

FACTSHEET

TITLE: **STREET & ALLEY VACATION NO. 15003**
(East/West Alley in the block bounded by M Street,
South 21st Street, N Street, and South 20th Street)

BOARD/COMMITTEE: Planning Commission

APPLICANT: Ken Fougeron on behalf of
New Generation Investments LLC

RECOMMENDATION: A finding of
conformance with the 2040 Comprehensive Plan
(7-0: Lust, Beecham, Harris, Weber, Hove, Scheer,
Sunderman voting 'yes'; Corr and Cornelius absent).

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

OTHER DEPARTMENTS AFFECTED: None.

SPONSOR: Planning Department

OPPONENTS: None.

REASON FOR LEGISLATION: To vacate all of the remaining portion of the east/west alley adjacent to Lots 2-6, Block 2,
Avondale Addition to Lincoln, generally located at 220 South 20th Street.

DISCUSSION/FINDINGS OF FACT:

1. The proposed vacation was initially thought to have been for property that was determined landlocked. Subsequent to the Planning Commission action, a staff memorandum (see p.12-15) was prepared explaining that there is city-owned land adjacent to the alley that technically provides access to the alley from M Street. It should be noted that this land has an automatic reverter clause in the deed to the city which returns ownership to the owner upon the alley being vacated.
2. The staff recommendation finding the proposed alley vacation to be in conformance with the Comprehensive Plan is based on the "Analysis" as set forth on p.3, concluding that the vacation of the remaining portion of the alley will not deny access to adjacent property owners and may facilitate land assembly for future development.
3. There was no testimony in opposition.
4. On April 15, 2015, the Planning Commission agreed with the staff recommendation and voted 7-0 to find the proposed vacation to be in conformance with the Comprehensive Plan, subject to the conditions of approval.
5. The appraisal of Clint Thomas of the Housing Rehab & Real Estate Division of the Urban Development Department is found on p.16, recommending that the vacated property be sold to the abutting property owner for \$383.40.
6. The funds for the vacated rights-of-way have been paid to the City Clerk, thus the requirements of Chapter 14.20 of the Lincoln Municipal Code have been satisfied.

FACTSHEET PREPARED BY: Geri Rorabaugh, Administrative Officer

DATE: May 12, 2015

REVIEWED BY: David R. Cary, Acting Director

DATE: May 12, 2015

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for April 15, 2015 PLANNING COMMISSION MEETING

PROJECT #: Street and Alley Vacation No. 15003

PROPOSAL: To vacate all of the remaining portion of the east/west alley adjacent to Lots 2-6, Block 2, Avondale Addition to Lincoln.

LOCATION: The remaining portion of the east/west alley in the block bounded by M Street, S. 21st Street, N Street and S. 20th Street.

LAND AREA: 0.06 acres, more or less

CONCLUSION: The existing alley is landlocked. Vacating this right-of-way will not deny access to adjacent property owners and may facilitate land assembly for future development. Subject to the conditions of approval, this request is in conformance with the Comprehensive Plan.

<u>RECOMMENDATION:</u>	Conforms to the Comprehensive Plan
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GENERAL INFORMATION:

LEGAL DESCRIPTION: The remaining portion of the east/west alley adjacent to Lots 2-6, Avondale Addition to Lincoln, located in the NW1/4 of Section 25-10-6 east of the 6th P.M., Lincoln, Lancaster County, Nebraska.

SURROUNDING LAND USE AND ZONING:

North: Electrical Substation; B-4
South: Cold Storage Facility; B-4
East: Undeveloped/Park Facilities; B-4/P
West: General Commercial: B-4

COMPREHENSIVE PLAN SPECIFICATIONS:

P. 10.15 - Local streets and alleys are not included in the functional classification.

HISTORY:

July 1886 Spencer's Subdivision platted this alley right-of-way

UTILITIES: There is a sanitary sewer located in the alley. Easements will need to be retained for the sanitary sewer.

