City Council Introduction: **Monday**, August 25, 2008
Public Hearing: **Monday**, September 8, 2008, at **1:30** p.m.

Bill No. 08-112

FACTSHEET

TITLE: **STREET & ALLEY VACATION NO. 08003,** requested by Aileen Eliker, to vacate the north/south alley north of Seward Avenue between North 60th Street and North 61st Street.

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

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/16/08
Administrative Action: 07/16/08

RECOMMENDATION: A finding of conformance with the Comprehensive Plan (8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent).

FINDINGS OF FACT:

1. Aileen Eliker, one of the petitioners, is seeking to vacate this alley and to purchase the vacated right-of-way for use as green space and boat storage. The other abutting property owner who also signed the petition to vacate acquiesced any right to purchase any part of the alley pursuant to purchase agreement.

2. The staff recommendation to find the proposed alley vacation in conformance with the Comprehensive Plan is based upon the "Analysis" as set forth on p.3. The petitioner should be required to remove the return onto Seward Avenue and construct new curb or post a bond prior to transfer of title. The staff presentation is found on p.5.

3. The petitioner's testimony is found on p.5, wherein she requests that they not be required to remove the return if the City will continue to have a utility easement.

4. There was no testimony in opposition.

5. On July 16, 2008, the Planning Commission agreed with the staff recommendation and voted 8-0 to find the proposed alley vacation to be in conformance with the Comprehensive Plan (Esseks absent).

6. The appraisal by Clint Thomas of the Housing Rehab & Real Estate Division of the Urban Development Department is found on p.17, finding that the proposed vacated area should be sold to the abutting property owners for $100.00 with the understanding that they bear the expense of the removal of the alley return and replacement of curb, gutter and sidewalk.

7. The petitioner, Aileen Eliker, has paid the funds for the right-of-way to the City Clerk.

FACTSHEET PREPARED BY: Jean L. Preister **DATE**: August 18, 2008

REVIEWED BY:_____ **DATE**: August 18, 2008

REFERENCE NUMBER: FS\CC\2007\SAV.08003

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for JULY 16, 2008 PLANNING COMMISSION MEETING

PROJECT #: Street and Alley Vacation No. 08003

PROPOSAL: Vacate the north/south alley north of Seward Avenue between N. 60th Street and N. 61st Street.

LOCATION: Between N. 60th Street and N. 61st Street north of Seward Avenue.

LAND AREA: 2,525 square feet, more or less

CONCLUSION: The vacation of this right-of-way conforms to the Comprehensive Plan provided easements are retained for public utilities.

RECOMMENDATION: Conforms to the Comprehensive Plan

GENERAL INFORMATION:

LEGAL DESCRIPTION: The north/south alley between N. 60th Street and N. 61st Street, north of Seward Avenue, located in the NW 1/4 of Section 9-10-7, Lancaster County, Nebraska.

SURROUNDING LAND USE AND ZONING:

North:	R-2 Residential District	Single-family detached dwellings
South:	I-1 Industrial District	Cabinet shop/industrial uses
East:	R-2 Residential District	Single-family detached dwelling
West:	R-2 Residential District	Single-family detached dwellings

COMPREHENSIVE PLAN SPECIFICATIONS:
The alley is not shown on the Functional Street and Road Classification plan. (p102)
Alleys are not included in the functional classification. (p 102)

HISTORY:

February 20, 1990: The petition for Street and Alley Vacation #90003 was withdrawn by the applicant.

February 7, 1990: A petition to vacate the same alley (Street and Alley Vacation #90003) as the current application was submitted by the same applicant.

UTILITIES: Existing utilities within the alley right of way include sanitary sewer and electrical. There are no natural gas lines.

TRAFFIC ANALYSIS: The alley right of way is not paved, but there is a curb cut onto Seward Avenue. The alley likely facilitates only minimal traffic circulation for occasional purposes.

