (25) years from and after the date of recordation of these covenants and restrictions, after which time these covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless sooner terminated as provided in paragraph 13 following.

13. That these covenants and restrictions may be terminated or modified at any time by a resolution of the City Council of the City of Lincoln as from time to time constituted; provided, however, no greater restrictions may be imposed than those provided herein.

14. That these covenants and restrictions shall be enforceable by the City of Lincoln through proceedings at law or in equity against any person or persons violating or attempting to violate any provision or provisions hereof.

15. That the invalidation of any one of these covenants and restrictions shall not affect the validity of the remaining provisions hereof which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed these presents this 13 day of FEB, 1975.

Irvin E. Schappaugh — Raymond Gottner

Eva L. Schappaugh — Mary Maxine Gottner

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

On this 13 day of FEBRUARY, 1975, before me, a notary public qualified for said county, personally came RAYMOND GOTTNER and MARY MAXINE GOTTNER, husband and wife, known to me to be the identical persons whose names are affixed to the above instrument and acknowledged the execution thereof to be their voluntary act and deed for the purposes therein set forth.

Witness my hand and notarial seal on the day and year last above written.

BRUCE D. WHITE
GENERAL NOTARIAL SEAL
STATE OF NEBRASKA
COMMISSION EXPIRES
MARCH 21, 1977

Notary Public

My commission expires _____.

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

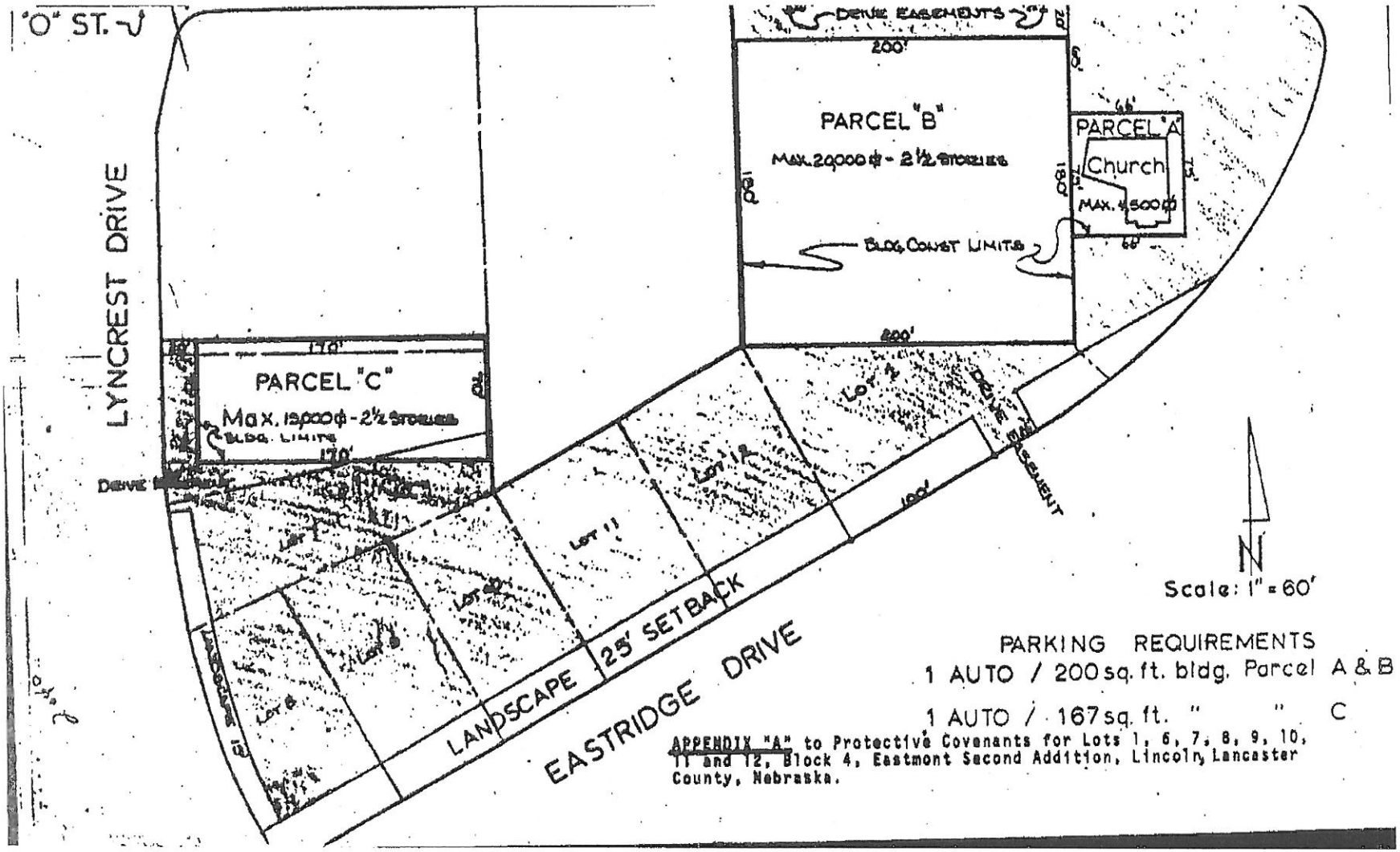
On this 13 day of FEBRUARY, 1975, before me, a notary public qualified for said county, personally came IRVIN E. SCHAPPAUGH and EVA L. SCHAPPAUGH, husband and wife, known to me to be the identical persons whose names are affixed to the above instrument and acknowledged the execution thereof to be their voluntary act and deed for the purposes therein set forth.

