

City Council Introduction: **Monday**, October 6, 2003  
Public Hearing: **Monday**, October 13, 2003, at **1:30 p.m.**

Bill No. 03-157

## **FACTSHEET**

**TITLE:** **STREET VACATION NO. 03011**, requested by the Director of the City Urban Development Department, to vacate and designate as surplus portions of the public right-of-way surrounding the new theater complex generally located from 11<sup>th</sup> to 12<sup>th</sup> Streets, between "P" and "O" Streets.

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

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 10/01/03  
Administrative Action: 10/01/03

**RECOMMENDATION:** A finding of conformance with the Comprehensive Plan (7-0: Bills-Strand, Carlson, Larson, Taylor, Marvin, Duvall and Steward voting 'yes'; Krieser absent).

### **FINDINGS OF FACT:**

1. The staff recommendation to find the proposed street vacation and designation of surplus to be in conformance with the Comprehensive Plan is based upon the "Analysis" as set forth on p.4, concluding that the proposed vacation of these public rights-of-way is consistent with the Comprehensive Plan.
2. The additional comments from the Public Works Department submitted on October 1, 2003, are found on p.14. The Nebraska Department of Roads and the Federal Highway Administration have been notified and have no objection to this proposal.
3. The minutes of the public hearing and action by the Planning Commission are found on p.6-7.
4. There was no testimony in opposition.
5. On October 1, 2003, the Planning Commission agreed with the staff recommendation and voted 7-0 to find the proposed street vacation and designation of surplus to be in conformance with the Comprehensive Plan.

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

**DATE:** October 7, 2003

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

**DATE:** October 7, 2003

**REFERENCE NUMBER:** FS\CC\2003\SAV.03011

# LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for October 1, 2003 PLANNING COMMISSION MEETING

**P.A.S.:** Street and Alley Vacation #03011

## **PROPOSAL:**

The Director of Urban Development has requested a finding of Conformance with the Comprehensive Plan for the vacation and designation as surplus of a portion of the public right-of-way surrounding the new theater complex that will be generally located at 12<sup>th</sup> and "P" Streets.

**LOCATION:** From 11<sup>th</sup> to 12<sup>th</sup> Streets, between "P" and "O" Streets.

**LAND AREA:** 8,852 square feet, more or less.

**CONCLUSION:** The vacation of these public rights-of-way is consistent with the Comprehensive Plan.

<b>RECOMMENDATION:</b>	<b>Conforms to the Comprehensive Plan</b>
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## **GENERAL INFORMATION:**

### **LEGAL DESCRIPTION:**

The north 13.5' of all that portion of "O" Street abutting Lots 9-16, Block 41, Original Plat; the west 9' of all that portion of 12<sup>th</sup> Street abutting Lot 1, Block 41, Original Plat; the east 9' of all that portion of 11<sup>th</sup> Street abutting Lots B, C, D, E, and F, County Clerk's Subdivision of Lots 5 and 6, Block 41, Original Plat; the south 9' of all that portion of P Street abutting Lots 1-4, Block 41, Original Plat and Lots A and B, County Clerk's Subdivision of Lots 5 and 6, Block 41, Original Plat; and the air rights over that portion of the east-west alley between 11<sup>th</sup> and 12<sup>th</sup> Streets measuring 56' in length adjacent to the west 32' of Lot 2, Lots 3-4, Lots 9-15, and the west 7' of Lot 16, Block 41 Original Plat, and adjacent to the east 50' of Lot F, County Clerk's Subdivision of Lots 5 and 6, Block 41, Original Plat; the north 6" of the east 50' and the north 6" of the west 68' of the east-west alley between 11<sup>th</sup> and 12<sup>th</sup> Streets for purposes of the connecting bridge/hallway structure and related appurtenances; in Block 41, Original Plat, all located in the SE1/4 of Section 23 T10N R6E, Lincoln, Lancaster County, Nebraska. (\*\*As revised by staff on 10/01/03\*\*)

### **SURROUNDING LAND USE AND ZONING:**

North: Office buildings, retail commercial B-4 Lincoln Center Business  
South: Office buildings, retail commercial B-4 Lincoln Center Business  
East: Office buildings, retail commercial B-4 Lincoln Center Business  
West: Office buildings, retail commercial B-4 Lincoln Center Business

## **HISTORY:**

- Jul 1997 Special Permit #1695 approved by Planning Commission for authority to construct dwelling units above the first floor of a building in the B-4 Lincoln Center Business district.
- Mar 1979 The zoning for Lot 41 changed from J Business to B-4 Lincoln Center Business as part of the 1979 zoning update.