ALTERNATIVE USES: Leave the right of way in place, open the alley, surface it, and maintain it as a public way.

ANALYSIS:

1. 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.

2. An easement must be retained for the existing public utilities in the alley.

3. There is an existing sanitary sewer manhole in the alley. Public Works will access the manhole via a utility easement when necessary.

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

1. The provisions of Chapter 14.20 of the Lincoln Municipal Code are met.

PRIOR TO TH E TRANSFER OF TITLE TO THIS PROPERTY, THE FOLLOWING MUST BE COMPLETED:

1. Remove the return onto Seward Avenue and construct new curb or post a bond in an amount of $2,850 or as determined by the Public Works Department.

2. A utility easement across the entire alley vacation must be retained by the City.

Prepared by:

Brandon M. Garrett, AICP
Planner

DATE: July 8, 2008

APPLICANT: Aileen A. Eliker
3924 N. 60th Street
Lincoln, NE 68507

OWNERS: Aileen A. Eliker
3924 N. 60th Street
Lincoln, NE 68507

Carter C. and Tamara A. Bull
3911 N. 61st Street
Lincoln, NE 68507

CONTACT: Donald J. Pepperl, P.C., L.L.O.
Law Office
4547 Calvert Street
P.O. Box 6476
Lincoln, NE 68506
402-489-9321

STREET & ALLEY VACATION NO. 08003

PUBLIC HEARING BEFORE PLANNING COMMISSION: July 16, 2008

Members present: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent.

Ex Parte Communications: None.

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

This application was removed from the Consent Agenda at the request of the petitioner.

Staff presentation: **Brandon Garrett of Planning staff** explained that this is a proposal to vacate the north/south alley. There is currently an east/west alley that will remain in place. The current situation is that the alley proposed to be vacated is not surfaced with gravel or anything. There is a curb return for the alley but the paving ends at the sidewalk. One of the conditions of approval is to remove that return and that the curb and gutter be replaced for Seward Avenue. Another typical condition of approval is the retention of a utility easement. There is a sanitary sewer through that alley and a manhole in that alley that will need to be accessed by Public Works occasionally for maintenance.

Proponents

1. Deanna Eliker, 6033 Hartley, testified on behalf of her mother, who is one of the petitioners for this alley vacation. She is opposed to the conditions because she does not understand why they are required to remove the return if the city will continue to utilize the alley. Eliker wants to retain access to the alley for storage of a boat trailer. It is a green space and there is a large tree that prevents any through access to the alley. It is bordered by a fence on the east side. The special assessment for the road was paid by the abutting owners. If the alley is closed and they cannot access the garage, they would have to pay for a curb cut. The petitioners are opposed to the curb cut being closed. Eliker explained that the petitioners are asking the city to vacate the alley so that the city does not use it. The petitioners want to close the alley and purchase the alley for their own use as green space and boat storage.

Eliker further explained that this lot was a three-lot configuration when her mother purchased it. They recycled a home that was going to be torn down and resubdivided the property. They may want to resubdivide again sometime in the future for another single-family home. They have maintained the alley. They want control of the alley. There is no opposition from the neighbors. There was no testimony in opposition.

Staff questions

Carroll asked staff to speak to the access to the manhole. **Chad Blahak of Public Works** assumed that the request to maintain the easement runs the full length of the alley. The city would have the right to use the alley for that maintenance, regardless of whether it is vacated. As far as removal of the return, if the alley is vacated and purchased, that would become a private driveway. If the

owner on either side of the alley purchases the entire alley, then that driveway would violate the “no overhang” for the returns on the driveway. The applicant is probably correct that it might be more handy for maintenance to use the return for their access for the time being. Removing it would require reapplying for a curb cut. They would need to get permission from the other property owner to allow that overhang.

Francis inquired whether the abutting property owners have the opportunity to purchase the alley once it is vacated and whether it gets split in half. Garrett agreed that to typically be the case. The abutting property owners must sign the petition and they each have the opportunity to buy half. However, in this particular case, it is just the west property owner that intends to purchase the entire alley. The east property owner does not want any part of it.

