

## FACTSHEET

**TITLE: WAIVER NO. 03004**, requested by Brian D. Carstens and Associates on behalf of Krein Real Estate, Inc., for an extension of time for installation of sidewalks and street trees in the Aspen 5<sup>th</sup> Addition Final Plat, on property generally located at Beaver Creek Lane and Pine Lake Road.

**STAFF RECOMMENDATION:** Approval of the extension of time for installation of street trees; denial of the extension of time for installation of sidewalks.

**ASSOCIATED REQUEST:** Waiver No. 03005 (03R-144)

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 05/14/03  
Administrative Action: 05/14/03

**RECOMMENDATION:** Approval of the extension of time for installation of street trees; denial of the extension of time for installation of sidewalks (7-0: Bills-Strand, Steward, Carlson, Duvall, Larson, Taylor and Schwinn voting 'yes'; Krieser absent; Newman resigned).

### FINDINGS OF FACT:

1. This request for an extension of time for installation of street trees and sidewalks in the Aspen 5<sup>th</sup> Addition was heard before the Planning Commission at the same time as the request for an extension of time for installation of street trees and sidewalks in the Aspen 6<sup>th</sup> Addition (Waiver No. 03005).
2. The staff recommendation to approve the extension of time for installation of street trees and to deny the extension of time for installation of sidewalks is based upon the "Analysis" as set forth on p.3, concluding that Aspen 5<sup>th</sup> Final Plat was approved by Planning Commission on June 17, 1998. The subdivision ordinance requires that sidewalks and street trees be installed within four years of the final plat approval. The applicant has already exceeded the allowed time by 10 months. An extension of two years would in reality be a three year extension. The completion of the sidewalks would eliminate gaps in the sidewalk system. Public Works opposes an extension of time for the installation of sidewalks. Planting street trees on lots prior to development could result in the trees being destroyed or planted where a driveway may be located. Therefore an extension of time for the installation of street trees is acceptable.
3. The applicant's testimony is found on p.5 and 6.
4. The record consists of a letter in support from the property owners at 7248 Carmen Drive (p.11).
5. Testimony in opposition is found on p.6 from a resident of the addition, expressing concern with the current safety hazard of children playing and riding their bicycles in the street.
6. On May 14, 2003, the Planning Commission agreed with the staff recommendation and voted 7-0 to recommend **approval** of the extension of time for installation of street trees and **denial** of the extension of time to install sidewalks. The Commission sentiment was that the missing sidewalk segments presented a safety issue, and later home construction could be done with minimum damage to the sidewalks.

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

**DATE:** May 27, 2003

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

**DATE:** May 27, 2003

**REFERENCE NUMBER:** FS\CC\2003\WVR.03004

**LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**  
**for May 14, 2003 PLANNING COMMISSION MEETING**

**P.A.S.:** Waiver #03004

**PROPOSAL:** Applicant is requesting a waiver to the requirement that sidewalks and street trees be installed within four years of final plat approval. Applicant is requesting a two year extension.

**CONCLUSION:** Aspen 5<sup>th</sup> Final Plat was approved by Planning Commission on June 17, 1998. The subdivision ordinance requires that sidewalks and street trees be installed within four years of the final plat approval. The applicant has already exceeded the allowed time by 10 months.  
An extension of two years would in reality be a three year extension

The completion of the sidewalks would eliminate gaps in the sidewalk system. Public Works opposes an extension of time for the installation of sidewalks.

Planting street trees on lots prior to development could result in the trees being destroyed or planted where a driveway may be located. Therefore an extension of time for the installation of street trees is acceptable

<b>RECOMMENDATION:</b>	Denial to extension of time for sidewalks. Approval to extension of time for street trees
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**GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Lots 2-6, Block 1; Lots 1-19, Block 2; Lots 1-12, Block 4; Aspen 5<sup>th</sup> Addition.