ANALYSIS:

1. This is a proposal to vacate a remaining portion of the east/west alley that is currently landlocked. This alley does not connect to public right-of-way.
2. Vacating this alley right-of-way should not negatively impact adjacent property owners. The vacated right-of-way could assist with land assembly and future redevelopment.
3. This right-of-way was originally platted in 1886 as part of Spencer's Subdivision. All other rights-of-way have been vacated in the block including Monroe Street and the east portion of the remaining east/west alley that connected to S. 21st Street.
4. There is a sanitary sewer in the alley right-of-way. An easement will need to be retained over the vacated right-of-way for maintenance of the sewer.
5. Subject to the conditions of approval, this request is in conformance with the Comprehensive Plan.
6. Lincoln Municipal Code Chapter 14.20 requires the City to establish the proper price to be paid for the right-of-way, as well as any amounts necessary to guarantee required reconstruction within the right-of-way. These values must be established and deposited with the City Clerk prior to scheduling the vacation request with the City Council.

**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 are met.
- 1.2 Include retention of utility easements by City with deed transfer.

Prepared by:

Paul Barnes, Planner
402-441-6372
pbarnes@lincoln.ne.gov

DATE: March 31, 2015

APPLICANT/CONTACT: Ken Fougeron
340 Victory Lane
Lincoln, NE 68528

OWNER: New Generation Investments LLC
340 Victory Lane
Lincoln, NE 68528

STREET & ALLEY VACATION NO. 15003

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, April 15, 2015, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jeanelle Lust, Cathy Beecham, Dennis Scheer, Lynn Sunderman, Ken Weber, Maja Harris, Chris Hove, (Tracy Corr and Michael Cornelius absent); David Cary, Steve Henrichsen, Brian Will, Tom Cajka, Paul Barnes, Christy Eichorn, Geri Rorabaugh and Amy Huffman of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission meeting

Chair Jeanelle Lust called the meeting to order at 1:00 p.m. and acknowledged the posting of the Open Meetings Act in the back of the room.

Lust requested a motion approving the minutes for the regular meeting held April 1, 2015, as revised. Harris moved approval, seconded by Beecham and carried 6-0: Lust, Beecham, Sunderman, Harris, Weber and Hove voting 'yes'; Scheer abstained; Cornelius, Corr absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

April 15, 2015

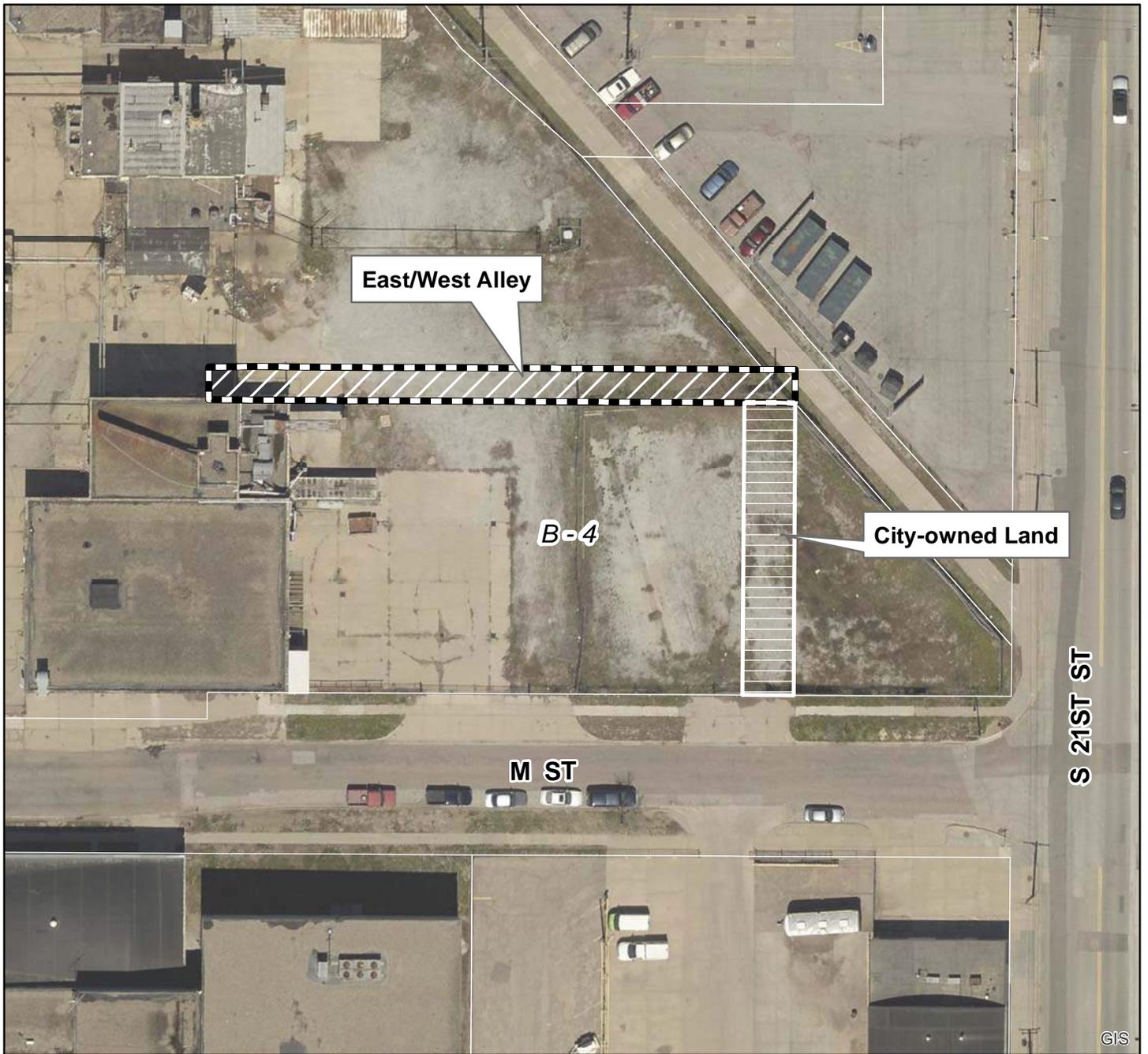
Members present: Lust, Hove, Beecham, Weber, Scheer, Harris, and Sunderman; Corr and Cornelius absent.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 15019, SPECIAL PERMIT NO. 15020, STREET & ALLEY VACATION NO. 15003, and WAIVER NO. 15003.**

