

FACTSHEET

TITLE: DECLARATION OF SURPLUS PROPERTY, requested by the Director of the City of Lincoln Parks & Recreation Department, declaring approximately 2,739 sq. ft. located at South 46th & "O" Streets as surplus.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 11/21/07 and 12/05/07
Administrative Action: 12/05/07

STAFF RECOMMENDATION: A finding of conformance with the Comprehensive Plan, subject to one condition of approval.

RECOMMENDATION: A finding of conformance with the Comprehensive Plan, subject to one condition of approval (7-1: Sunderman, Larson, Francis, Esseks, Taylor, Moline and Carroll voting 'yes'; Gaylor Baird voting 'no'; Cornelius absent).

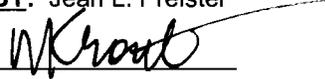
ASSOCIATED REQUESTS: Street and Alley Vacation No. 07008 (08-68)

FINDINGS OF FACT:

1. This proposal for declaration of surplus property was heard in association with Street and Alley Vacation No. 07008 before the Planning Commission.
2. This is a request by the Director of Parks & Recreation to declare approximately 2,729 sq. ft. of land located near the intersection of South 46th and "O" Streets as surplus. "O" Street has been improved along this extent and additional right-of-way was dedicated along the south side to accommodate it. The associated application seeks to vacate the portion of South 46th Street adjacent to this tract. Th City intends to transfer ownership of both this parcel and the vacated right-of-way to the property owner adjacent to the west.
3. The staff recommendation to find the proposed declaration of surplus property to be in conformance with the Comprehensive Plan is based upon the "Analysis" as set forth on p.2-3, concluding that there are planned improvements to the remaining park to the south of this area and the loss of this parcel will not negatively affect that project. There is no public purpose to retain ownership of this tract of land. The staff presentation is found on p.4-5.
4. This proposal is supported by the Witherbee Neighborhood Association (p.15).
5. There was no testimony in opposition.
6. On December 5, 2007, the majority of the Planning Commission agreed with the staff recommendation and voted 7-1 to find the proposed declaration of surplus property to be in conformance with the Comprehensive Plan, finding that the proposed declaration of surplus, together with the proposed street vacation, is a win-win while it removes a billboard and an old building and improves the property. Commissioner Gaylor Baird dissented, finding that the Comprehensive Plan calls for protection of green space in urban areas and she believes that this is one of the only pieces of attractive land along "O" Street that still has green space.
7. On December 5, 2007, the Planning Commission also voted 7-1 to find the associated street vacation to be in conformance with the Comprehensive Plan.
8. **Note:** The record consists of a memorandum from Rick Peo, Chief Assistant City Attorney, dated November 20, 2007, suggesting that if the park land was dedicated or donated to the city under the condition that it be used only as a park, it may not be appropriate to be declared as surplus (p.16). However, the City Attorney has since determined that the park land may be declared as surplus and added to the developer's site because additional land to the east has been acquired to offset the park land to be declared surplus.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: August 29, 2008

REVIEWED BY: 

DATE: August 29, 2008

REFERENCE NUMBER: FS\CC\2008\CPC.07023+

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for November 21, 2007 PLANNING COMMISSION MEETING

P.A.S.: Comprehensive Plan Conformance No. 07023

PROPOSAL: Finding a declaration of surplus property for a tract of land in conformance with the Comprehensive Plan

LOCATION: South 46th & O Streets

LAND AREA: Approximately 2,739 square feet.

CONCLUSION: There is no public purpose to retain ownership of this tract of land.

<u>RECOMMENDATION:</u>	In conformance with the Comprehensive Plan.
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GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached legal description.

EXISTING ZONING: H-2 Highway Business

EXISTING LAND USE: Open Space

SURROUNDING LAND USE AND ZONING:

North:	Commercial	H-2
South:	Open Space	H-2
East:	Open Space	H-2
West:	Commercial, S. 46 th St. right-of-way requested to be vacated	H-2

ASSOCIATED APPLICATIONS:

SAV#07008 - A request to vacate approximately that portion of South 46th Street adjacent this subject tract.

