

City Council Introduction: **Monday**, October 30, 2000  
Public Hearing: **Monday**, November 6, 2000, at **1:30 p.m.**

Bill No. 00-199

## **FACTSHEET**

**TITLE:** **STREET VACATION NO. 00017**, requested by the abutting property owners, to vacate North 40<sup>th</sup> Street from the John Dietrich Trail, north to the terminus of North 40<sup>th</sup> Street, generally located at the north end of 40<sup>th</sup> Street, north of Adams Street.

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

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 10/18/00  
Administrative Action: 10/18/00

**RECOMMENDATION:** A finding of conformance with the Comprehensive Plan and Conditional Approval (9-0: Duvall, Krieser, Carlson, Steward, Hunter, Schwinn, Newman, Taylor and Bayer voting 'yes').

### **FINDINGS OF FACT:**

1. The Planning staff recommendation to find the proposed street vacation to be in conformance with the Comprehensive Plan with conditions of approval is based upon the "Analysis" as set forth on p.3-4. The conditions of approval are found on p.4.
2. The applicant's testimony is found on p.5. The applicant agreed with the conditions of approval.
3. There was no testimony in opposition.
4. The Planning Commission agreed with the staff recommendation.

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

**DATE:** October 23, 2000

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

**DATE:** October 23, 2000

**REFERENCE NUMBER:** FS\CC\FSV00017

**LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**

**P.A.S.: STREET AND ALLEY VACATION NO. 00017**

**DATE: OCTOBER 2, 2000**

**PROPOSAL:** Petitions have been received from the abutting property owners to vacate North 40<sup>th</sup> Street from the John Dietrich Trail, north to the terminus of North 40<sup>th</sup> Street, generally located at the north end of 40<sup>th</sup> Street, north of Adams

**GENERAL INFORMATION:**

**APPLICANTS:**

Gus R. and Margaret A. Hitz  
3164 North 40<sup>th</sup> Street  
Lincoln, NE 68504  
402-466-6596

Carol W. Kendle  
1225 Butler Avenue  
Lincoln, NE 68521  
402-435-5779

Todd Rivers  
Trustee - Darryl E. Rivers Marital Trust  
6822 Platte Avenue  
Lincoln, NE 68507  
402-467-1314

James Springer  
C/o Continuum Enterprises  
3156 North 40<sup>th</sup> Street  
Lincoln, NE 68504  
402-466-5456

**LOCATION:** North 40<sup>th</sup> Street running north from the John Dietrich Trail approximately 305.85 feet, generally located at North 40<sup>th</sup>, north of Adams.

**LEGAL DESCRIPTION:** The North 40<sup>th</sup> Street right-of-way from the south line of Lots 39 and 53, Wesleyan Heights, north to the railroad right-of-way, adjacent to Lots 39 through 46, and Lots 48 through 53, Wesleyan Heights, in the Southeast quarter of Section 7, Township 10 North, Range 7 East of the 6<sup>th</sup> P.M. Lincoln, Lancaster County, Nebraska.

**EXISTING ZONING:** I-1 Industrial

**PURPOSE:** To vacate the street and sell it to the abutting property owners.

**SIZE:** 13,792.5 square feet, more or less.

**EXISTING LAND USE:** A gravel street.

**SURROUNDING ZONING AND LAND USE:** I-1 Industrial in all directions. The west side of the street is vacant land being used for storage of vehicles, the concrete and construction office, two dwelling units on the east side of the street, railroad property to the north, and commercial and industrial uses to the south.

**COMPREHENSIVE PLAN SPECIFICATIONS:** In conformance. This area is shown as Industrial on the Comprehensive Plan Land Use Map. North 40<sup>th</sup> Street is not shown on the Existing or Future Functional Street and Road Classification map.