There were no ex parte communications disclosed.

Scheer moved approval of the Consent Agenda (Item Nos. 1.1, 1.2, 1.3, and 1.4), seconded by Hove and carried 7-0: Lust, Hove, Beecham, Weber, Scheer, Harris, and Sunderman; Corr and Cornelius absent.

Note: This is final action on Special Permit No. 15019, Special Permit No. 15020, and Waiver No. 15003, unless appealed to the City Council within 14 days.



2013 aerial

Street and Alley Vacation #: SAV15003
S 21st & M St



One Square Mile:
 Sec.25 T10N R06E

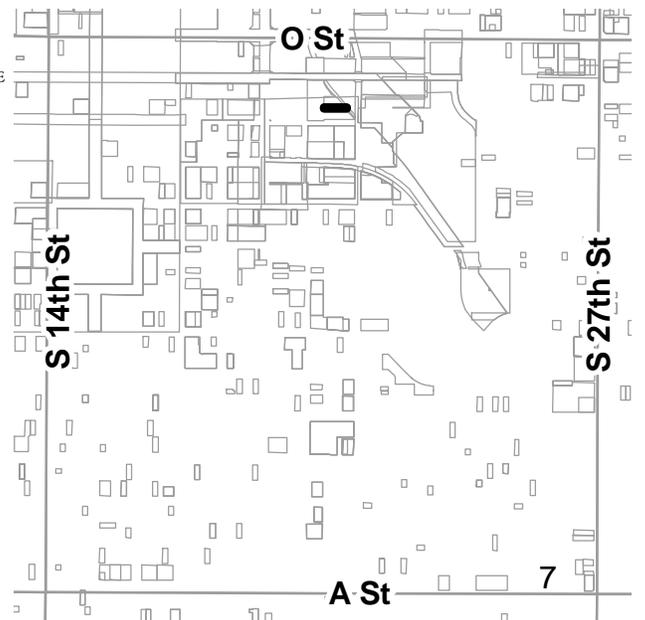
Zoning:

- 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

Area of Application

Zoning Jurisdiction Lines

Lancaster County Jurisdiction





GIS

2013 aerial

Street and Alley Vacation #: SAV15003
S 21st & N St

Zoning:

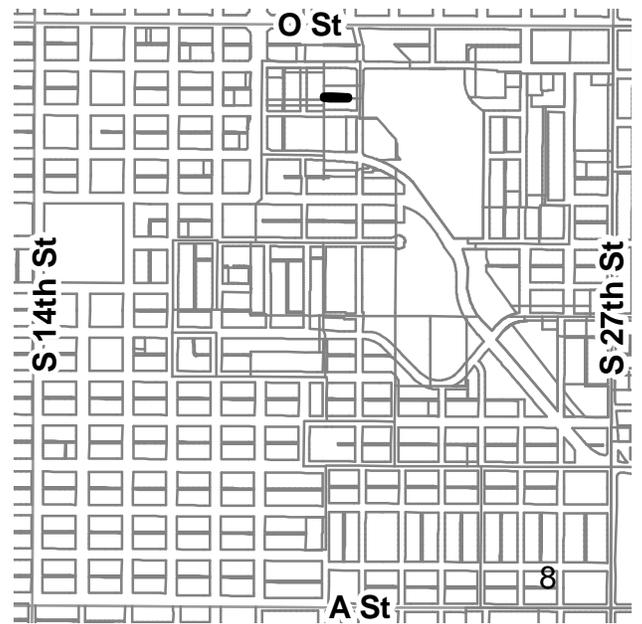
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One Square Mile:
 Sec.25 T10N R06E

Area of Application

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INFORMATION SHEET

An Information Sheet must be filled out completely by the owners of each parcel abutting the requested vacation. The attached **Petition to Vacate Public Way** must also be filled out completely according to the instructions contained in the Instruction Sheet.

1. Name of Petitioner (Current Titleholder/s): New Generation Investments, LLC

If more than one individual, indicate if you are:

_____ joint tenants with right of survivorship, OR _____ tenants in common

2. Petitioner's Address: 340 Victory Lane
Lincoln, NE 68528

3. Petitioner's Telephone Number: (402) 323-3100

4. Name of street, alley, or other public way sought to be vacated: East/West alley running
from west line of vacated RE property within block
bounded by M & N Street and 20th & 21st Street

5. Legal description of Petitioner's property which abuts the public way sought to be vacated: _____
see attached

6. Why are you seeking to have this street, alley, or other public way vacated?
Redevelopment plans for the adjoining property
may require sewer line to be relocated.

7. What use or uses do you propose to make of the public way should it be vacated?
Part of mixed-use development.

8. Do you intend to purchase that portion of the vacated public way which abuts your property as described in the **Petition to Vacate Public Way** and/or other portions of the vacated public way? Y YES ___ NO

9. Name and address of person to whom tax statement should be sent:
Michael J. Tavlin, CFO
BEJ Partnership, Ltd.
340 Victory Lane, Lincoln, NE 68528

The property will be appraised and the purchase price of the portion abutting your property must be paid by you to the City Clerk unless you have indicated that the portion abutting your property will be sold to any other abutting owner willing to pay the purchase price. The Vacation Ordinance will not be introduced before the City Council until the full price of the entire public way proposed to be vacated has been paid.

***** IMPORTANT: BE SURE THAT THE PETITION TO VACATE PUBLIC WAY HAS BEEN PROPERLY EXECUTED BY ALL TITLEHOLDERS TO YOUR PROPERTY AND ATTACH IT TO THIS INFORMATION SHEET.**

PETITION TO VACATE PUBLIC WAY
with
RELEASE AND WAIVER OF RIGHTS AND TITLE,
AND QUITCLAIM DEED TO CITY OF LINCOLN

TO THE HONORABLE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

The undersigned property owner(s) hereby petition you to vacate the following street, alley, or other public way, commonly known as: *(i.e.: Elm Street from 1st to 2nd St. or East-west alley, from the north line of 1st St. to the south line of 2nd St.)*

East/West alley running from west line of vacated RR property within block

bounded by M & N street and 20th & 21st street

in the CITY OF LINCOLN, NEBRASKA, with the City reserving in said street, alley, or other public way such title, rights, easements, and privileges as it may deem necessary. In consideration of the vacation of the above-described street, alley, or other public way, we, and each of us, for ourselves, our heirs, personal representatives, successors, and assigns, hereby waive and release any and all claims, causes of action, rights of access, and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of such vacation; and hereby quitclaim unto the City of Lincoln, Nebraska, and to its successors and assigns forever, all right, title, interest, estate, and demand, both at law and in equity, in and to all of said street, alley, or other public way.

TO HAVE AND TO HOLD the above-described street, alley, or other public way together with all tenements, hereditaments, and appurtenances thereto belonging unto the City of Lincoln, Nebraska, and to its successors and assigns forever.