## **COMPREHENSIVE PLAN SPECIFICATIONS:**

The Land Use Plan designates this area as Commercial. (F 25)

**Commercial:** Areas of retail, office and service uses. Commercial uses may vary widely in their intensity of use and impact, varying from low intensity offices, to warehouse, to more intensive uses such as gas stations, restaurants, grocery stores or automobile repair. Each area designated as commercial in the land use plan may not be appropriate for every commercial zoning district. The appropriateness of a commercial district for a particular piece of property will depend on a review of all the elements of the Comprehensive Plan. (F 22)

### ***Key Elements of the Communities Economic Future***

**Downtown's Role** - Downtown Lincoln has evolved from its earlier role as the region's dominant retail center to an urban mixed-use center. Today, Downtown is a center for government, education, entertainment, convention and conference facilities, housing, arts, business, professional services and tourism. Downtown should remain the designated entertainment, tourism and cultural center for the community and continue to strengthen linkages with the University of Nebraska-Lincoln. (F 11)

**Downtown Lincoln - the Heart of Our Community** - Downtown Lincoln continues to serve its role as the central location for commerce, government, entertainment and the arts. Views to the State Capitol have been preserved, as they have in the past, as part of our community form. (F 16)

Among existing Regional Centers, Downtown Lincoln stands as a unique community resource. Downtown is the county's most intensive center of activity, offering a broad mix of retail, office, industrial, residential, and governmental uses. It is home to numerous public facilities - including the Nebraska State Capitol, the University of Nebraska-Lincoln's main campus, and County-City Building - as well as private endeavors - including financing, insurance, and other business services. Downtown Lincoln has historically served as the community's dominant center of entertainment. A key element to this role has been the long standing and successful "theater policy." This policy has allowed Downtown to retain an appreciable share of the area's movie theaters. It is intended that this policy would continue as part of the present Plan. (F 43, 44)

### ***Principles for Downtown***

The City should preserve and enhance Downtown's role as:

- the major office and service employment center of the City
- the focus of all levels of government
- the City's principal cultural and entertainment center
- the hotel and convention center for the City
- the City's financial center
- a hub of higher education
- specialty retail geared toward employees, area residents, convention visitors and University population

Lincoln's successful Theater Policy must be maintained and reinforced. New entertainment attractions should be encouraged to locate in the Downtown. (F 48)

**UTILITIES:**

Lincoln Electric System has existing facilities located in the alley. They will retain their easements in the alley, hence the request to only vacate air rights in the alley for only that portion that will be covered by the bridge/hallway. Aquila has gas mains located all around Block 41, but they are located out in the streets, so their facilities will not be affected by this request. Alltel and Time Warner Cable have not commented on this request.

**TRAFFIC ANALYSIS:**

Highway 34, which is also "O" Street, falls under the jurisdiction of the Nebraska Department of Roads. A vacation of this right-of-way by the City would remove the vacated area from the jurisdiction of the Department. The Department of Roads does not object to this vacation. They have also discussed this vacation with the Federal Highway Administration, and they also have no objection.

**ANALYSIS:**

1. This is a request by the Director of Urban Development for a finding of Conformance with the Comprehensive Plan for the vacation and designation as surplus of a portion of the public right-of-way surrounding the new Grand Theater complex that will be located downtown.
2. Title to the area of the proposed vacation will remain with the City of Lincoln. The City will convey a permanent redevelopment easement, as contemplated in the redevelopment agreement, for so long as the redevelopment improvements shall exist in the affected areas. At such time as the improvements no longer exist, the easement over the affected areas would terminate, and the property would return to public right-of-way status.
3. The Urban Development Department and City Attorney's Office have indicated the right-of-way must be vacated to clear the title so the project can proceed.
4. The general nature of the redevelopment activities within the vacated area is to occupy these spaces with building features and appurtenances that may extend out from the building at various elevations, including ground level. The majority of these features include entrance canopies, covered walkway and seating areas, and window treatments that protrude from the building face.
5. This vacation will create lots that no longer front on a public street or private roadway. This can be resolved by providing an access easement over the vacated area.
6. No City Department has raised an objection to this requested vacation.

