

City Council Introduction: **Monday**, March 17, 2003  
Public Hearing: **Monday**, March 24, 2003, at **1:30 p.m.**

Bill No. 03R-71

## **FACTSHEET**

**TITLE:** **SPECIAL PERMIT NO. 1423F**, an amendment to the **HIMARK ESTATES COMMUNITY UNIT PLAN**, requested by D & M Development, L.L.C. on behalf of HiMark Development, Inc., on property generally located at So. 84<sup>th</sup> Street and Old Cheney Road, specifically at the east end of Augusta Drive.

**STAFF RECOMMENDATION:** Conditional approval.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 02/19/03  
Administrative Action: 02/19/03

**RECOMMENDATION:** Conditional Approval (6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent).

### **FINDINGS OF FACT:**

1. This proposed amendment to the HiMark Estates Community Unit Plan seeks to correct one of the General Notes to identify Lots 7-48, Block 2, as duplex lots with zero setbacks on all lot lines.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.4-5, concluding that this application is being made to correct a previous oversight. Adjusting yard setbacks to zero is the usual practice in a community unit plan when the lots are surrounded by common open space.
3. The applicant's testimony is found on p.7, assuring that this amendment will not increase the number of dwelling units nor will this amendment affect any of the residents of HiMark or the adjacent neighborhoods. The lots have been developed in this manner.
4. There was no testimony in opposition.
5. On February 19, 2003, the Planning Commission agreed with the staff recommendation and voted 6-0 to recommend conditional approval, as set forth in the staff report dated January 17, 2003.
6. The Site Specific conditions of approval (#1.1 and #1.2) required to be completed prior to scheduling this application on the Council agenda have been submitted by the applicant and approved by the reviewing departments.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** March 10, 2003

**REVIEWED BY:** \_\_\_\_\_

**DATE:** March 10, 2003

**REFERENCE NUMBER:** FS\CC\2003\SP.1423F

**LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT**

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**P.A.S.:** Special Permit #1423F  
HiMark Estates CUP

**DATE:** January 17, 2003

**SCHEDULED PLANNING COMMISSION MEETING:**

**DATE:** February 19, 2003

**PROPOSAL:** This is a request to amend Special Permit 1423E to revise one General Note to identify certain lots as duplex lots with zero setback on all lot lines.

**WAIVER REQUEST:** Front yard setback from 20' to 0'.  
Rear yard setback from smaller of 30' or 20% of lot depth to 0'.  
Side yard setback from 5' to 0'.

**LAND AREA:** 4.34 acres, more or less (Lots 7-48, Block 2)  
401.69 acres, more or less (HiMark CUP)

**CONCLUSION:** This application is being made to correct a previous oversight. Adjusting yard setbacks to 0' is the usual practice in a CUP when the lots are surrounded by common open space.

**RECOMMENDATION:**

Conditional Approval

**GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** All of the Lots, Blocks, and Outlots in the following subdivisions: HiMark Estates Addition, HiMark Estates 1<sup>st</sup> Addition, HiMark Estates 2<sup>nd</sup> Addition, HiMark Estates 3<sup>rd</sup> Addition, HiMark Estates 4<sup>th</sup> Addition, HiMark Estates 5<sup>th</sup> Addition Corrected, HiMark Estates 6<sup>th</sup> Addition, HiMark Estates 7<sup>th</sup> Addition, and Iron Gates Estates, all located in Section 11, T9N, R7E, City of Lincoln, Lancaster County, Nebraska.

The specific Lots to be amended are legally described as:

Lots 1-24, and 26-39, Block 1 and Outlot A, HiMark Estates 2<sup>nd</sup> Addition, Lots 1-4, Block 1 and Outlot A, HiMark Estates 4<sup>th</sup> Addition, all located in the NW 1/4 of Section 11, T9N, R7E, City of Lincoln, Lancaster County, Nebraska.

**LOCATION:** The east end of Augusta Drive.

**APPLICANT:** Dan Muhleisen  
D & M Development, L.L.C.  
6321 Doecreek Circle  
Lincoln, NE 68516  
(402) 483-5831

**OWNER:** HiMark Development, Inc., et al  
8901 Augusta Drive  
Lincoln, NE 68526

**CONTACT:** Same as Applicant.

**EXISTING ZONING:** R-3 Residential.

**EXISTING LAND USE:** Residential lots, private roadways, golf course and clubhouse, parking lot, and open space.

**SURROUNDING LAND USE AND ZONING:**

|        |                 |  |
|--------|-----------------|--|
| North: | AG Agriculture  | HiMark Golf Course                           |
| South: | R-3 Residential | Single-family residential and golf course    |
| East:  | AG Agriculture  | HiMark Golf Course and clubhouse             |
| West:  | AG Agriculture  | Villa Del Ray acreage subdivision and Vacant |

**HISTORY:**

Apr 2002 Special Permit #1423E approved. This amendment provided for setback adjustment to Lot 3, HiMark Estates 7<sup>th</sup> Addition.