Witness my hand and notarial seal on the day and year last above written.

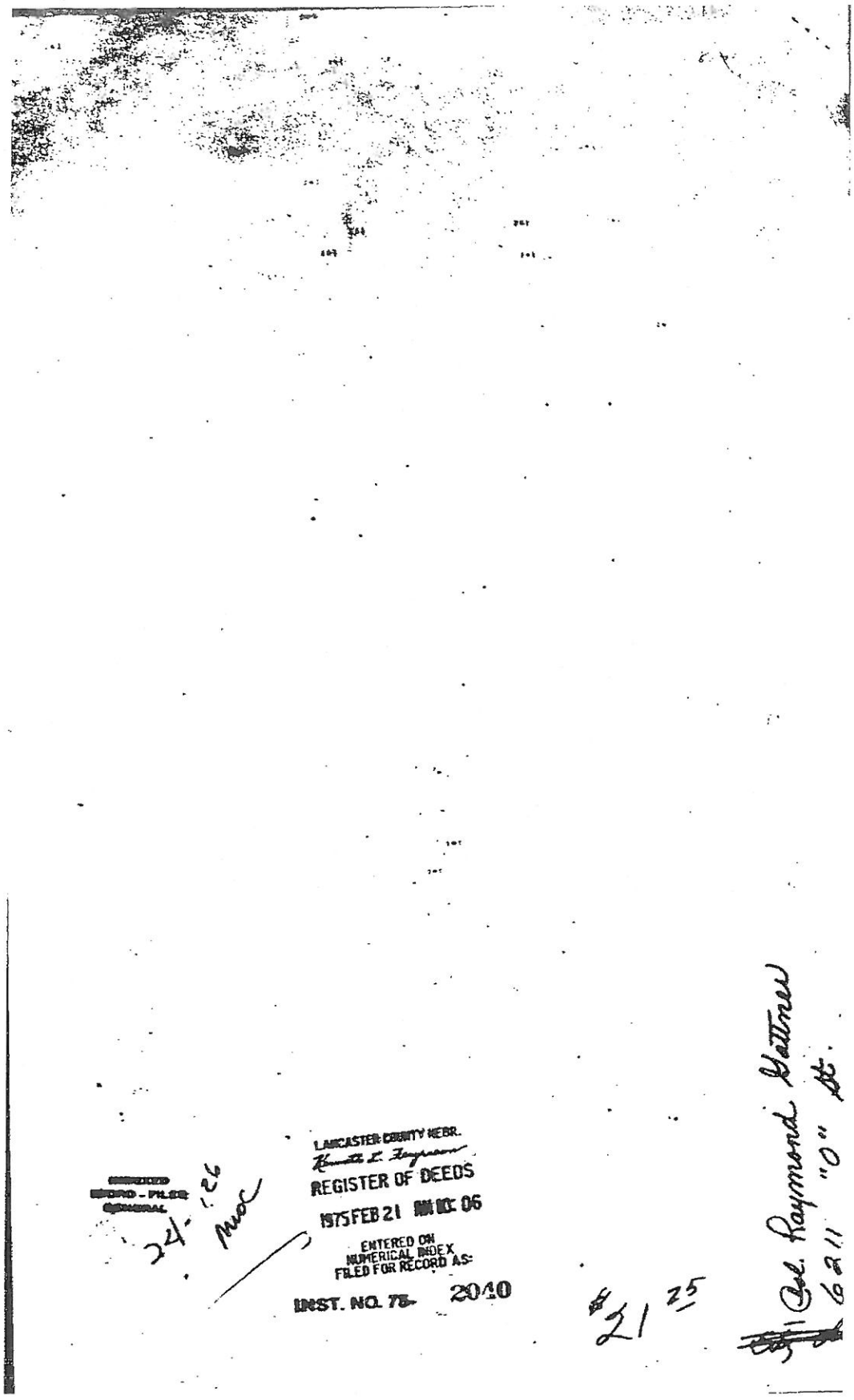
BRUCE D. WHITE
GENERAL NOTARIAL SEAL
STATE OF NEBRASKA
COMMISSION EXPIRES
MARCH 21, 1977

Notary Public

My commission expires _____.



APPENDIX "A" to Protective Covenants for Lots 1, 6, 7, 8, 9, 10, 11 and 12, Block 4, Eastmont Second Addition, Lincoln, Lancaster County, Nebraska.



LANCASTER COUNTY NEBR.
Kenneth L. Ferguson
REGISTER OF DEEDS
1975 FEB 21 AM 10: 06
ENTERED ON
NUMERICAL INDEX
FILED FOR RECORD AS:
INST. NO. 75- 2040

24-126
MOC

$21.25

Col. Raymond Gattner
6211 "O" St.