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

- 1.1 The provisions of Chapter 14.20 of the Lincoln Municipal Code shall be met.

1.2 Public access and utility easements should be retained over the entire area.

Prepared by:

Greg Czaplewski  
Planner

**Date:** September 18, 2003 (Legal description revised on 10/01/03)

**Applicant:** Director of Urban Development  
Marc Wullschleger  
808 P Street, Suite 400  
Lincoln, NE 68508  
441-7126

**Owner:** City of Lincoln

**Contact:** Urban Development Department  
Dallas Mcgee, Assistant Director  
808 P Street, Suite 400  
Lincoln, NE 68508  
441-7857

# STREET & ALLEY VACATION NO. 03011

## PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 1, 2003

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

Staff recommendation: A finding of conformance with the Comprehensive Plan.

This application was removed from the Consent Agenda at the request of the Planning staff for the submittal of additional information and a revised legal description.

Ex Parte Communications: None.

Greg Czaplewski of the Planning staff submitted a letter from the Public Works Department addressing the easements that will be granted if this public right-of-way is vacated and indicating that the Nebraska Department of Roads (NDOR) needs to be notified of this request. Czaplewski advised that the NDOR has been notified and they have not objected to this proposal. The Federal Highway Administration has also been notified and they do not object. Czaplewski also submitted a revised legal description for the area being vacated; however, this revision does not require additional notice or readvertising. Czaplewski also submitted a revised map that conforms with the revised legal description.

Steward inquired as to the responsibility for maintaining the surface of these vacated portions, i.e. that is, the surface that is not covered by some building appurtenance in both the alley and along the sidewalk. Dallas McGee of Urban Development advised that the portion that would be in the area where the entire width of the alley is vacated would be maintained by the Douglas Theater Company. The portion beyond that would be maintained by the city. The sidewalks would continue to be maintained by the city. The city would grant an easement to Douglas Theater which would allow portions of the building to extend into what is now the right-of-way; however, most of the vacation requested is to allow for awnings and areas above the ground level.

Carlson commented that the city is going to retain ownership of this property, so the proposal is actually vacating a particular use to a different use. McGee concurred. Initially, they talked about not vacating. They had discussions with NDOR and not vacating would have been their preference; however, in discussions with the developer and getting title insurance on the building itself, the title insurance company needed assurance that the right-of-way on "O" Street would not be taken for additional width for a road. Therefore, the city is retaining ownership, vacating it as street right-of-way and then granting an easement to the developer to occupy that portion of the space where their building may be located. The city has reversion rights in the event that the use stops.

## Support

1. **Michael Morrow** appeared as attorney for **Center Associates**, which is entering into the Redevelopment Agreement with the city. He applauded the staff for getting the correct legal descriptions. Part of the reason for the easement is because the facade itself is going to encroach

slightly into the public right-of-way. There is a walkway connecting the two buildings between the alley. The legal description for the easement talks about surface rights only for the walkway in the alley and for the easement in the alley. That is somewhat of a misnomer. The 6" easement that the developer is requesting that would run along the northern boundary of the alley is for footings that will extend below the surface; however, Morrow assured that they will not in any way interfere with any utilities. The easements for the walkway that will connect the two buildings will also have footings that will extend to a maximum depth of 4' to support the walkway facility. Therefore, it will also be necessary to have a subsurface easement across the portion of the alley that supports the walkway itself. There will no longer be vehicular access through the alley.