Aug 2001 Special Permit #1423C approved with an increase in the number of multi-family dwelling units from 240 to 272. However, this permit was voided because the owner did not sign the Letter of Acceptance.

Jan 2001 Special Permit #1423D withdrawn.

Nov 2000 Special Permit #1423D submitted. This was a request to rename a private roadway and install gates at its entrance. Based upon a prior grant of public access over the private roadway, the Applicant could not use the gates to exclude the public.

Nov 1999 Special Permit #1423C submitted.

Aug 1999 Administrative Final Plat #99025 approved. This renamed Lots 7-48, Block 2 HiMark Estates to Lots 1-24, and 26-39, Block 1 and Outlot A, HiMark Estates 2<sup>nd</sup> Addition.

Aug 1999 Administrative Amendment #99054 to Special permit #1423A approved to add restrooms and an irrigation pump house to HiMark Golf Course.

- Jul 1998 Change of Zone #3125 approved to change the zoning for the area covering this application from AG Agricultural to R-3 Residential.
- Jul 1998 Special Permit #1423B approved for the HiMark Estates Community Unit Plan, which included 507 dwelling units and golf course.
- Apr 1998 Special Permit #1423A withdrawn.
- Mar 1996 Special Permit #1423A submitted. This application sought to expand the existing clubhouse and add a cart storage building to the HiMark Golf Course.
- Aug 1993 Administrative Amendment #93055 to Special Permit #1423 approved to increase the number of parking stalls.
- Mar 1993 Administrative Amendment #92075 to Special Permit #1423 approved to rearrange portions of the parking lot and provide signage.
- Apr 1992 Special Permit #1423 approved for a golf course.
- Mar 1979 The zoning for the area of this CUP was changed from A-A Rural and Public Use to AG Agricultural as part of the 1979 Zoning Update.

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Land Use Plan identifies both Additions as Urban Residential.

**UTILITIES:** Public

**TRAFFIC ANALYSIS:** Gleneagle Court is a private roadway

**ANALYSIS:**

1. This is a request to amend Special Permit 1423E (HiMark Estates CUP) to revise General Note 12 to identify Lots 7-48, Block 2 as duplex lots with zero setbacks on all lot lines.
2. Each of these lots is surrounded by Outlot F.
3. It has been common practice in the past to treat the lot lines for lots that are surrounded by an outlot as building envelope lines. This practice recognizes the use of the outlot as the required yard for the lot, thereby reducing required setbacks within the lot to 0'.
4. The R-3 Residential zoning district requires the following setbacks: front yard, 20'; side yard, 5' or 0' if party wall; rear yard, smaller of 30' or 20% of lot depth.
5. The lot lines, as shown on the CUP, are a minimum of 30' from the edge of Gleneagle Court, abut another lot on one side and are a minimum of 20' from the lot on the other side. These separations appear to meet the requirements of the R-3 district for front and side yards.

6. The lots, as shown on the CUP, are all 90' feet deep. The required rear yard setback is 20% of the depth, or 18'. Outlot F appears to provide a minimum of 18' of open space between each of the lots and the outlot boundary. The area of greatest is the separation between lots adjacent to Villa Del Ray (the west boundary of the CUP). Along this boundary, 26.5' of separation is provided, which exceeds the minimum requirement of 18'.
7. This amendment will not increase the number of dwelling units provided within this CUP.
8. The City Engineer's office has no objection to this amendment.
9. The Building and Safety Department/Fire Prevention has no objection to this amendment.
10. The Fire Department has no objection to this amendment.
11. Lincoln Electric System does not require any easements with this request. However, LES reserves the right to require additional easements at the time of final plat, with any relocation of existing easements done at the owner's expense.
12. The Building and Safety Department has not commented on this amendment.
13. If approved, this amendment will correct a previous oversight.
14. The Planning Department recommends the conditional approval of this application based on the following conditions.