Carroll wondered whether the purchase of the vacated alley could require a new application for a curb cut further to the west so that it is away from the east property owner. Blahak indicated that they would be required to apply for a curb cut regardless.

Cornelius noted that the applicant brought up a seeming contradiction between the requirement for a utility easement and the return being removed. Is it possible to accommodate them in the short term by not requiring the return to be removed as part of the vacation, but to defer that until they purchase the alley and reapply for the curb cut? Blahak stated that if they don’t purchase the vacated right-of-way, it is still owned by the city. Blahak envisions some sort of agreement. It would probably be best served if they were willing to purchase it and go through the exercise of applying for the curb cut so that the return is not just sitting out here.

Rick Peo, City Law Department, suggested that if the alley is vacated, that street return is part of the existing alley and it is conveyed to the private property owner. The way it exists today, it would then encroach on the abutting property owner without their permission. That could probably be refined to shorten it up to maintain it on the new purchaser’s side of the boundary line, but not knowing the legal description he is not sure that is the issue. Public Works is suggesting the application for curb cut would define what they could have. If the alley is vacated, the utility easement must be retained by the city. That cannot be given up.

Carroll suggested that the alley could be vacated and during the sale process, the city can negotiate the return. Peo thinks they can work out details as to how much actually has to be removed.

<u>Response by the applicant</u>

Eliker pointed out that the alley is a T-alley. Therefore, at the north end of the alley there is an 8 x 16 return. The neighbor has fenced across that area. She believes they can negotiate some sort of agreement that the return in the front on the south side versus the return on the north side may be accomplished. There is a large 3' hackberry or green ash tree located in the middle of the alley. There is no way for the city to back their truck up from the north end of the alley to the manhole. That access is much more convenient from the south side.

Francis inquired whether Eliker has talked with her neighbor about possible encroachment. Eliker stated that the abutting neighbor has no problem. He would also agree to move the fence.

Carter Bull, 3911 N. 61st Street, the other petitioner and abutting property owner, appeared and stated that he gave up the right to purchase the right-of-way because that was a provision in his