COMPREHENSIVE PLAN SPECIFICATIONS: The Future Land Use Map of the 2030 Comprehensive Plan designates this land for commercial land uses.

ANALYSIS:

1. This is a request from the Director of the Parks and Recreation Department for a finding of conformance with the Comprehensive Plan for a declaration of surplus property. The subject tract is approximately 2,729 square feet in area located near the intersection of South 46th and O Streets.

2. O Street has recently been improved along this extent and additional right-of-way was dedicated along the south side to accommodate it. This request is related to the associated SAV#07008 request to vacate the portion of South 46th Street adjacent to this tract. The City intends to transfer ownership of both this parcel and the vacated South 46th Street right-of-way to the property owner adjacent to the west.
3. The Parks and Recreation Advisory Board considered this request at their September 6, 2007 meeting and voted to recommend approval of declaring the parcel as surplus.
4. The Parks and Recreation Department noted there are planned improvements to the remaining park to the south of this area, and the loss of this parcel will not negatively affect that project. The Parks Department also noted that because of proximity to O Street, which is a busy, high-speed arterial street, the subject parcel has minimal value as an outdoor recreation area.
5. Public Works notes there are existing public easements in the area. These easements will be retained by the City prior to transfer of ownership of the land. Public Works is also recommending that access to O Street from the subject parcel be relinquished.

CONDITIONS:

1. A provision relinquishing access to O Street from the surplus parcel is included in the deed transferring ownership.

Prepared by:

Brian Will
441-6362, bwill@lincoln.ne.gov
Planner
November 7, 2008

APPLICANT: Lynn Johnson, Director
Lincoln Parks and Recreation Department
2740 A Street
Lincoln, NE 68502
402.441.7847

CONTACT: Brian Will
City of Lincoln/Lancaster County Planning Department
555 South 10th Street
Lincoln, NE 68508
402.441.6362

**COMPREHENSIVE PLAN CONFORMANCE NO. 07023
and
STREET & ALLEY VACATION NO. 07008**

REQUEST FOR DEFERRAL:

November 21, 2007

Members present: Moline, Esseks, Francis, Taylor, Cornelius, Larson, Sunderman and Carroll; Gaylor-Baird absent.

Ex Parte Communications: None.

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

This application was removed from the Consent Agenda and called under Requests for Deferral.

The Clerk announced that the staff has requested a two-week deferral.

Cornelius moved to defer two weeks, with continued public hearing and action scheduled for December 5, 2007, seconded by Francis and carried 8-0: Moline, Esseks, Francis, Taylor, Cornelius, Larson, Sunderman and Carroll voting 'yes'; Gaylor-Baird absent.

There was no public testimony.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 5, 2007

Members present: Sunderman, Larson, Taylor, Francis, Moline, Gaylor-Baird, Esseks and Carroll; Cornelius absent.

Ex Parte Communications: None.

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

Staff presentation: **Brian will of Planning staff** reminded the Commission that these applications were on the November 21st agenda and deferred in response to a memo from the City Law Department advising that the property not be surplused.

Will then showed the layout of the original final plat for Witherbee Gardens, showing a couple of entrance points at "O" Street. With the "O" Street widening/paving project, one of the entrance points was closed off. This is a request to declare a portion of the park land as surplus property and to vacate the west leg of Witherbee Blvd. Staff is recommending approval and a finding conformance with the Comprehensive Plan. The staff finds that there is no public purpose to retain that portion of park land. The Parks Advisory Board has also reached this conclusion. The right-of-way is also access and not needed.

Francis inquired whether the issue with the Law Department has been resolved. **Rick Peo of the City Law Department** suggested that it is appropriate for the Planning Commission to at least make a finding of conformance with the Comprehensive Plan and allow it to move from here. It will not be scheduled on the City Council agenda until the staff has had an opportunity to determine whether the park property can be surplus. We are faced with a Nebraska Supreme Court opinion which found that land dedicated by a person for park purposes is dedicated not just to the city but to the public and held in trust for the public. That trust is basically irrevocable. Once dedicated as park property, it is park property. The Parks Department has indicated that there might be some unique situation here with the 46th Street project, and that possibly this is really just a transfer of the park boundary further to the east and therefore we could go ahead and sell off the portion to the west. The Law Department needs to review this further as to relocation of park boundary to resolve the issue.