The undersigned hereby represent(s) that he, she, they, or it is(are) the owner(s) of the following described property in Lincoln, Lancaster County, Nebraska, abutting on said street, alley, or other public way: *(Legal description from deed or abstract NOT street address, i.e. Lot 10, Block 500 Boardwalk Addition NOT 4500 Park Place Blvd.)*

See Attached

DATED this 6th day of March, 2015.

New Generation Investments, LLC
[Name of Titleholder]

By: [Signature]
~~Managing Member~~ Manager

**(ALL TITLEHOLDERS OF THE REAL ESTATE DESCRIBED ON THE PRECEDING PAGE
MUST SIGN THIS PETITION BEFORE A NOTARY PUBLIC)**

STATE OF Nebraska)
) ss.
Lancaster COUNTY)

The foregoing instrument was acknowledged before me on this 6th day of March,
2015, by Derek C. Zimmerman, ~~managing member~~ Manager of New Generation Investments, LLC,
on behalf of said limited liability company.

(Seal) 

Tina M. Scully
Notary Public

SIGNATURE PAGE FOR LIMITED LIABILITY COMPANY

MEMORANDUM

TO: City Council

FROM: Paul Barnes, Planner

SUBJECT: Additional Information for SAV15003

DATE: May 6, 2015

CC: David Cary Bob Simmering
Clint Thomas Ken Fougeron
Steve Werthmann Rick Peo

The purpose of this memo is to provide the City Council with additional information regarding Street and Alley Vacation #15003.

The original request from the applicant was to vacate the remaining portion of the east/west alley in the block bounded by N and M Streets from S. 20th to S. 21st Street. The Planning Department received the vacation application on March 12, 2015 and the Planning Commission hearing was held on April 15, 2015. The Planning Commission voted 7-0 to find the vacation request to be in conformance with the Comprehensive Plan.

The remaining portion of the east/west alley was originally thought to be a landlocked right-of-way. After the Planning Commission hearing on April 15 it was determined that the City owned a piece of land that provided access to the alley from M Street. A deed for the City-owned land from December 1929 states, "...the City of Lincoln, Nebraska, municipal corporation, shall use said real estate for an alley-way and for alley purposes...". This property is City-owned and was not dedicated as right-of-way. It appears this land has been used as part of a private parking lot for decades.

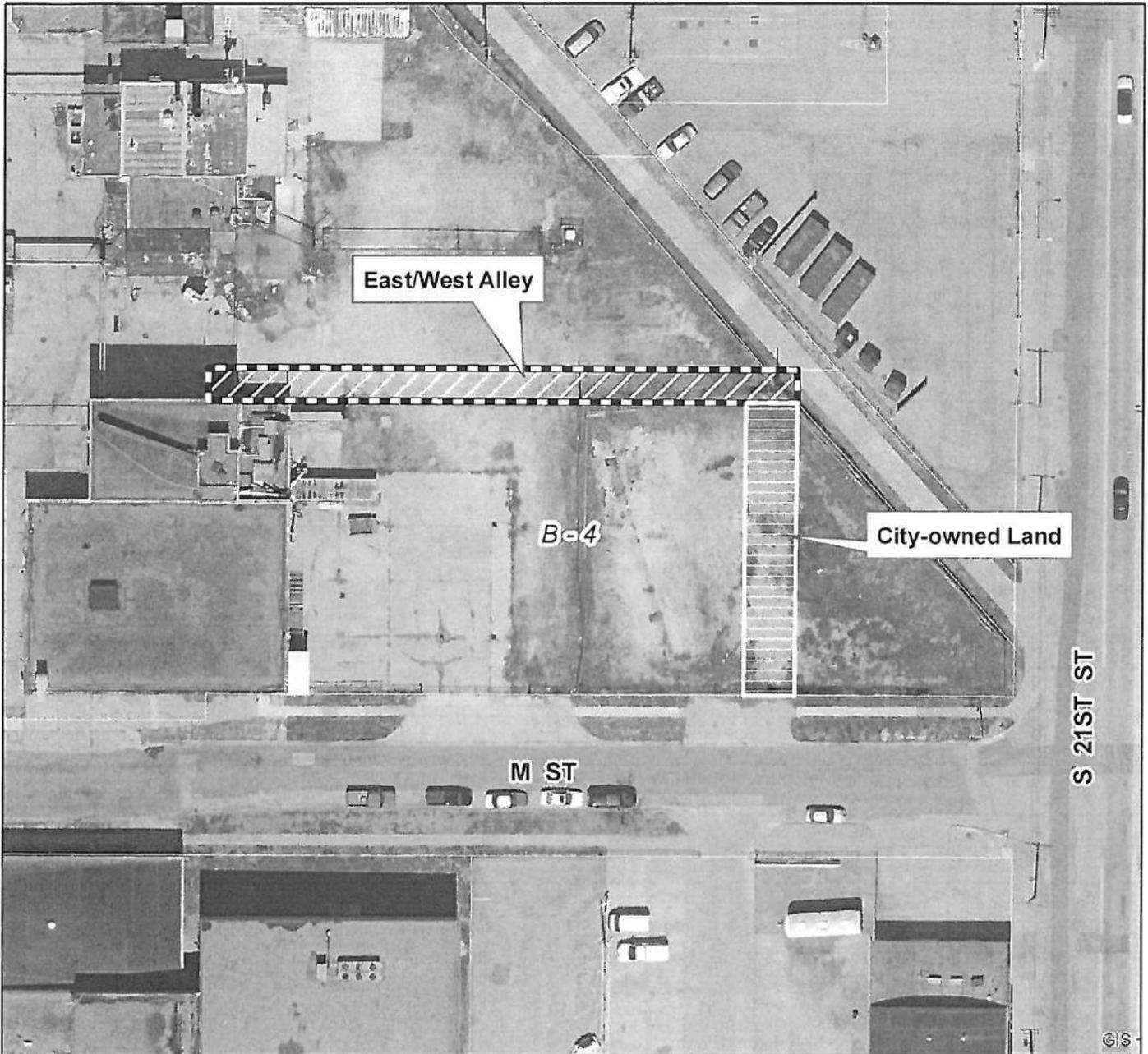
The deed goes on to state that, "...should the said City of Lincoln cease to use said real estate for an alley-way and alley purposes, the said real estate shall revert to the grantor herein, its successors or assigns."