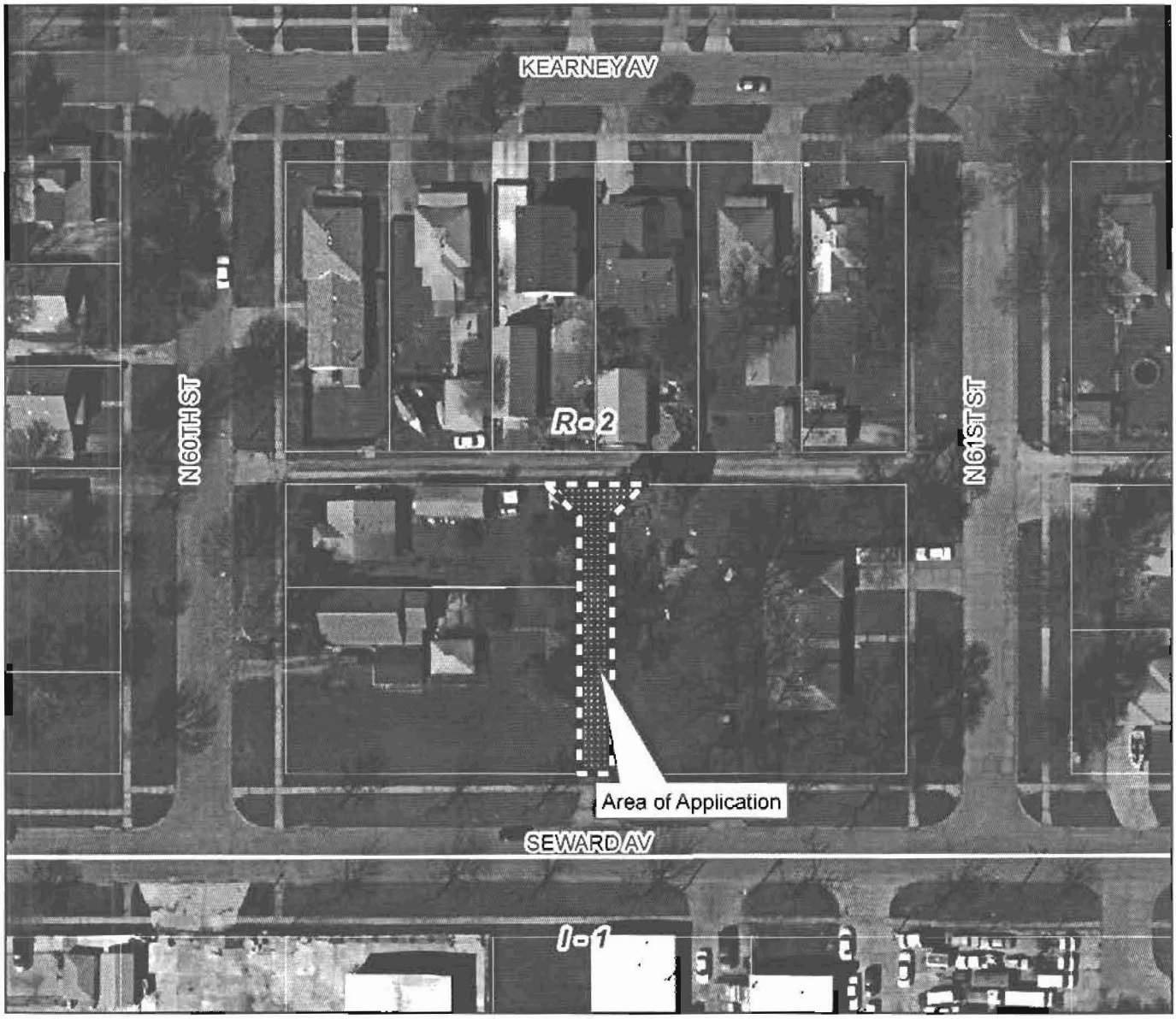
purchase agreement when they bought the property. His only concern is that the area remain green space and not be used for storage. He does not object to storing the boat, but the actual vacation of the alley was in his purchase agreement with the church in 1988, and he agreed that the alley would be used as green space only.

ACTION BY PLANNING COMMISSION: July 16, 2008

Sunderman moved a finding of conformance with the Comprehensive Plan, with conditions as set forth in the staff report, seconded by Taylor.

Sunderman believes the vacation is in conformance with the Comprehensive Plan because it is not used as an alley. The return will come into play when they are negotiating the final price. As far as vacating an alley, it is appropriate.

Motion for a finding of conformance with the Comprehensive Plan carried 8-0: Cornelius, Partington, Taylor, Sunderman, Larson, Gaylor Baird, Francis and Carroll voting 'yes'; Esseks absent. This is a recommendation to the City Council.



2007 aerial

Street & Alley Vacation #08003
60th - 61st & Seward Alley

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

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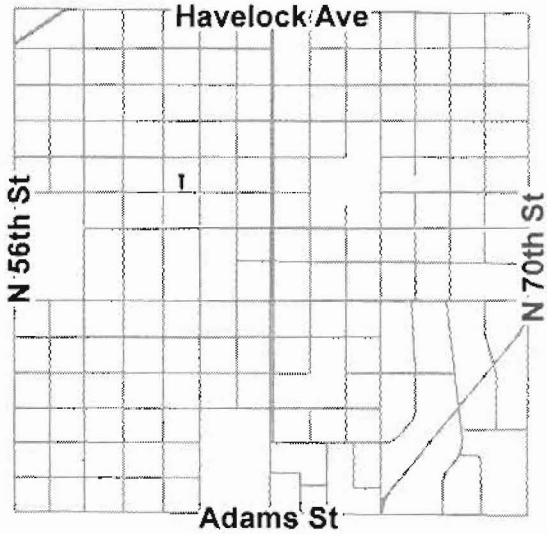
One Square Mile
Sec. 9 T10N R07E

N

Zoning Jurisdiction Lines

City Limit Jurisdiction



Please provide your comments below, and also identify the reservations and easements you will require should this vacation be approved. Complete ONLY those areas of your jurisdiction.