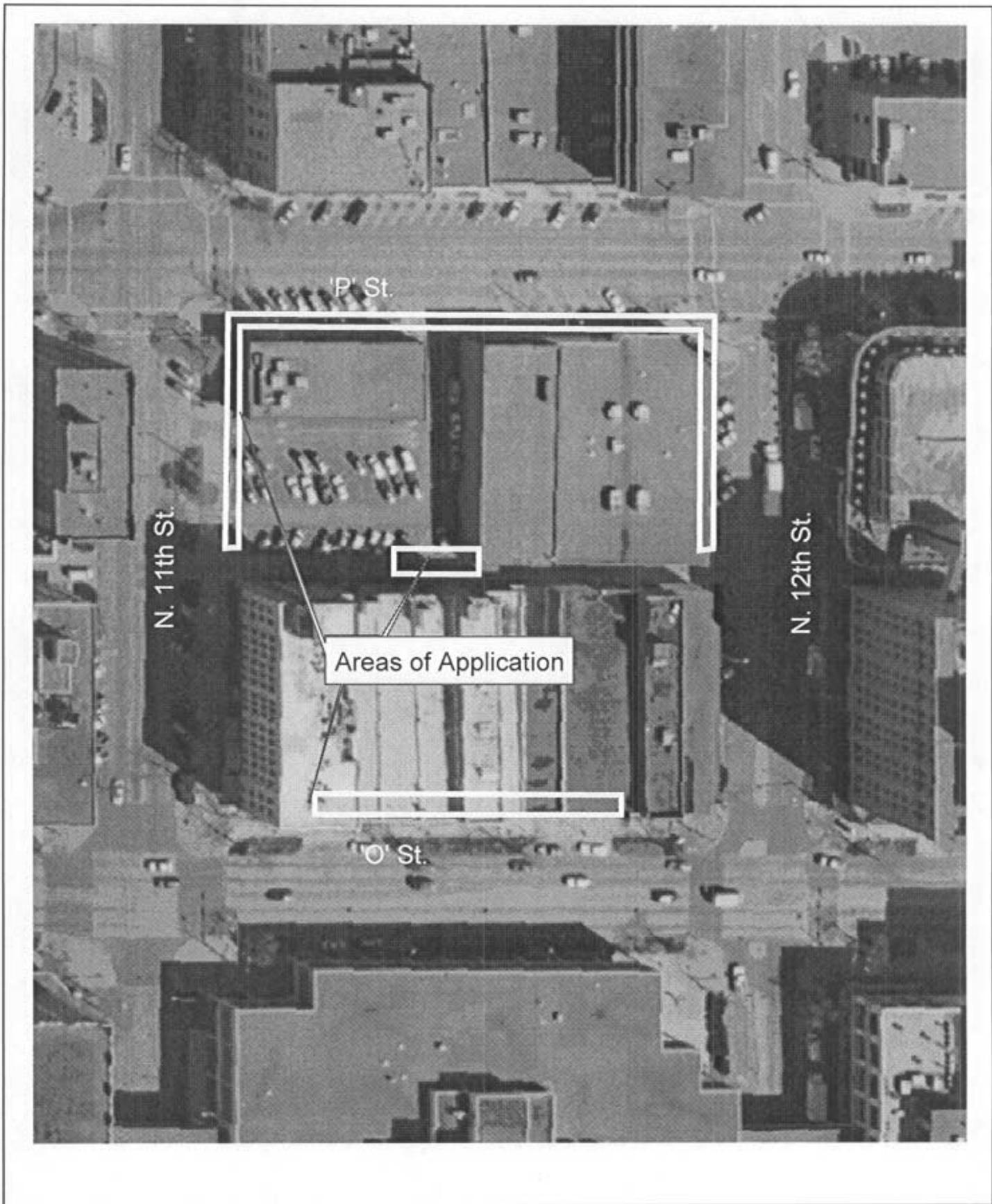
There was no testimony in opposition.

Steward inquired whether there needs to be any revisions to the staff report or conditions to include the subsurface easement. Rick Peo of the City Law Department advised that the Planning Commission is only acting on the finding as to conformance with the Comprehensive Plan on the street vacation itself. Transfer of easement rights will be a separate action.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