JJ Yost of the Parks and Recreation Department stated that Parks has worked with the adjacent landowner, the Witherbee Neighborhood Association and Urban Development to develop a master plan for Witherbee Park. As part of the “O” Street widening project, the connection to “O” Street was removed and a hammerhead was installed for the properties adjacent on the west side of 46th Street. The master plan for further development of the park has been an ongoing process with the adjacent landowner and the neighborhood association. From the Parks Department standpoint, the 25' that they are seeking to declare as surplus doesn't change the park master plan – it is an area where Parks would create a landscape buffer or screening between “O” Street and the park play area. The 25' is adjacent east of the vacated right-of-way. The vacated right-of-way is now a grassed area.

Esseks believes the Planning Commission role is to determine to what extent this change promotes the welfare of the community. Park land is a potentially good resource for promoting recreation, etc. Are we losing it for a good purpose? If not, then he does not believe the Planning Commission can find the surplus of that park property to be in conformance with the Comprehensive Plan. Yost suggested that this is part of a bigger picture of redevelopment of the area. This is a component of development on an adjacent property. So we think it is a “win-win” that does not take away from the park.

Wynn Hjermsstad of Urban Development concurred that this is part of a bigger picture. When “O” Street was being widened, the property owner there did not have a very good building and it has now been demolished. Urban Development started having conversations with the owner as part of the widening project. It was an unsightly building and not a very good use, i.e. adult book store. The owner was going to give up some right-of-way for the widening. The site is very small and he could not build a whole lot there. All of this kind of grew into looking at the adjacent park, realizing it was not a very sightly green space and not used because of the proximity to “O” Street, so they started looking at this whole site. Urban Development did have several meetings with the neighborhood association and talked about what they would like to see and how to make this a more usable space. The idea of taking the surplus park land provides a little bit more buffer to “O” Street in order to use the park more, and it makes it a more usable and more friendly park. It would also allow the property owner to build a bigger building. The owner has also agreed to remove the billboard and has agreed to use restrictions that are very typical in redevelopment agreements, i.e. no adult book stores, no pawn shops, no alcohol sales, etc. He has also agreed to pay fair market value for the surplus park land. The

neighborhood likes it. It improves a park area that is not very usable at this time and it allows some redevelopment to occur at that site.

Hjermstad clarified that the additional 25 feet will be used for parking, with the access being off of 45th Street. The curbcut on “O” Street will be closed.

Gaylor-Baird observed that there are several old trees on the property. Yost confirmed that there are two existing trees – one would be removed and one would stay. There would also be more trees added in the master plan.

46th Street will remain a hammerhead.

There was no testimony in opposition.

COMPREHENSIVE PLAN CONFORMANCE NO. 07023
ACTION BY PLANNING COMMISSION:

December 5, 2007

Larson moved a finding of conformance with the Comprehensive Plan, seconded by Moline.

Gaylor-Baird commented that while it is a small piece of land, it is one of the only pieces of attractive land along “O” Street that still has green space. The Comprehensive Plan calls for protection of green space in urban areas. It is close to an area declared as blighted. She is having difficulty supporting this despite the cooperation that seems to have been going on. She believes that there is some merit to considering the protection and integrity of design.

Francis is convinced by the fact that the neighborhood association is on board. It does not give up all of the green space. In fact, she believes that it will develop some better green space and allow good usage of that frontage.

Carroll suggested that this is a pretty good balance of improving the property site versus the park. It removes the billboard and an old building. The city took land away from this property owner when “O” Street was widened, so he believes this proposal improves the property owner’s situation as well as the city. It is a 50/50 balance.

Esseks observed that normally, the Planning Commission should not approve the loss of park land. But, the fact that the neighborhood association accepts it because of the other benefits, he is led to believe that the Commission should show support.