**LOCATION:** Beaver Creek Ln. & Pine Lake Rd.

**EXISTING ZONING:** R-4, Residential

**EXISTING LAND USE:** Residential

**SURROUNDING LAND USE AND ZONING:**

North: R-3, Residential

South: R-3, Residential

East: R-4, Residential

West: R-3, Residential

**HISTORY:** Aspen 5<sup>th</sup> Addition final plat was approved by Planning Commission on June 17, 1998.

**COMPREHENSIVE PLAN SPECIFICATIONS:**

“Interconnected networks of streets, trails and sidewalks should be designed to encourage walking and bicycling and provide multiple connections within and between neighborhoods.” (F-66)

“The sidewalk system should be complete and without gaps.” (F-89)

**TRAFFIC ANALYSIS:** All streets within Aspen 5<sup>th</sup> Addition final plat are local roads.

**ANALYSIS:**

1. The applicant is requesting an extension of time for the installation of sidewalks along the public right-of-way, along the private roadways and in the pedestrian easement, as well as the installation of street trees.
2. The sidewalk in the pedestrian easement is installed.
3. Public Works does not support a waiver of the time limit for the installation of sidewalks.
4. Parks & Recreation Department does not object to the extension of time for the installation of street trees.
5. Section 26.11.040(a) of the Land Subdivision Ordinance states that sidewalks within streets and those trees not included in a landscape screen shall be installed within four years of final plat approval.
6. Aspen 5<sup>th</sup> Addition Final Plat was approved on June 17, 1998.
7. Applicant is asking for a two year extension to install the sidewalks and street trees. The improvements were to be completed by June 17, 2002. A two year extension would in reality be a three year extension.

Prepared by:

Tom Cajka  
Planner

DATE: April 30, 2003

**Applicant:** Krein Real Estate, Inc.  
4750 Normal Blvd.  
Lincoln, NE 68506  
(402) 323-8200

**Owner:** same as applicant

**Contact:** Brian D. Carstens & Associates  
601 Old Cheney Rd. Suite C  
Lincoln, NE 68512  
(402) 434-2424

**WAIVER NO. 03004**  
**and**  
**WAIVER NO. 03005**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 14, 2003

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

Staff recommendation: Denial of the extension of time for installation of sidewalks and approval of the extension of time for installation of street trees.

Ex parte communications: None.

Tom Cajka of Planning staff submitted a map of the area to show where sidewalks have been installed within the boundaries of Aspen 5<sup>th</sup> and 6<sup>th</sup> Additions. On the black and white copy of the map, the gray tones are the lots that do not have sidewalks constructed today, but the streets are in.

Proponents

**1. Brian Carstens** appeared on behalf of **Krein Real Estate**. This is a project that is being built now. The streets, sewer and water are in, with 1/3 of the lots yet to be built upon. Because of the location next to the curb, if the sidewalks were installed they would be crushed during construction of the homes. Krein has had a history of putting sidewalks in prior to occupancy. A pedestrian easement sidewalk is in place already. This is just a request for extra time to put the sidewalks in as houses are being constructed.

Steward inquired as to why the already established deadline has been exceeded by almost a year. Carstens explained that Krein platted several lots all at one time and waited quite a while to put the streets and water in before developing that phase. The original 5<sup>th</sup> Addition was a fairly large plat. The street was put in probably a year after the final plat was approved.

Carlson then discussed the aerial photo with the applicant. Carstens stated that every lot that has been built upon has sidewalks constructed.

Cajka further explained that there are two different final plats involved. Some of these areas have been further subdivided into other additions. Carlson can't tell where the sidewalks are located and where they are not installed. Cajka pointed out that there are sidewalks all along Sugar Creek Circle, except for one lot.

Taylor inquired as to the length of the requested extension. Carstens believes the applicant is requesting two years.

## Opposition

1. **Daniel Hevelone**, 5011 Eagle Ridge Road, testified in opposition. The lot next to him has been sold for three years and not developed. There are a couple of pedestrian accesses right in the middle of the circle coming from Country Hill Road. On Sugar Creek Circle, there is a sidewalk coming in that goes into a pedestrian path on the east side of Sugar Creek, which is the common area. There is a tremendous amount of pedestrian traffic from both of those additions with children playing and riding their bicycles out in the street. He has real safety concerns. He would like to see at least the sidewalk put in on Eagle Ridge, from Beaver Creek to Sugar Creek Circle. This would at least give them access on one side of the street. These sidewalks were originally to have been installed by June, 2002. Another two years makes it 2005. They do not have a neighborhood association yet, so who is liable if some child gets run over out in the street? If the sidewalks are waived, is it the city's responsibility if there is an accident? Hevelone agrees with the staff recommendation.