Type of Facility	Facility presently in place.	Facility to be built. When?
Sanitary Sewer		
Water Mains		
Storm Sewer		
Electrical Power, Overhead		
Electrical Power, Underground		
Street Lighting		
Steam Lines		
Telephone Lines, Overhead		
Telephone Lines, Underground		
Gas Mains	No	N/A
Traffic Signal Interconnect		
Reconstruction of Surface Features, Cost:		
Street Trees		

General Comments:

Aquila does not object.

6-19-08
Date

Randy J Kreifel
Signature

432-1715
Phone

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Please provide your comments below, and also identify the reservations and easements you will require should this vacation be approved. Complete ONLY those areas of your jurisdiction.

Type of Facility	Facility presently in place.	Facility to be built. When?
Sanitary Sewer		
Water Mains		
Storm Sewer		
Electrical Power, Overhead		
Electrical Power, Underground		
Street Lighting		
Steam Lines		
Telephone Lines, Overhead		
Telephone Lines, Underground		
Gas Mains		
Traffic Signal Interconnect		
Reconstruction of Surface Features, Cost:		
Street Trees		

General Comments:

No CONFLICTS

6-18-8
Date

Signature

TWC

421-0383
Phone

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Barnie L Blum/Notes
07/02/2008 08:42 AM

To Brandon M Garrett/Notes@Notes
cc Dennis D Bartels/Notes@Notes
bcc
Subject Re: alley return

Brandon,

It would be approximately $2,850 to remove the existing alley return, replace the curb and sidewalk, and fill in with dirt. I believe applicant would make a cash deposit to the City Finance Department to hold until the work is completed. If the alley does lead to a garage there would be no reason for a curb cut.

Barnie

M e m o r a n d u m

To: Brandon Garrett - Planning

From: Byron Blum - Engineering Services

Subject: Street and Alley Vacation #08003

Date: June 18, 2008

cc: Randy Hoskins
Dennis Bartels

The City of Lincoln has an existing 6" sanitary sewer in this alley. If vacated, a permanent easement would need to be established for future maintenance or replacement.

The petitions submitted represent 100% of the frontage for the alley proposed to be vacated. The information sheets provided indicate that the owners of the lots on the east side of the alley do not intend to purchase their portion of the alley. The owner of the west side indicates the intent to purchase at least its half. Unless the west owner is willing to purchase the entire alley, Public Works recommends that the alley not be vacated.

If the alley is to be vacated, Public Works recommends the following conditions:

- a permanent easement be established for the existing sanitary sewer
- the existing alley return at Seward Avenue be removed
- curb and gutter be constructed at the petitioners expense

If the petitioner would like a driveway to Seward Avenue, they would need to apply for a curb cut from the City of Lincoln.

Please provide your comments below, and also identify the reservations and easements you will require should this vacation be approved. Complete ONLY those areas of your jurisdiction.

Type of Facility	Facility presently in place.	Facility to be built. When?
Sanitary Sewer	Yes	
Water Mains		
Storm Sewer		
Electrical Power, Overhead		
Electrical Power, Underground		
Street Lighting		
Steam Lines		
Telephone Lines, Overhead		
Telephone Lines, Underground		
Gas Mains		
Traffic Signal Interconnect		
Reconstruction of Surface Features, Cost:		
Street Trees		

See MAP

General Comments:
Need to Keep easement MH will
Now Only be Accessible via private property
Recommend denial

6/13
Date

BAK
Signature

Phone

Q:\PC\FORMS\sav routing wpd

Please provide your comments below, and also identify the reservations and easements you will require should this vacation be approved. Complete ONLY those areas of your jurisdiction.