Motion for a finding of conformance with the Comprehensive Plan carried 7-1: Sunderman, Larson, Francis, Esseks, Taylor, Moline and Carroll voting ‘yes’; Gaylor-Baird voting ‘no’; Cornelius absent. This is a recommendation to the City Council.

STREET & ALLEY VACATION NO. 07008
ACTION BY PLANNING COMMISSION:

December 5, 2007

Francis moved a finding of conformance with the Comprehensive Plan, seconded by Moline and carried 7-1: Sunderman, Larson, Francis, Esseks, Taylor, Moline and Carroll voting 'yes'; Gaylor-Baird voting 'no'; Cornelius absent. This is a recommendation to the City Council.



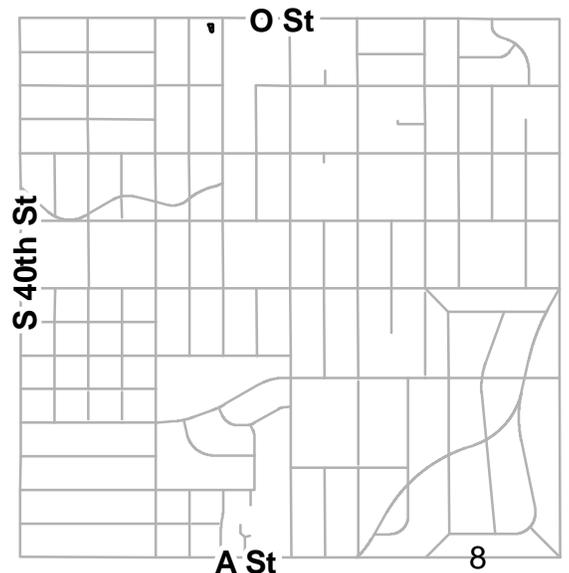
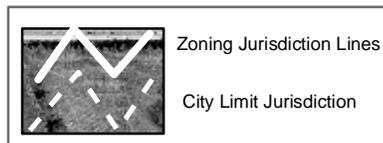
Comp Plan Conformance #07023 S 46th & O Streets