Taylor inquired where the two-year deadline came from. Cajka explained that it is a requirement of the subdivision ordinance that sidewalks and street trees be installed four years from the date of approval of the final plat. That four years has passed. Aspen 5<sup>th</sup> is almost a year overdue. Aspen 6<sup>th</sup> is about one-half year overdue. Staff's recommendation is to deny the time extension on the sidewalks and that the sidewalks be constructed.

Bills-Strand wondered whether the Commission could require the developer to put the connecting sidewalks in and approve the extension of time for the remainder. Cajka advised that the pedestrian easements that connect are both in place. The waiver is for the sidewalks that are not constructed along the street.

## Response by the Applicant

Carstens further stated that Krein has several homes to construct on the south side. In fact, technically, he could replat those lots. The two-year extension is desirable. Carstens suggested that possibly Krein could start to market the property a little harder and get the sidewalks in place in a year. It seems like a waste of time and energy to put the sidewalks in before the property is developed.

Hevelone approached the Commission again, stating that he knows the principle behind this and realizes there will be some cost, but for \$400 to \$500 worth of sidewalk it is pretty cheap compared to someone getting mangled or killed for it. Will the money be kept in escrow for this? Schwinn believes there is money in escrow to construct the sidewalks if the developer does not.

## **WAIVER NO. 03004**

### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 14, 2003

Steward moved to approve the staff recommendation, which denies the extension of time for installation of sidewalks and approves the extension of time for installation of street trees, seconded by Carlson.

Bills-Strand thinks this is a waste. She understands about the children riding their bikes so she would like to at least see Lots 9 and 10 with sidewalks. Krein doesn't have the rest of it sold and will have to tear the sidewalks out in order to do the development.

Schwinn commented that he has done a lot of work in existing neighborhoods where the sidewalks have been there and it is not that hard to work around them. There is a safety issue here and he thinks the four years is an appropriate rule.

Steward would have felt differently had there not been as much progress in the development as there has been over four years. There is reasonable indication that this is going to sell so he believes the developer has responsibility to make it as safe as possible.