**ANALYSIS:**

1. This request to vacate a gravel portion of North 40<sup>th</sup> Street is to allow the abutting property owners to turn it into a paved private roadway to serve the properties.
2. The Public Works Department reports the following:
  - 2.1 On April 21, 2000, Don W. Taute, Assistant City Attorney sent the attached letter to Concrete and Construction Concepts, Attention to Bruce Jensen and James Springer, of unauthorized placement of paving in North 40<sup>th</sup> Street north of Adams Street by their company. The letter also stated that Concrete and Construction Concepts had been informed of the proper means to have North 40<sup>th</sup> Street paved as a public street. Concrete and Construction Concepts was advised that the only allowable way to pave the right-of-way without authorization of an executive order or assessment district was to vacate the right-of-way and create an approved private roadway.
  - 2.2 There are five owners and 15 lots abutting the portion of North 40<sup>th</sup> Street proposed to be vacated. None of the lots will have frontage or access to a public or private street if this vacation is approved. A replat of the property would be required to create a private roadway and provide frontage and access to each ownership in accordance with subdivision ordinance requirements. In addition to the private roadway issue, a plat would need to address the lack of abutting public sewer and water for several of the ownerships abutting this vacation.
  - 2.3 In addition to damage to the street, Concrete and Construction Concepts removed and rebuilt a portion of the existing concrete public trail crossing at North 40<sup>th</sup> Street without permission or authority. The presently existing reconstruction and grading is not satisfactory.
  - 2.4 Peoples Natural Gas has an existing 2 inch gas main located in the right-of-way, and request that a permanent easement be established or that the main is abandoned and relocated at the petitioners expense.
  - 2.5 The Department of Public Works and Utilities recommends denial of this proposed vacation until conditions have been met. These conditions will require the submittal and approval of preliminary and final plats in accordance with Title 26 - *The Land Subdivision Ordinance*. If this vacation is approved or denied, the existing pavement adjacent to Lot 39, City owned, must be removed and standard street paving shall be installed in a legal manner, and the trail property restored. If denied, the illegally placed paving must be removed and the roadway restored to City standards.
3. With any street vacation that creates lots without frontage and access, subdivision of the property is required to provide the required frontage and access. This is an unusual situation whereby a private roadway will be required along with the resolution of issues for access to sewer and water. A preliminary plat is necessary to address these issues along with the grading of the private roadway.

4. All of the abutting property owners have agreed to purchase the right-of-way if it is vacated except for Gus and Margaret Hitz. They are the owners of the three lots (Lots 42, 43, and 44) in the middle of the block on the east side of the street. If they do not purchase the vacated right-of-way in front of their lots, the owner or owners on the opposite side of the street will be given the opportunity of purchasing the right-of-way. The City should not vacate the right-of-way unless all the land will be purchased by abutting property owners.
5. This street is not shown in the Comprehensive Plan's Functional Street and Road Classification Map for future use as a public street.
6. The Real Estate Division has established a sales price for the right-of-way of \$2,758.50.

**STAFF RECOMMENDATION:**

1. The proposed vacation conforms with the 1994 Comprehensive Plan.
2. Conditional Approval of the Vacation.

**Conditions:**

1. A permanent easement for existing gas mains shall be retained, or the petitioner reach agreement with Peoples Natural Gas relative to the relocation of the gas main.
2. The existing pavement adjacent to Lot 39, City owned, be removed and standard street paving be installed in a legal manner, and the trail is properly restored.
3. Plats are submitted and approved, or are in process, to provide street frontage and access to the platted lots and to resolve the public sewer and water issues.
4. All the land is to be purchased by one or more of the abutting property owners.

Prepared by:

Richard A. Houck, AICP  
Planner II  
Planning Department

# STREET VACATION NO. 00017

## **PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 18, 2000

Members present: Duvall, Krieser, Carlson, Steward, Hunter, Schwinn, Newman, Taylor and Bayer.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan and conditional approval.

### Proponents

**1. Bruce Jansen, Vice-President of Concrete & Construction Concepts, and Jim Springer, President of Concrete & Construction Concepts,** presented the application.

They do understand the condition requiring utility easements. The existing pavement adjacent to Lot 39 is required to be removed and replaced. Jansen agreed that they began paving before they received approval to pave. They paved half of the street in front of the C&C Concepts property to eliminate the 8-10" of mud that developed every time it rained. They agree to tear it out and repave it.

C&C Concepts has agreed to purchase the whole street and deed it back to the other abutting property owners and to give all the neighbors a permanent easement for access onto the street.

Steward confirmed that this has been and will continue to be a dead-end. The applicant is aware of this and understands that the city has no plans to extend the street. Steward asked whether there would be a turn-around. C&C will be putting in a turn-around. It will be paved as a city street in order to add value to the adjacent properties.

There was no testimony in opposition.

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

October 18, 2000

Taylor moved approval, with conditions, seconded by Hunter and carried 9-0: Duvall, Krieser, Carlson, Steward, Hunter, Schwinn, Newman, Taylor and Bayer voting 'yes'.