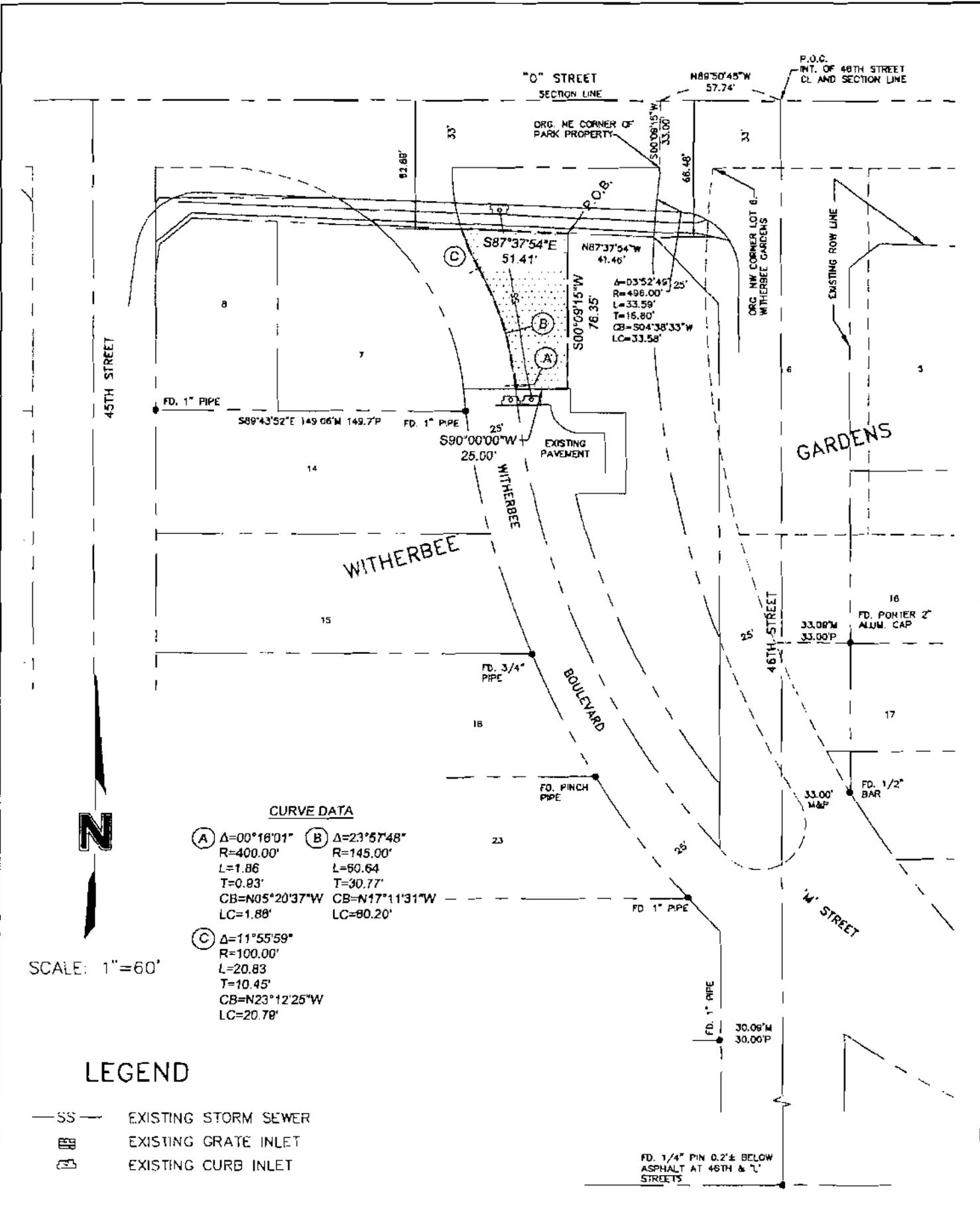
2005 aerial

Zoning:

One Square Mile
Sec. 29 T10N R07E

- 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





PROJECT NO: 2006-1235
 DRAWN BY: dat
 DATE: 07/19/07

PARK TO MARX EXHIBIT

OLSSON ASSOCIATES
 ENGINEERS - PLANNERS - SCIENTISTS - SURVEYORS
 1111 LINCOLN MALL - LINCOLN, NEBRASKA 68508
 402-474-5211 - FAX 402-474-3180