**CONDITIONS:**

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
  - 1.1 Revise the site plan to show the new General Note 12.
  - 1.2 Revise the site plan to show the area of amendment within a "cloud" and remove all clouds not associated with this amendment.
2. This approval permits Lots 7-48, Block 2 of HiMark Estates CUP, as shown on Special Permit #1423F, to be developed with zero (0) foot setbacks for all yards.

General:

3. Before receiving building permits:

3.1 The construction plans shall comply with the approved plans.

STANDARD CONDITIONS:

4. The following conditions are applicable to all requests:
  - 4.1 Before occupying the dwelling units all development and construction shall have been completed in compliance with the approved plans.
  - 4.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
  - 4.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 4.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 4.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.
5. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Greg Czaplewski  
Planner

**SPECIAL PERMIT NO. 1423F,  
AN AMENDMENT TO THE  
HIMARK ESTATES COMMUNITY UNIT PLAN**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

February 19, 2003

Members present: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn; Krieser, Larson and Steward absent.

Staff recommendation: Conditional approval.

There were no ex parte communications disclosed by the Commissioners.

Greg Czaplewski of the Planning staff submitted one letter in opposition from Pius T. Gange, 5033 Sawgrass Drive.

Proponents

**1. Dan Muhleisen** appeared on behalf of the owner and developers of **HiMark Estates**. The only purpose of this application is to correct an error caught by Building & Safety on the drawing. This amendment will identify Lots 7-48, Block 2, as duplex lots with zero setbacks on all lot lines. This amendment will not increase the number of dwelling units. They have been building the lots in this manner. This amendment will not affect any of the residents of HiMark or the adjacent neighborhoods.

Muhleisen indicated that he would contact the person who wrote the letter in opposition. They thought this would provide for additional townhouse uses and this is not an amendment to do that. This is just a correction to a general note that pertains to the existing townhomes in HiMark Estates. There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

February 19, 2003

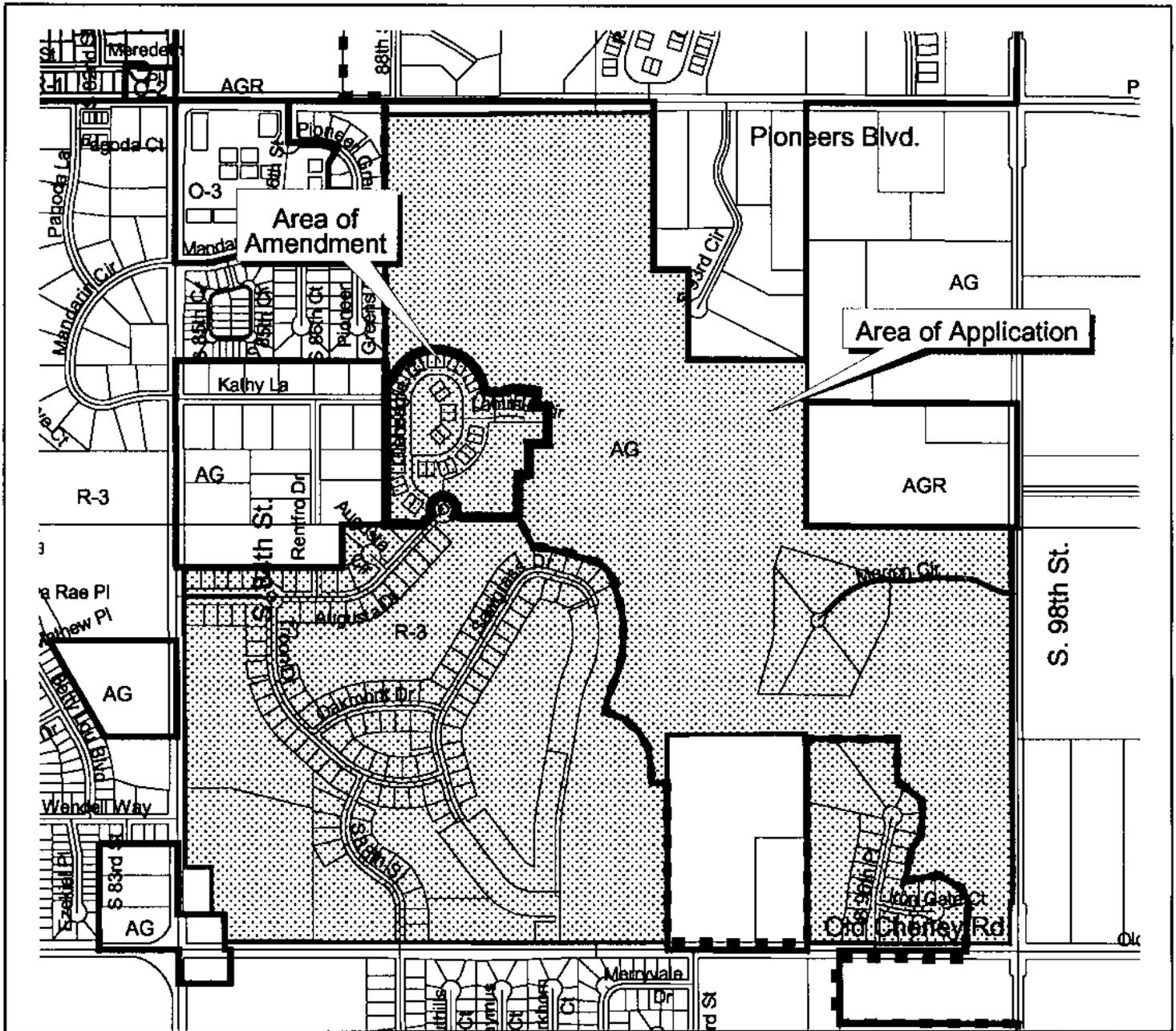
Duvall made a motion to approve the staff recommendation of conditional approval, as set forth in the staff report dated January 17, 2003, seconded by Carlson and carried 6-0: Newman, Carlson, Taylor, Bills-Strand, Duvall and Schwinn voting 'yes'; Krieser, Larson and Steward absent.



