

## **FACTSHEET**

**TITLE: STREET & ALLEY VACATION NO. 10002**, requested by B & J Partnership and Growth Management Corporation, to vacate that portion of the north-south alley between South 15<sup>th</sup> Street and South 16<sup>th</sup> Street from South Street to approximately 210 feet north of South Street.

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

**ASSOCIATED REQUESTS:** Change of Zone No. 10003 (Ordinance No. 19387 adopted May 17, 2010) and Special Permit No. 10008 (Resolution No. A-85862 adopted May 17, 2010)

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 03/10/10 and 04/07/10  
Administrative Action: 04/07/10

**RECOMMENDATION:** A finding of conformance with the Comprehensive Plan (5-2: Cornelius, Larson, Esseks, Francis and Sunderman voting 'yes'; Gaylor Baird and Taylor voting 'no'; Lust and Partington absent).

### **FINDINGS OF FACT:**

1. This alley vacation and the associated Change of Zone No. 10003 and Special Permit No. 10008 were heard at the same time before the Planning Commission.
2. This is a request to vacate that portion of the north-south alley between South 15<sup>th</sup> Street and South 16<sup>th</sup> Street from South Street to approximately 210 feet north of South Street to accommodate a redevelopment project on this block. A single user (CVS Pharmacy) will utilize most of the south half of this block for their building and parking. The proposed building location for this redevelopment project is directly over the existing alley.
3. The staff recommendation to find the proposed alley vacation in conformance with the Comprehensive Plan, with conditions as set forth on p.4, is based upon the "Analysis" as set forth on p.3-4, concluding that the vacation of the alley will aid in the redevelopment of the block, provided that public access is maintained; that easements are retained for public utilities or are moved to another location approved by Public Works and LES; and that a turnaround or connection to the north-south alley is provided so that the north-south alley will not be a dead-end. The staff presentation is found on p.5-7.
4. The applicant's testimony is found on 8-11 and 15-16, and the record consists of five letters in support, that documentation being focused upon the associated change of zone and special permit and thus not attached to this Factsheet.
5. Testimony in opposition is found on p.11-13, and the record consists of 20 letters in opposition, that documentation also being focused upon the associated change of zone and special permit and thus not attached to this Factsheet. The main focus of the opposition was the change of zone to O-2 on the two residential properties to allow the off-premise sale of alcohol. The opposition also raised issues concerning traffic flow and the increase of traffic on S. 15<sup>th</sup> Street.
6. On April 7, 2010, the majority of the Planning Commission agreed with the staff recommendation and voted 5-2 to find the proposed alley vacation to be in conformance with the Comprehensive Plan (Gaylor Baird and Taylor dissenting; Lust and Partington absent). (See Minutes, p.16-18).
7. On April 7, 2010, the majority of the Planning Commission also agreed with the staff recommendation and voted 5-2 to recommend approval of the associated Change of Zone No. 10003 and to adopt Resolution No. PC-01204, approving the associated Special Permit No. 10008 for the authority to sell alcoholic beverages for consumption off the premises, with conditions. The special permit was appealed to the City Council.
8. On May 17, 2010, the City Council passed Ordinance No. 19387, approving the associated Change of Zone No. 10003, and adopted Resolution No. A-85862 approving the associated Special Permit No. 10008.
9. The appraisal by Clint Thomas of the Housing Rehab & Real Estate Division of the Urban Development Department is found on p.20, finding that the area being vacated should be deeded to the abutting land owner for \$490.00, with retention of the appropriate easements.
10. The petitioners have paid the \$490.00 value to the City Clerk, thus the provisions of Chapter 14.20 of the Lincoln Municipal Code have been satisfied.

**FACTSHEET PREPARED BY:** Jean L. Preister  
**REVIEWED BY:**  
**REFERENCE NUMBER:** FS\CC\2010\SAV.10002

**DATE:** May 19, 2010  
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# LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for March 10, 2010 PLANNING COMMISSION MEETING

**PROJECT #:** Street and Alley Vacation No.10002

**PROPOSAL:** To vacate that portion of the north-south alley between S. 15<sup>th</sup> Street and S. 16<sup>th</sup> Street from South Street to approximately 210 feet north of South Street.

**LOCATION:** Northwest corner of S. 16<sup>th</sup> Street and South Street.

**CONCLUSION:** The vacation of this right-of-way conforms to the Comprehensive Plan, and will aid in the redevelopment of the block, provided that public access is maintained and that easements are retained for public utilities or are moved to another location approved by Public Works and LES, and a turnaround or connection to the north-south alley is provided so that the north south alley will not be a dead end.