EXHIBIT

A LEGAL DESCRIPTION FOR A PARCEL OF LAND COMPOSED OF A PORTION OF PROPERTY DESIGNATED AS "PARK", LOCATED SOUTH OF "O" STREET AND LYING BETWEEN 45TH STREET AND 46TH STREET, WITHERBEE GARDENS, LOCATED IN THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF 46TH STREET WITH THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE, WEST, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, ON AN ASSUMED BEARING OF NORTH 89 DEGREES 50 MINUTES 45 SECONDS WEST, A DISTANCE OF 57.74 FEET; THENCE SOUTH 00 DEGREES 09 MINUTES 15 SECONDS WEST, PERPENDICULAR FROM SAID NORTH LINE, A DISTANCE OF 33.00 FEET TO THE ORIGINAL NORTHEAST CORNER OF SAID PARK PROPERTY, SAID POINT BEING LOCATED 33 FEET SOUTH OF THE NORTH LINE OF SAID NORTHWEST QUARTER AND 25 FEET WEST OF THE ORIGINAL NORTHWEST CORNER OF LOT 6 OF SAID WITHERBEE GARDENS; THENCE AROUND THE ARC OF A COUNTER CLOCKWISE CURVE, HAVING A RADIUS OF 496.00 FEET, ALONG THE EASTERLY LINE OF SAID PARK PROPERTY, HAVING A DELTA ANGLE OF 03 DEGREES 52 MINUTES 49 SECONDS, AN ARC LENGTH OF 33.59 FEET, A CHORD BEARING OF SOUTH 04 DEGREES 38 MINUTES 33 SECONDS WEST, AND A CHORD LENGTH OF 33.58 FEET TO A POINT THAT IS 66.48 FEET SOUTH OF THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 87 DEGREES 37 MINUTES 54 SECONDS WEST A DISTANCE OF 41.46 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 09 MINUTES 15 SECONDS WEST A DISTANCE OF 76.35 FEET TO A POINT; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST A DISTANCE OF 25.00 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF WITHERBEE BOULEVARD, SAID LINE BEING THE WESTERLY LINE OF PROPERTY DESIGNATED AS "PARK"; THENCE AROUND THE ARC OF A CLOCKWISE CURVE, HAVING A RADIUS OF 400.00 FEET, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, HAVING A DELTA ANGLE OF 00 DEGREES 16 MINUTES 01 SECONDS, AN ARC LENGTH OF 1.86 FEET, A CHORD BEARING OF NORTH 05 DEGREES 20 MINUTES 37 SECONDS WEST, AND A CHORD LENGTH OF 1.86 FEET TO A POINT OF REVERSE CURVATURE; THENCE AROUND THE ARC OF A COUNTER CLOCKWISE CURVE, HAVING A RADIUS OF 145.00 FEET, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, HAVING A DELTA ANGLE OF 23 DEGREES 57 MINUTES 48 SECONDS, AN ARC LENGTH OF 60.64 FEET, A CHORD BEARING OF NORTH 17 DEGREES 11 MINUTES 31 SECONDS WEST, AND A CHORD LENGTH OF 60.20 FEET TO A POINT OF REVERSE CURVATURE; THENCE AROUND THE ARC OF A CLOCKWISE CURVE, HAVING A RADIUS OF 100.00 FEET, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, HAVING A DELTA ANGLE OF 11 DEGREES 55 MINUTES 59 SECONDS, AN ARC LENGTH OF 20.83 FEET, A CHORD BEARING OF NORTH 23 DEGREES 12 MINUTES 25

SECONDS WEST, AND A CHORD LENGTH OF 20.79 FEET TO A POINT;
THENCE SOUTH 87 DEGREES 37 MINUTES 54 SECONDS EAST A DISTANCE OF
51.41 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 2,739 SQUARE FEET,
MORE OR LESS.

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Parks & Recreation Advisory Board Action Item Fact Sheet

Meeting Date: September 6, 2007

Request:

Recommend declaring an area of about 1,910 square feet in the northern portion of Witherbee Park as surplus. *(Please see attached map.)*

Discussion: Witherbee Park is a small area of green space at the intersection of 46th & 'O' Street. The owner of the adjoining property west of the park has expressed interest in acquiring a vacated portion of Witherbee Boulevard and a 25 ft. wide area in the northern portion of the park to allow for redevelopment of the commercial site. The Witherbee Neighborhood Association has been consulted and supports declaring the subject area as surplus property and transferring ownership to the adjoining property owner.

Conformance with Adopted Plans and Guidelines: The subject area has minimal value as outdoor recreation area, and does not significantly diminish the value of Witherbee Park as open space along 'O' Street and within the neighborhood.

Staff Recommendation: Approve.

Committee Discussion and Recommendation: Approve
Committee: Fees & Facilities **Chair:** Jolanda Junge-Kuzma

Parks & Recreation Advisory Board Action:

Date: September 6, 2007

It was moved (Fees/Facilities Comm.) to declare the above described portion of Witherbee Park at 46th & "O" Street as surplus property. Motion carried by majority vote of members present with Cook abstaining and Tidball voting 'no'

RECEIVED

OCT 5 2007

Review Comments for Application #: CPC07023

Comments as of: Wednesday, November 07, 2007

Status of Review Complete

Reviewed By Alltel

NCSBJW

Comments

Status of Review Complete

Reviewed By Building & Safety

Terry Kathe

Comments:

Status of Review: No Rev Req

Reviewed By Lincoln Electric System

NCSBJW

Comments:

Status of Review: Complete

Reviewed By Parks & Recreation

NCSBJW

Comments

Status of Review Routed

Reviewed By Planning Department

COUNTER

Comments

Status of Review Active

Reviewed By Planning Department

BRIAN WILL

Comments:

Status of Review: Complete

Reviewed By Planning Department

RAY HILL

Comments:

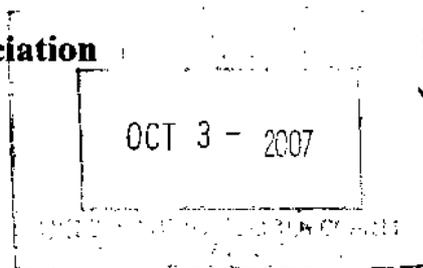
Comments: Engineering Services has reviewed the proposed surplus property request by the Parks Department to surplus a portion of Witherbee Park located south of "O" Street east of the former southbound leg of Witherbee Boulevard and has the following comments:

1. There are existing public sewer, water and storm sewer facilities in the area to be surplus. Sewer, water, and storm sewer easements need to be retained over the entire surplus property.

2. The Witherbee Boulevard right-of-way west of the surplus property has not been vacated. The property should not be surplus unless the abutting right-of-way is also vacated and sold to the abutting owner to the west of the right-of-way.

Witherbee Neighborhood Association

Steve Schwab, President
3510 Woods Ave
Lincoln, NE 68510



"IN THE HEART OF MIDTOWN" - S. 33RD TO S. 56TH & "O" TO RANDOLPH STREETS

September 28, 2007

City of Lincoln-Lancaster County Planning Department
Attn: Planning Commission
555 S. 10 Street, Room 213
Lincoln, NE 68508

Re: Street Vacation & Comp Plan Conformance

Dear Planning Commission Members:

On behalf of the Witherbee Neighborhood Association (WNA) Board, I am contacting you in regards to vacating a portion of Witherbee Blvd and the partial surplus of City property adjacent to the property owned by Stuart Marx at 4501 O Street (please see attached).

The Lincoln Parks & Recreation Department has asked that our neighborhood association look at the proposed street vacation and proposed surplus property declaration and have our Board vote on these proposals, which they have. By a vote of 8-0, the WNA Board has voted in favor of both proposals because they are necessary to facilitate the future redevelopment and improvement of the Marx property, which we also favor.

Since these proposals must be submitted to the Planning Commission to determine if they are in conformance with the Comprehensive Plan, I ask that you please submit our letter of support for the record at the hearing in which they are addressed by the Commission.

Sincerely,

A handwritten signature in cursive script that reads "Steve Schwab".

Steve Schwab
WNA President

Cc: Lynn Johnson, Director, Lincoln Parks & Recreation
Wynn Hjermstad, Urban Development Manager
Paul Galter, Attorney for Stuart Marx

Attachment

INTER-DEPARTMENT COMMUNICATION

TO	Planning Commission	DATE	November 20, 2007
DEPARTMENT		FROM	Rick Peo
ATTENTION		DEPARTMENT	Chief Assistant City Attorney
COPIES TO		SUBJECT	Comprehensive Plan Conformance No. 07023 - Declaration of Surplus

I believe there is an obstacle to declaring Witherbee Park surplus and authorizing its conveyance.

Witherbee Park was dedicated to the City as a park in the final plat of Witherbee Addition. The general rule is that "when the parkland is dedicated or donated to a city under the condition that it be used only as a park, the city cannot divert the land to a use inconsistent with the purposes of the grant." 10 *McQuillin, The Law of Municipal Corporations* §28.52.05. This rule is followed in Nebraska.

In *Ash v. City of Omaha*, 152 Neb. 393, 409, 41 N.W.2d 386 (1950), the Nebraska Supreme Court restricted the power of a city to dispose of land received as a gift. The Court stated the rule as follows:

Where dedication is made for a defined purpose, neither, legislature, municipality, its successor, nor general public has any power to use property for any other purpose than one designated, whether use be public or private, or whether dedication is a common-law or statutory dedication, notwithstanding that changed use may be advantageous to the public.

Ash, supra at 409, 41 N.W.2d at 396.

ERP/ce