Type of Facility	Facility presently in place.	Facility to be built When?
Sanitary Sewer		
Water Mains		
Storm Sewer		
Electrical Power, Overhead	NONE	—
Electrical Power, Underground	NONE	POSSIBLE UG SEC TO 3918 N.60
Street Lighting	NONE	NONE
Steam Lines		
Telephone Lines, Overhead		
Telephone Lines, Underground		
Gas Mains		
Traffic Signal Interconnect		
Reconstruction of Surface Features, Cost		
Street Trees		

General Comments:

RETAIN UTILITY EASEMENTS FOR POSSIBLE FUTURE ~~SERVICE~~ UNDERGROUND Electrical SERVICE ~~FOR~~ Facilities ~~3918 N.60~~ 6-17-08

6/19/08

6/23/08
Date

Stanley D. Wostrel
Signature

467-7627
Phone

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Rick Peo/Notes
Sent by: Cheryl L Eno

06/17/2008 04:32 PM

To Brandon M Garrett/Notes@Notes

cc

bcc

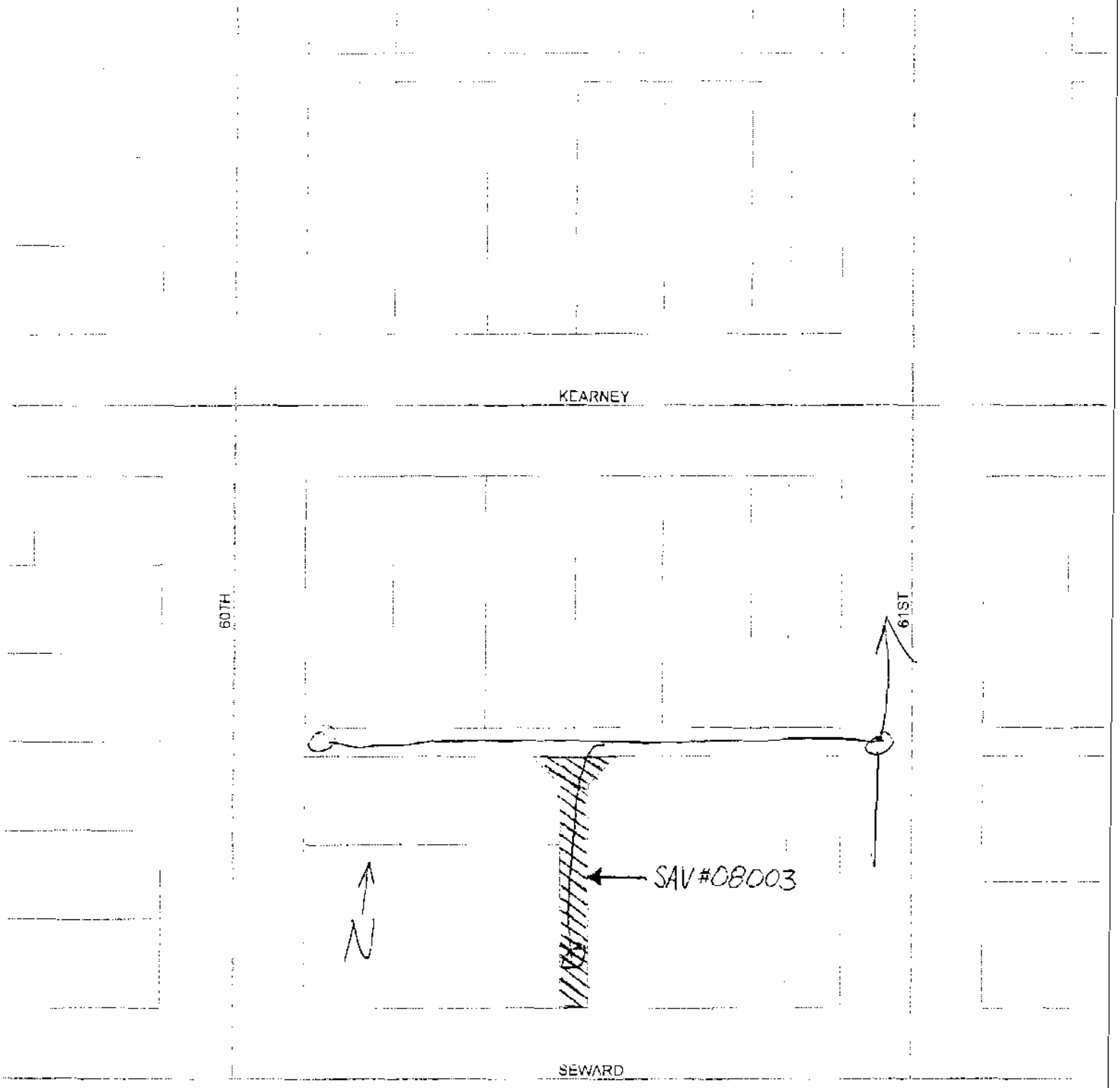
Subject SAV 08003
The north/south alley between 60th & 61st north of Seward St.