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

**LEGAL DESCRIPTION:** The north south alley from the north line of South Street to the north line of Lot 15 Maxwells Addition and the north line of Lot 6, Block 3 Electric Park Addition all located in the NW 1/4 of 36-10-06 Lincoln, Lancaster County.

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

North: R-5 and R-2 Residential District - Single family dwelling units

South: B-3 Commercial District - Hospital, Bryan LGH

East: B-3 Commercial District and R-2 Residential

Fast food restaurants and some retail. The residential lot has a house that will be removed.

West: B-3 Commercial District and R-5 Residential

There is one dwelling unit on the west side that will be removed. The rest of the property is vacant.

**ASSOCIATED APPLICATIONS:** CZ10003, SP10008

## **COMPREHENSIVE PLAN SPECIFICATIONS:**

The 2030 Comprehensive Plan identifies this area as Commercial

Alleys are not included in the functional classification (p 102)

*“Maximize the community’s present infrastructure investment by planning for residential and commercial development in areas with available capacity.” (P. 9)*

*“Encourage mixed-use redevelopment, adaptive reuse, and in-fill development including residential, commercial, and retail uses. ” (P. 10)*

*“The community actively encourages public-private partnerships, strategic alliances and collaborative efforts....as a means to accomplish its future economic objectives.” (P. 30)*

*“The City should preserve and enhance Downtown’s role as:*

- the major office and service employment center of the City*
- the City’s principal cultural, entertainment and tourism center*
- a regional retail center geared toward employees, area residents, convention visitors and University population” (P. 36)*

*“Encourage renovation and reuse of existing commercial centers. Infill commercial development should be compatible with the character of the area and pedestrian oriented.” (P. 36)*

**HISTORY:**

- |                             |   |
|-----------------------------|---|
| July 20 <sup>th</sup> 2005  | Planning Commission approved a special permit to allow a parking lot in a residential district to serve an adjacent commercial use on Lot 15, Maxwell Addition. |
| April 17 <sup>th</sup> 2006 | City Council approved a change of zone from R-5 residential to B-3 Commercial subject to a zoning agreement.  |

**UTILITIES:** LES is the only utility that still has facilities in this alley.

**TRAFFIC ANALYSIS:** Access to South Street will be relinquished and access to S. 15<sup>th</sup> Street from the non-vacated portion of the alley will be provided by an easement across the applicants property or a turn around will be provided at the end of the dead end alley.

**ALTERNATIVE USES:** No vacation of the alley.

**ANALYSIS:**

1. The vacation of this portion of the north-south alley is part of a redevelopment project on this block. A single user will utilize most of the south half of this block for their building and parking. The proposed building location for this redevelopment project is directly over the existing alley.
2. 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.

3. This vacation will create a dead-end alley. The applicant will need to either build a turnaround at the north side of their property or provide a public access easement across their property for access to S. 15<sup>th</sup> Street. The applicants must also remove the existing alley return to South Street. If the remainder of the alley is vacated in the future than this condition wouldn't apply.

**CONDITIONS:**

1. Before the item is scheduled on the City Council agenda the provisions of Chapter 14.20 of the Lincoln Municipal Code must be met.
2. A provision relinquishing access to South Street from the vacated right-of-way is included in the deed transferring ownership of the vacated right-of-way.
3. Easements are retained for the existing LES facilities in the area to be vacated or the facilities are moved to an alternative location approved by LES.
4. Agree to remove the existing alley return to South Street.
5. Build a turnaround on the north side of the property or provide a public access easement across the property for access to S. 15<sup>th</sup> Street.
6. Remove the existing alley return to South Street.

Prepared by:

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**DATE:** February 25, 2010

**APPLICANT:** B& J Partnership  
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Lincoln, NE 68528

Growth Management Corporation  
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Lincoln, NE 68502

**CONTACT:** Mark Hunzeker  
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1248 O Street  
Lincoln, NE 68508

**CHANGE OF ZONE NO. 10003,  
SPECIAL PERMIT NO. 10008  
and  
STREET & ALLEY VACATION NO. 10002**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 10, 2010

Members present: Francis, Esseks, Cornelius, Taylor, Gaylor Baird, Partington and Sunderman; Larson and Lust absent.

Ex Parte Communications: None.

Staff recommendation: Approval of the change of zone; conditional approval of the special permit; and a finding of conformance with the Comprehensive Plan on the alley vacation.

Staff presentation: **Christy Eichorn of Planning staff** began the presentation by requesting a four-week deferral of the public hearing because the staff and Planning Commission have been inundated with a lot of last minute information. In order to make a well-informed decision and recommendation it would be beneficial to have some additional time. She would like to have the opportunity to clarify some of the issues of the opposition and gather additional information.