If the east/west alley is vacated the City will prepare a deed to transfer the property back to the adjacent owner since it is no longer needed for alley purposes. The City Council will not need to take action on this item since the deed from 1929 contains a reversionary clause.

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

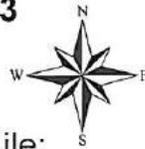
If you have questions you can reach me by email at pbarnes@lincoln.ne.gov or by phone at 441-6372.

Lincoln City-Lancaster County Planning Department
555 S. 10th St., Rm. #213 • Lincoln NE 68508
Phone: (402) 441-7492 • Fax: (402) 441-6377



2013 aerial

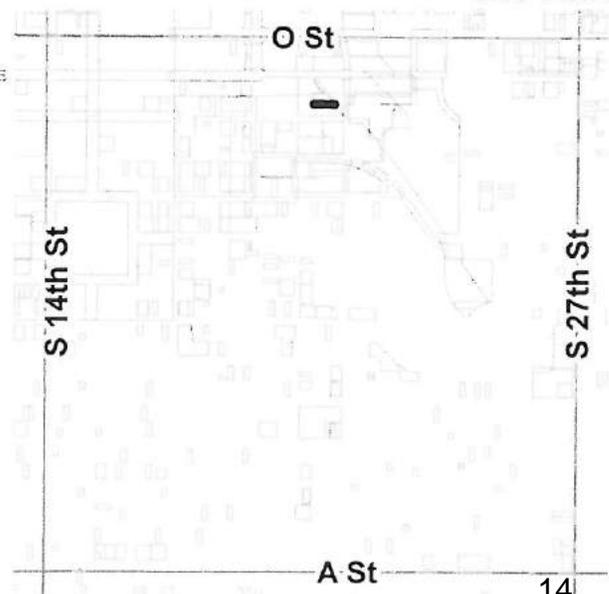
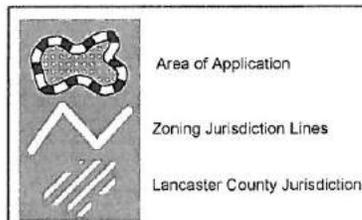
Street and Alley Vacation #: SAV15003
S 21st & M St



One Square Mile:
 Sec.25 T10N R06E

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DEED BOO

284-230 12-28-29

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DEED RECORD No. 284

Deed
The Chicago, Rock Island & Pacific Railway Company
To
City of Lincoln, Nebraska
Filed for Record
December 28, 1929, at 10:50 A. M.
T. E. Wheeler, Register of Deeds
Fee \$1.00