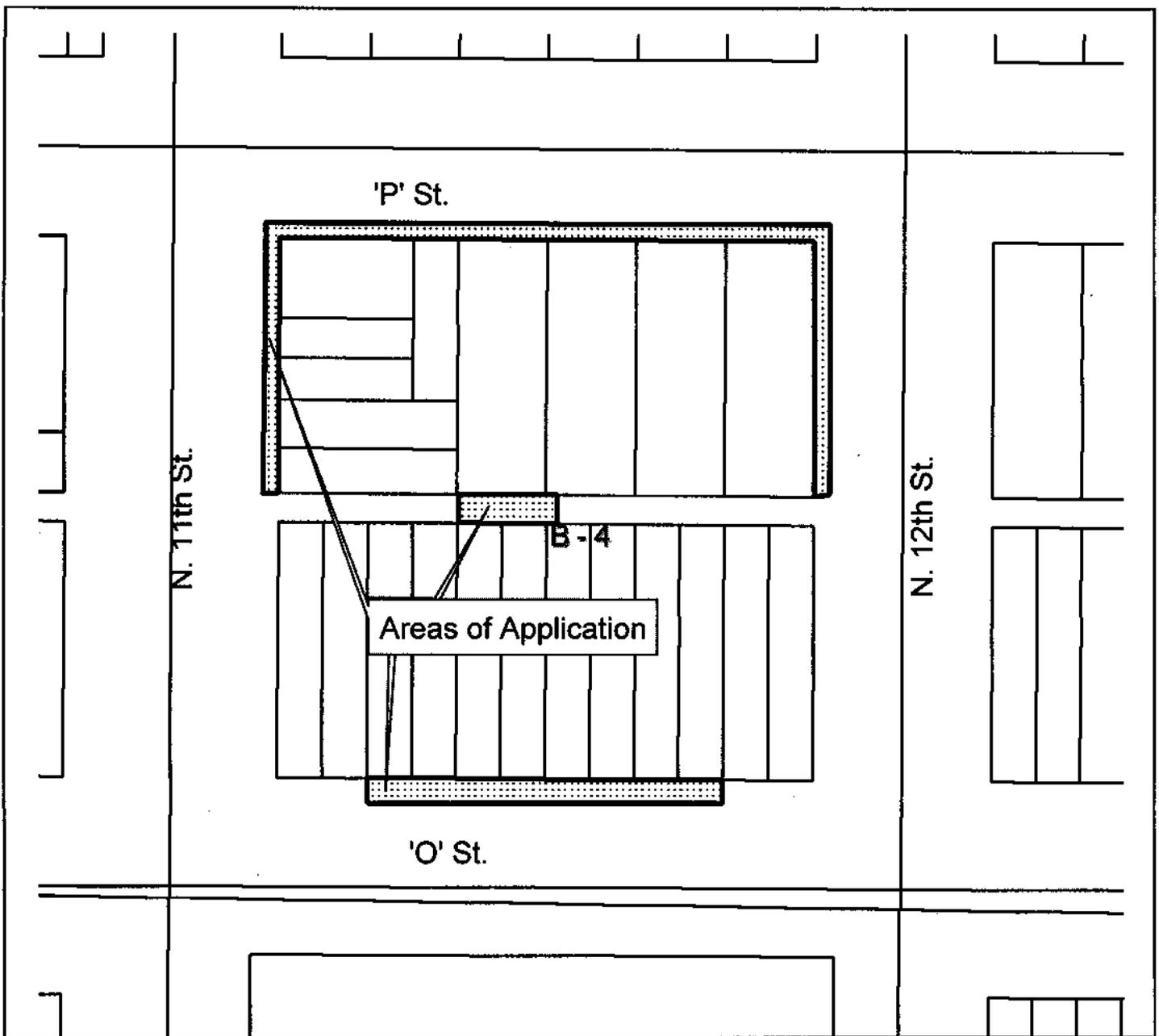
October 1, 2003

Larson moved to find the proposal to be in conformance with the Comprehensive Plan, seconded by Bills-Strand and carried 7-0: Bills-Strand, Carlson, Larson, Taylor, Marvin, Duvall and Steward voting 'yes'; Krieser absent.



**Street & Alley Vacation #03011**  
**'O' Street, 11th to 12th**





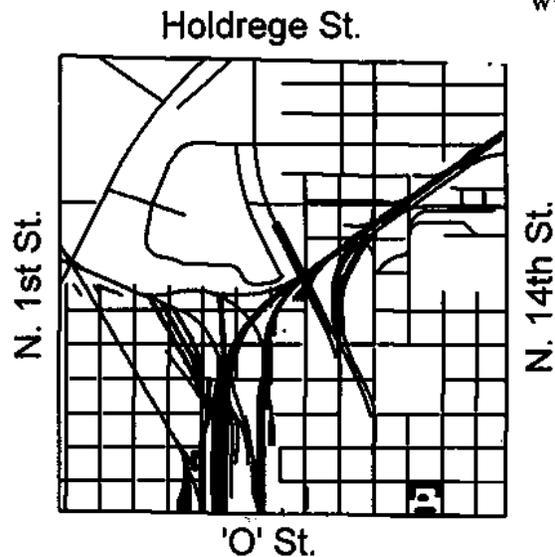
# Street & Alley Vacation #03011

## 'O' Street, 11th to 12th

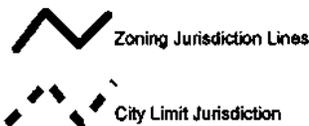
### Zoning:

- 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
- I-3 Employment Center District
- P Public Use District

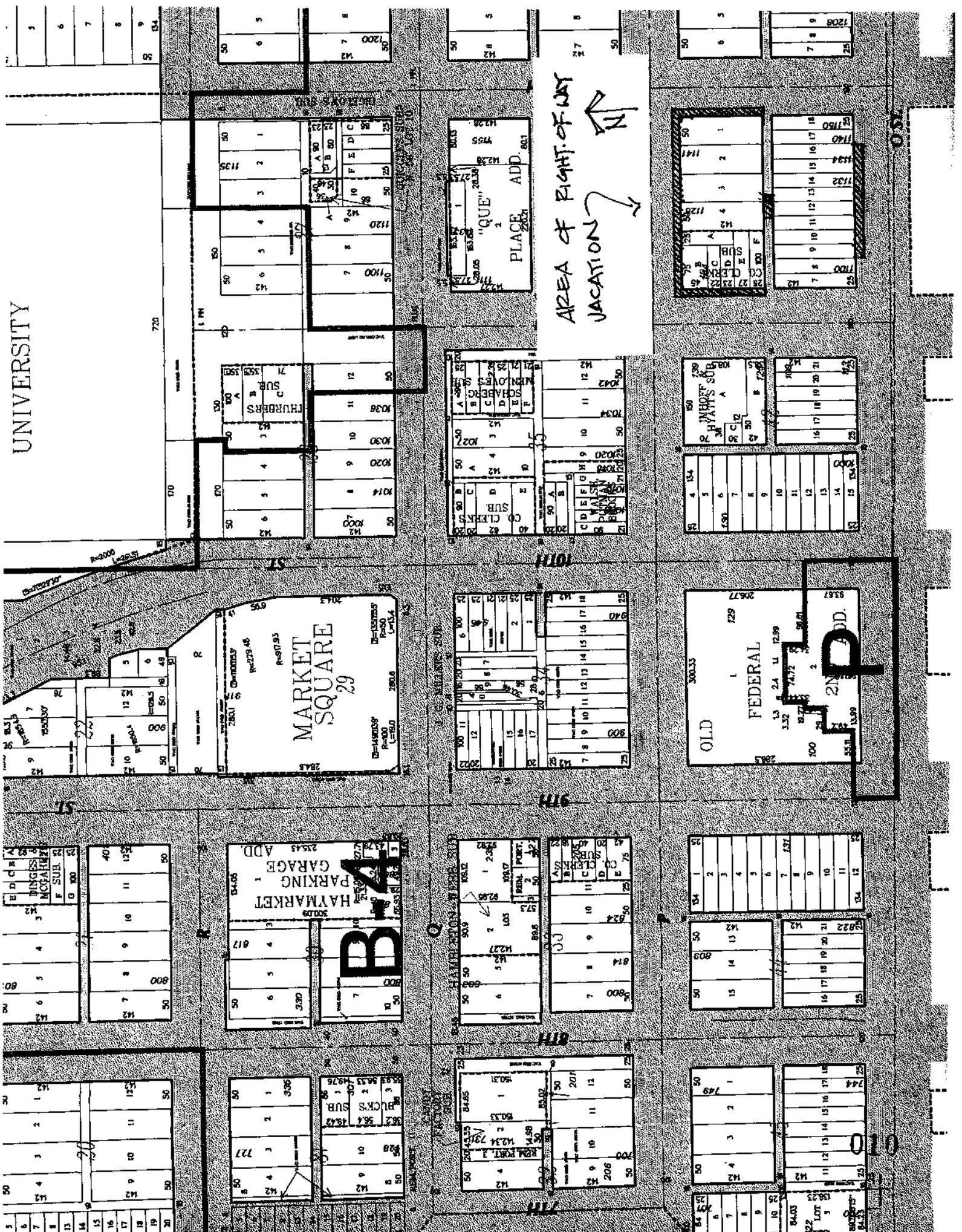
One Square Mile  
Sec. 23 T10N R6E



009



UNIVERSITY



AREA OF RIGHT-OF-WAY  
 VACATIONS

MARKET SQUARE  
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FEDERAL  
 2ND ADD.