The project is located between 15<sup>th</sup> and 16th Streets, north of South Street, for a CVS Pharmacy, located mostly on property currently zoned B-3. The proposed changes of zone are to change three properties from either R-5 or R-2 to O-2 and B-3. Taking a look at the overall application, there have been a lot of questions about the O-2 zoning. Some of the letters in opposition were that the O-2 was strictly for the alcohol sales for the CVS Pharmacy on the B-3 zoning and whether the applicant's intent is to develop the O-2 into an office district. The staff looked at the O-2 by itself to see if it was appropriate for this particular district.

This property is within the South Street Redevelopment Plan adopted in 2007. The area was declared blighted and became part of the Redevelopment Plan, although there was not a specific plan for this particular lot in that Redevelopment Plan.

Eichorn pointed out that there is a lot which was rezoned from Residential to B-3 in order to accommodate a potential drive-thru coffee shop. With that zoning, there was a zoning agreement which limited uses, had buffers and all kinds of mitigation techniques to mitigate the impacts on the residential to the north and west. This project expands that commercial area by two lots.

Eichorn advised that the staff is recommending that approval of the change of zone be subject to a zoning agreement, the purpose of which is to mitigate the impact of the commercial uses on the neighborhood. Currently, the B-3 abuts the R-2 and R-5 zoning. Whenever an area is redeveloped, there is an attempt to go from more intense commercial use to less intense commercial use to residential. If there is property that could potentially be rezoned between

residential and commercial, especially like B-3, we try to mitigate that with R-T or O-2 zoning which are transition districts that generally allow office uses but not high intensity commercial uses.

In the zoning agreement, the staff is asking for specific points to help mitigate the impact, including no illuminated signs facing the west side of the property with more residential uses; retaining the mature trees that could be saved; and providing more street trees along South Street and 16<sup>th</sup> Street, which is in conformance with the South Street Redevelopment Plan.

The zoning agreement also requires the developer to rebuild the sidewalk on South Street. The developer has agreed to put the sidewalk 6 feet off the curb and make it 5 feet wide to meet all ADA standards, thus a portion needs to be located on private property.

The zoning agreement also requires a 6' opaque fence between O-2 and B-3, to remain as long as the uses are residential. When the O-2 zoning becomes an office use, then the fence would no longer be necessary.

As a carryover from the previous zoning agreement, some of the uses would also be limited, including the more intense uses such as tire stores, vehicle body repair, car wash, service stations, etc., which should be at least 100' from any residential district.

In terms of rezoning of the O-2 property, the staff is requesting the four-week deferral to get more clarification. It is not the intent to rezone someone's property if they don't want the property rezoned. Until early this morning, the Planning Department had no contact from the property owners proposed to be zoned O-2. They were notified; Eichorn attempted to visit and left her business card; and she posted a zoning action sign in their front yard. Unfortunately, she did not hear from the owners until receiving a letter this morning from Mr. Chapin, one of the property owners, who has concerns about the pharmacy proposed with the noise that might be associated, potentially 24 hours a day. The author of this letter lives in the property just south of the alley. There is also a property just north of the CVS property from which the Planning Department has not heard anything. Chapin has concerns about the drive-thru but suggests that that could potentially be mitigated. Eichorn wants to discuss that more with Mr. Chapin. He is not against alcohol sales but he does not believe that it should be approved at the expense of the neighborhood. He also expressed concerns about future expansion of business districts where they do not belong. Eichorn wants to have some discussion with this property owner.

Esseks sought clarification of the uses north of this property – if we agree to O-2 along the bottom of the alley, there are properties immediately adjacent to the north. He would like the staff to make contact with these property owners as to their wishes and the current uses. Eichorn pointed to the historic landmark (the Dial House), which is currently in the process of potentially being moved to a location at 29<sup>th</sup> & Washington Streets. The owner of that property, B&J Partnership, applied for a demolition permit and was denied by the Historic Preservation Commission; however, the Historic Preservation Commission is in favor of moving the Dial House to another location. Those particular applications will be on the Planning Commission agenda on March 24<sup>th</sup>.

Esseks is also interested in the properties across the alley – in other words, he is interested in the uses of all adjacent properties. Eichorn noted that all of the property to the north is mostly single-family and two-family residential.

Francis inquired whether it is common to have a zoning request on property that is not owned by the applicant. Eichorn stated that it is not common, but it is not completely unheard of. The staff has submitted a list of properties that have been rezoned where the property has stayed in residential use. In most of those cases, it was the property owners who wanted to participate in the change of zone. She acknowledged that it is rare.