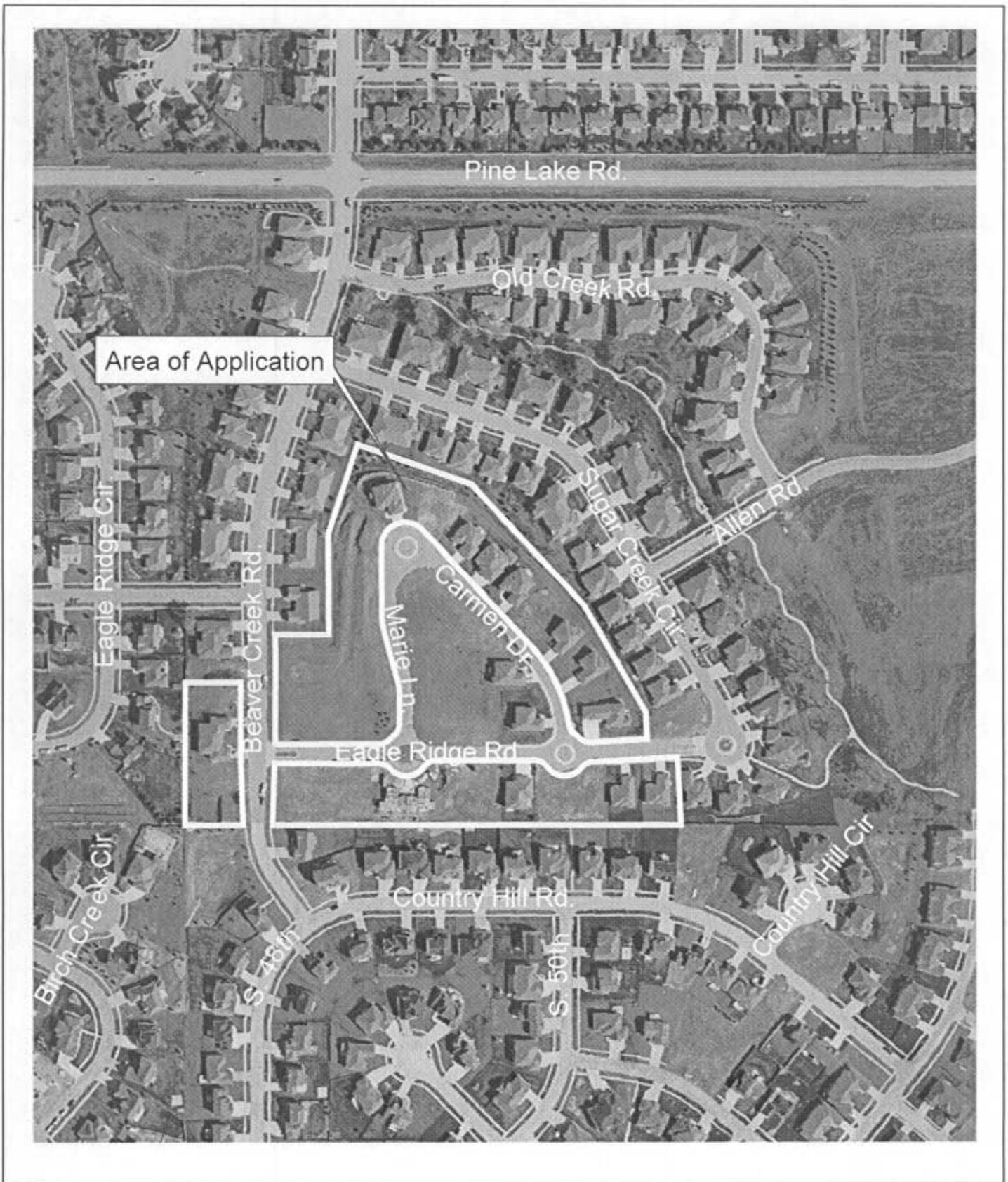
Motion approving the staff recommendation carried 7-0: Bills-Strand, Steward, Carlson, Duvall, Larson, Taylor and Schwinn voting 'yes'; Krieser absent; Newman resigned.