**Special Permit #1423F**  
**HiMark Estates CUP**



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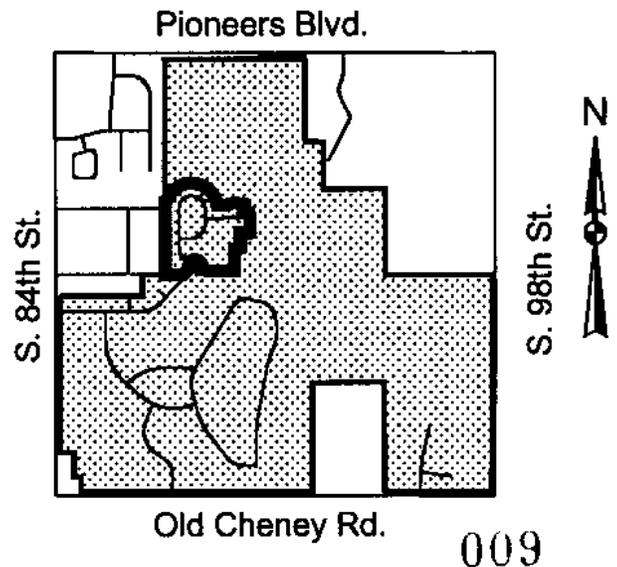
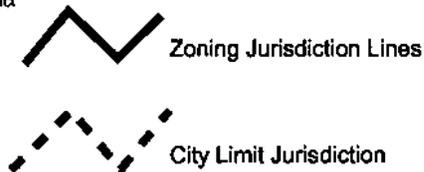


## Special Permit #1423F HiMark Estates CUP

### Zoning:

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

One Square Mile  
Sec. 11 T9N R7E



009

# D & M Development, LLC.



Dan Muhleisen  
6321 Doecreek Circle ♦ Lincoln, Nebraska 68516  
Phone (402) 483-5831

January 9, 2003

Mr. Ray Hill  
Lincoln-Lancaster Co. Planning Dept.  
555 South 10th Street  
Lincoln, NE 68508

Re: Amendment to the HiMark Estates  
Preliminary Plat and C.U.P.

Dear Ray:

On behalf of the owners and developers of HiMark Estates, we are requesting an Amendment to the Preliminary Plat and C.U.P. The following change has been made to the plan:

1. General note 12 has been revised as follows: Lots 7-48, Block 2 are duplex lots. The lots are building envelope lines and shall have zero setback on all lot lines.

This change allows flexibility in the design and construction of the duplex townhomes in HiMark Estates which are being built exclusively by Manzitto Brothers Construction.

Enclosed are the following items:

- A. 12 copies of the revised Site Plan.
- B. \$195.00 check for the Amendment to the Preliminary Plat and C.U.P.
- C. Ownership Certificate to be provided by Capital Title ASAP.

If you have any questions or need additional information, please call.