DEED

THIS INDENTURE made this 8th day of December, 1929, between THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa, of the first part, and the CITY OF LINCOLN, NEBRASKA, a municipal corporation, of the second part, WITNESSETH, That the said party of the first part, in consideration of the vacation by the City of Lincoln, Nebraska, a municipal corporation, of that portion of

the alley lying north of Lot One (1), and the east thirty-one (31) feet of Lot Two (2), Block Two (2), Avondale Addition, an addition to the City of Lincoln, Nebraska, has remised, released, and quit claimed, and by these presents does for itself, and its successors and assigns, remise, release, and forever quit-claim and convey unto the said party of the second part, forever all its right, title, interest, estate, claim and demand, both at law and in equity, of, in and to all the real estate described as The West Nineteen (19) feet of Lot Two (2), Block Two (2), Avondale Addition to the City of Lincoln, Lancaster County, Nebraska, together with all and singular the hereditaments thereunto belonging.

TO HAVE AND TO HOLD the above described premises unto the said City of Lincoln, Nebraska, a municipal corporation; so that neither the said The Chicago, Rock Island and Pacific Railway Company, a corporation, the said party of the first part, or any person in its name and behalf shall or will hereafter claim or demand any right or title to the said premises or any part thereof but that it shall, and its successors and assigns shall, by these presents be excluded and forever barred.

(1)

This conveyance of the above described real estate is made upon the express condition that the City of Lincoln, Nebraska, a municipal corporation, shall use said real estate for an alley-way and for alley purposes, and should the said City of Lincoln cease to use said real estate for an alley-way and for alley purposes, then said real estate shall revert to the grantor herein, its successors or assigns.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and corporate seal the day and year above written.

In the presence of:

M. J. Zielkowski

E. Christiansen

Approved as to Form

Frank A. Peterson
Deputy City Atty.

Dec. 15, 1929.



THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, a Corporation,

By L. C. Fritch
Vice President

Carl Nyquist
Secretary

(2)

STATE OF ILLINOIS)
COUNTY OF JOCK) SS.

On this 8th day of December, 1929, before me, the undersigned, T. Vanderpool, a Notary Public, duly commissioned and qualified for and residing in said county, appeared L. C. Fritch and Carl Nyquist, to me personally known, who being by me duly sworn, did say that they are respectively, Vice President and Secretary of The Chicago, Rock Island and Pacific Railway Company, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of the said corporation, and that said above and foregoing

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PAG

INTEROFFICE MEMORANDUM

TO: Mayor Beutler
& City Council Members

FROM: Clinton W. Thomas

DEPARTMENT: City Council Office

DEPARTMENT: Housing Rehab & Real Estate Division

ATTENTION:

DATE: April 20, 2015

COPIES TO: Teresa J. Meier
Jeff Kirkpatrick
Byron Blum, Bldg & Safety
Geri Rorabaugh, Planning
Sandy Dubas, City Clerk's Office
Jamie Phillips, Mayor's Office

SUBJECT: Street & Alley Vacation No. 15003
E/W alley, block bounded by M, N, 20th,
21st

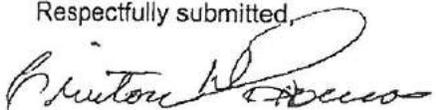
A request has been made to vacate the remaining portion of the alley in the block bounded by M, N, 20th and 21st Streets. This alley is within the area formerly occupied by Fisher Foods. The area was viewed and appears a portion of the parking lot and staging area of the former business. Staff has indicated the existence of a sanitary sewer within the area to be vacated and has requested that an easement for the repair and maintenance of that sewer be retained. An overhead line was also observed within the area but it is not known if that line is a public line or a private line serving only that business.

Long narrow strips such as this rarely have any value to anyone except the abutting landowner and since this area is landlocked by the abutter it is undoubtedly true in this case. Given that no one else would be interested in the area and the abutter would probably continue to use it as they have in the past it is recommended that the area be vacated and sold to the abutting property owner for \$0.15/sq ft. The calculations are as follows:

$$2,553.6 \text{ Sq Ft} \times \$0.15/\text{Sq Ft} = \$383.40$$

Therefore, if the area is vacated it is recommended that it be sold to the abutting landowner for \$383.40.

Respectfully submitted,



Clinton W. Thomas
Certified General Appraiser #990023