**WAIVER NO. 03005**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 14, 2003

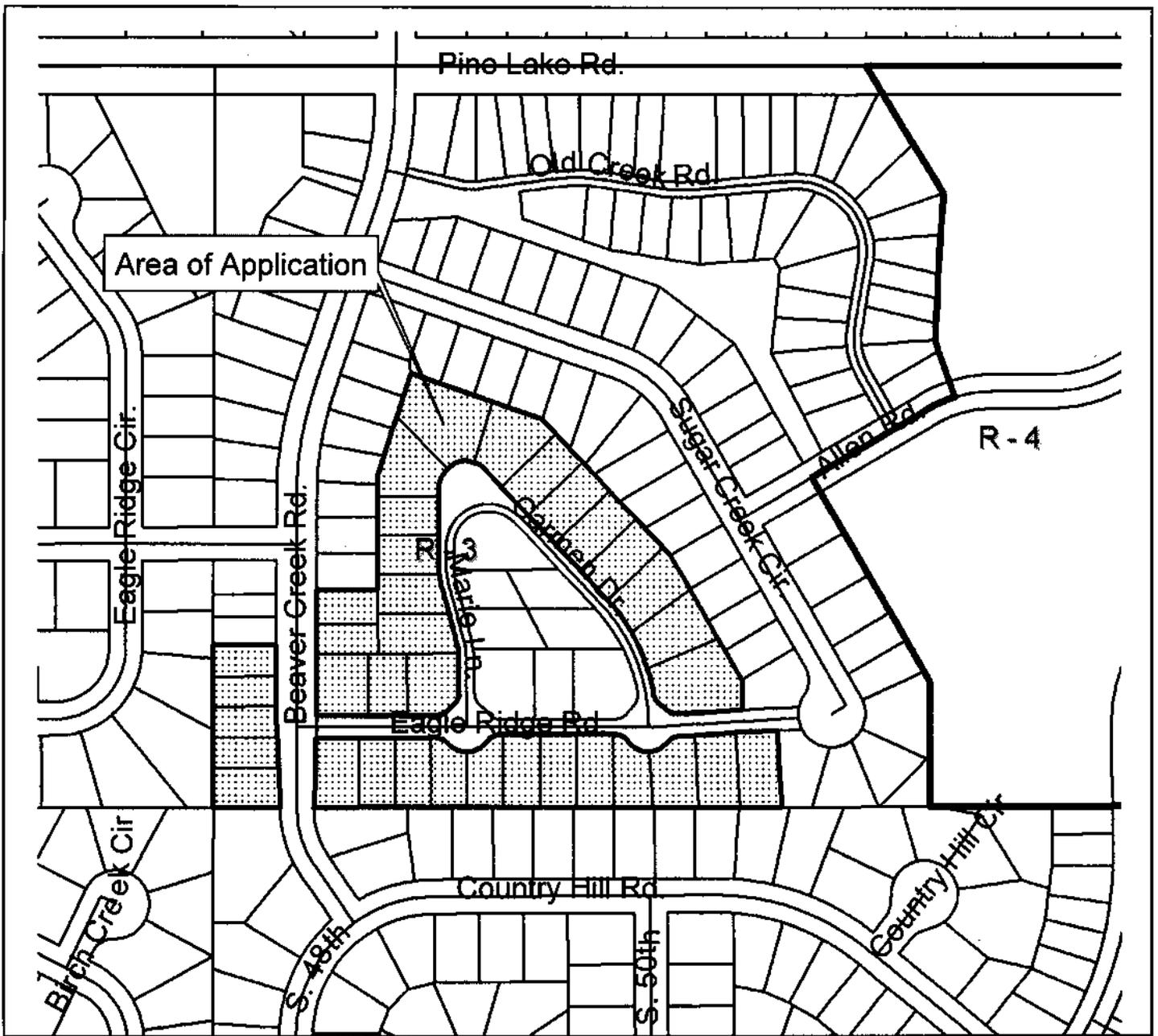
Steward moved to approve the staff recommendation, which denies the extension of time for installation of sidewalks and approves the extension of time for installation of street trees, second by Taylor and carried 7-0: Bills-Strand, Steward, Carlson, Duvall, Larson, Taylor and Schwinn voting 'yes'; Krieser absent; Newman resigned.



**Waiver #03004**  
**Beaver Creek Ln & Eagle Ridge Rd.**  
**Aspen 5th**



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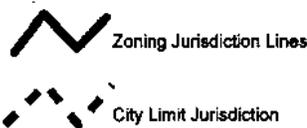
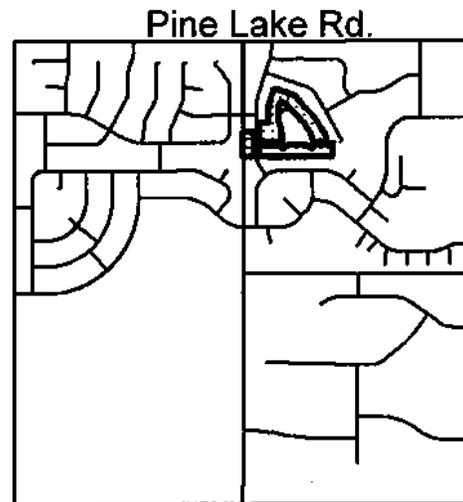