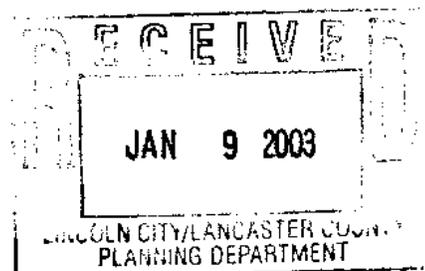
Sincerely,

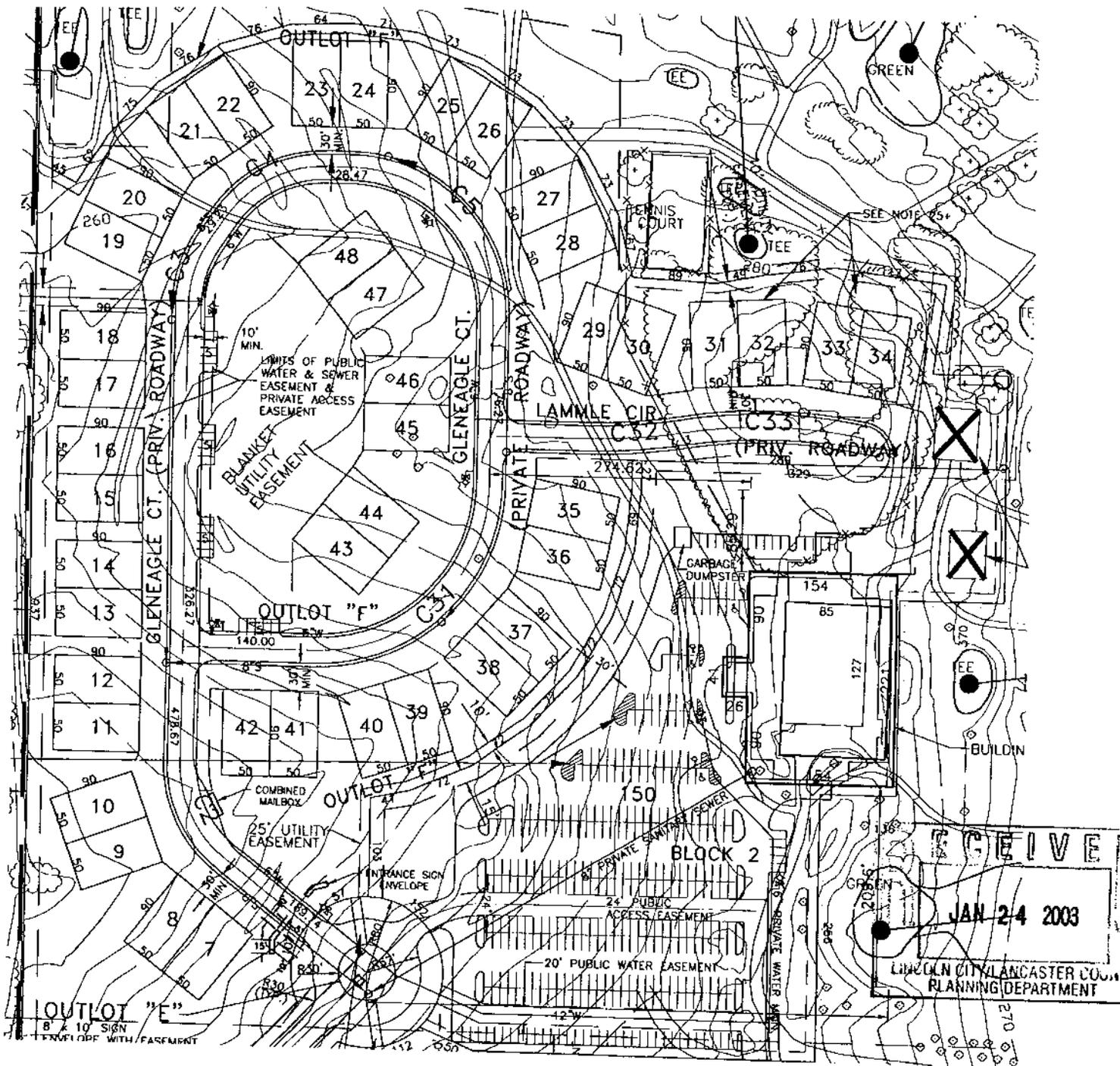
Handwritten signature of Dan Muhleisen in black ink.

Dan Muhleisen

cc: Dru Lammler  
Merle Jahde

Sam Manzitto  
Mark Hunzeker





NOT TO SCALE