HAYMARKET  
 PARKING GARAGE  
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Jeff A Cole

09/11/2003 02:04 PM

To: Gregory S Czaplowski/Notes@Notes  
cc: Dallas A Mcgee/Notes@Notes  
Subject: Revised Vacation request letter

Greg - here is a more detailed explanation of the request for vacation that we received from Law department. It provides a better picture of the project and request, especially regarding alley related issues, than the draft we sent over yesterday.

Let me know if you have questions. Thanks

September 11, 2003

Greg Czaplowski  
Lincoln / Lancaster County Planning Department  
555 S 10th Street  
Suite 213, Mailbox #16  
Lincoln, NE 68508

RE: Request to vacate portions of Block 41

The Urban Development Department, on behalf of the City of Lincoln, is requesting that the Planning Commission review and approve for conformance with the comprehensive plan a requested vacation and surplus designation of a portion of the public rights-of-way surrounding the new theater complex that will be located on Block 41 of the original plat of the City of Lincoln.

The requested vacation includes 9 feet of right of way extending from the property line along P, 11th and 12th Streets. On O Street, the requested vacation is 13 feet 6 inches in front of those lots included in the redevelopment site. In addition the planned redevelopment improvements include a bridge over the existing alley. The vacation request will also apply to the air rights above the existing alley in Block 41 for purposes of an above grade interior hallway connecting bridge. The bridge will connect the redevelopment improvements on the north half of the block to the improvements on the south half. The redeveloper will receive an air rights easement from the city for so long as the redevelopment improvements exist for the bridge. Although the bridge will preclude vehicular and pedestrian traffic from traveling through the entire alleyway, an essential component of the alley is retained for public utility corridors as they now exist. The alley was considered for closing, but relocating existing utilities was cost prohibitive. This was an essential component of a successful redevelopment of the blighted conditions in the area.

The areas of requested vacation are identified in the attached material.

Title to the vacated property will be retained in City ownership, and the City will grant to the developer, Center Associates, LLC, permanent easement/s for construction and for so long as the redeveloper improvements exist in the vacated areas, including access for maintenance and improvements or repairs as needed. The design that the developer is utilizing was developed in

conjunction with architects hired by the City and conforms to design standards identified by the Urban Design Committee.

We ask that this request be placed on your October 1 agenda.

**Project Specific Information**

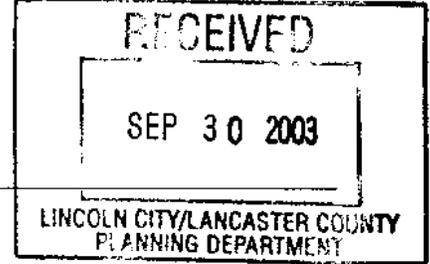
**Ownership:** Currently the City is the owner of all the properties on the block with the exception of the former Wells Fargo bank building and warehouse. These properties are owned by Center Associates LLC, the parent company of Douglas Theatre Corporation, the developer building the theater complex that will occupy this site.

**Applicant:** City of Lincoln, Urban Development Department

**Contact Information:** Dallas McGee, Assistant Director, 441-7856

Sincerely,

Dallas McGee  
Assistant Director



# M e m o r a n d u m



**To:** Greg Czapleski, Planning Dept.  
**From:** Dennis Bartels, Engineering Services  
**Subject:** Street and Alley Vacation #03011  
**Date:** September 26, 2003  
**cc:** Allan Abbott  
Roger Figard  
Randy Hoskins  
Steve Masters  
Joel Pederson  
Nicole Fleck-Tooze  
Shane Dostal

Engineering Services has reviewed the proposed vacations of portions of "O" Street, "P" Street, 11th Street, 12th Street and the east-west alley in Block 41 for the proposed theater complex and has the following comments:

1. The proposal indicates that the City will maintain ownership of the vacated rights-of-way and will grant easements to the theater developer. The use of these easements must be approved by Public Works to assure an adequate sidewalk space is maintained. Blocking sidewalks by using the entire easement at sidewalk level is not acceptable.
2. The proposed alley vacation includes a proposal to build a structure over the alley and over the existing public sewer in this alley. The vacation includes area in addition to the proposed structure. The proposed vacation is satisfactory provided that the easement granted does not include the right to build an at-grade structure in the easement except in the 56 feet of space that has been discussed.
3. The vacation of right-of-way along "O" Street will required approval of the Nebraska Department of Roads.