**Waiver #03004**  
**Beaver Creek Ln & Eagle Ridge Rd**  
**Aspen 5th**

**Zoning:**

One Square Mile  
 Sec. 20 T9N R7E

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

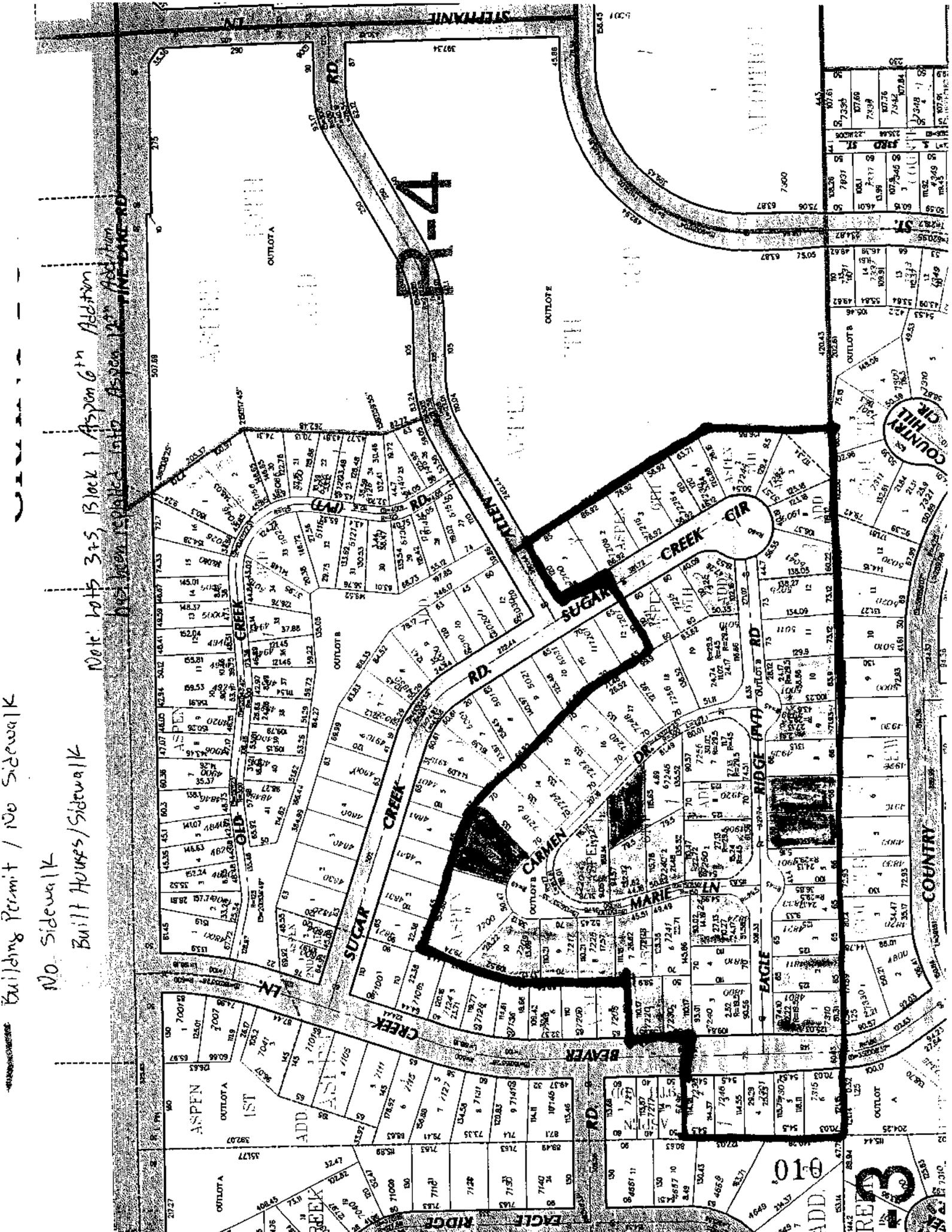


Yankee Hill Rd.

009

Building Permit / No Sidewalk  
No Sidewalk  
Built Houses/Sidewalk

Note: lots 3-5, Block 1 Aspen Addition  
has now replaced into Aspen Park Addition



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IN SUPPORT

ITEM NO. 3.5: ~~WAIVER NO. 03004~~  
ITEM NO. 3.6: WAIVER NO. 03005  
(p.125 and 131 - Public Hearing - 5/14/03)



RobandLee@aol.com

05/06/2003 03:20 PM

To: plan@ci.lincoln.ne.us

cc:

Subject: Waiver Nos 03004 and 03005

In answer to your letter of May 2, 2003 regarding the above waivers, we consent to the request and recommendation.

Robert and Leeana Kudlacek, 7248 Carmen Drive, Lincoln, NE 68516