Brandon,

The ownership set forth in the Petitions to Vacate Public Way submitted by Aileen A. Eliker and Carter C. & Tamara A. Bull for the vacation of a " 'T' Alley Between 60th and 61st Streets & Seward Street" (SAV 08003) is correct and the petition has been properly executed.

Before filing the Petitions with the Register of Deeds, I would revise the description of the alley being vacated as you have identified it in your transmittal memorandum, i.e., the north/south alley between N. 60th St. and N. 61st Street, north of Seward Street.

Rick Peo
Chief Assistant City Attorney
575 South 10th Street, Room 4201
Lincoln, NE 68508
402-441-7264
rpeo@lincoln.ne.gov


KEARNEY
60TH
61ST
SAV#08003
N
SEWARD

INTEROFFICE MEMORANDUM

TO:	Mayor Beutler & City Council Members	FROM:	Clinton W. Thomas
DEPARTMENT:	City Council Office	DEPARTMENT:	Housing Rehab & Real Estate Division
ATTENTION:		DATE:	July 21, 2008
COPIES TO:	Teresa J. Meier Marvin Krout John Hendry Byron Blum, Bldg & Safety Jean Preister, Planning	SUBJECT:	Street & Alley Vacation No. 08003 North/South Alley north of Seward Ave. between N. 60th & N. 61st St.

A request has been made to vacate the alley running northward from Seward Avenue to the east-west alley between North 60th and North 61st Streets. The area was viewed and appeared to simply blend in with the yards of the abutting properties with grass, trees, and flowers having been planted in the area. There was a alley return in the curb at that location, but it does not appear to lead anywhere. While there were no visible signs of utilities in this portion of the alley, Public Works has indicated the existence of electrical and sanitary sewer for which they have requested easements.

Small, narrow strips such as this have very little value, in and of themselves, especially when encumbered with utility easements. The value would be estimated at a minimal amount of $0.15 per square foot. In this case, the buyer is required to pay to remove the existing alley return and replace the curb and gutter and sidewalk sections at a cost estimated at $2,850. Since any prospective buyer would consider that cost when purchasing the property, and it exceeds any value the area might have; it is recommended, if the alley be vacated it be sold to the abutting property owners for $100.00, or $50.00 on each side (if is split between two owners), with the understanding they bear the expense of the removal of the alley return and replacement of curb, gutter and sidewalk.

Respectfully submitted,

Clinton W. Thomas

Clinton W. Thomas
Certified General Appraiser #990023