Francis referred to the site plan for the pharmacy layout. She inquired whether the parcel showing the parking lots and the turnaround is already owned by the applicant. Eichorn indicated that the property is owned by B&J Partnership, the applicant, and the Dial House. Francis wondered whether this project could move forward without the rezoning of those properties, and they would not be able to have alcohol sales at the pharmacy. Eichorn believes that might be possible.

Gaylor Baird asked Eichorn to clarify Analysis #2, in terms of the zoning agreement, where it suggests that the B-3 zoning would allow a range of commercial and retail uses in the future that would not be compatible with residential zoning. Eichorn explained that the zoning agreement limits where those uses might be located. There are a variety of uses allowed in the B-3 district. The zoning agreement prohibits those more intense uses to within 100' of a residential district, which is more buffer than what would normally be required. The zoning agreement stays with the land. If a subsequent owner would want to do a service station on this property in the future, they would be required to be at least 100' away from any residential districts, they could not have any illuminated signs on the western side of their building and they would be required to meet all restrictions put in the zoning agreement. The zoning agreement mitigates those concerns in Analysis #2. The purpose of the O-2 is to mitigate more of the residential area to the north and buffer what would already be allowed in the B-3 district so that we don't have B-3 adjacent to R-2.

### Proponents

1. **Mark Hunzeker** appeared on behalf of **B&J Partnership**, the applicant and owner of most of this property. They have been working with staff on this for six months and would agree to a four-week delay.

Francis moved to defer, with continued public hearing and action on April 7, 2010, seconded by Esseks and carried 7-0: Francis, Esseks, Cornelius, Taylor, Gaylor Baird, Partington and Sunderman voting 'yes'; Larson and Lust absent.

There was no other public testimony.

### **CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 7, 2010

Members present: Cornelius, Larson, Taylor, Esseks, Gaylor Baird, Francis and Sunderman; Lust and Partington absent.

Ex Parte Communications: Francis disclosed that she had a conversation with Sandy Wacker and showed her how to get onto the Web site to review the staff documents.

Larson disclosed that he had a conversation with Mark Hunzeker but they did not discuss this application whatsoever.

Staff recommendation: Approval of the change of zone; conditional approval of the special permit; and a finding of conformance with the Comprehensive Plan on the alley vacation.

Staff presentation: The staff presentation occurred at the public hearing held on March 10, 2010.

Chair Sunderman explained that he is giving some additional time to Mark Hunzeker, who represents the applicant on this proposal, to discuss the difficulty of redeveloping in the older areas of the city.

### Proponents

**1. Mark Hunzeker** appeared on behalf of **B&J Partnership**, the owner of most of the property within this application.

Hunzeker began his testimony by stating that it is a very time-consuming, expensive and difficult process to assemble sites for redevelopment in older parts of the community. The Nebraska Community Development Law provides cities with a variety of tools with which to assist developers and to bring redevelopment plans to fruition. The most powerful tool that it is given is the power of eminent domain. The city is authorized not only to condemn property to acquire it, but then in addition and in conjunction with that, to sell property at what is called “fair value”, as opposed to what is a more common term, “fair market value”. It means that you can actually sell property at a discount to a developer which the city has acquired at fair market value – in other words, to assist in the assemblage of property for redevelopment.

Lincoln has rarely used that power on behalf of private developers. And in the recent past, Hunzeker could not think of an example. There have been a few over the past 20-30 years, but in the recent past, the city has determined it is not going to do that on behalf of a private developer. It is undeniable that the city’s decision not to use eminent domain makes it more expensive and sometimes impossible for private redevelopers to assemble parcels for redevelopment in accordance with redevelopment plans adopted by the city.

Hunzeker went on to state that the city also clearly has the power to use its zoning power in aid of the redevelopment process. The statute actually says that the governing body of a city, to the greatest extent it deems to be feasible, shall afford the maximum opportunity to the rehab or redevelopment of the area by private enterprises. You are strongly encouraged to utilize whatever powers you have to encourage those areas to be redeveloped by private enterprise rather than by the city. The governing body shall give consideration to this objective in exercising its powers under the Community Development Law including the exercise of its zoning powers. The statutes encourage the city to use its zoning power to assist private enterprise.

Hunzeker further suggested that rezoning property which abuts a redevelopment project, especially upzoning of that property, is clearly within the statutory language. There is no harm

to any value (arguably the value of the property upzoned would increase); there is certainly no taking; the existing land use can continue indefinitely; and the purpose of the law is served.

Lincoln has used zoning in the past to implement neighborhood subarea plans. In fact, the Planning Commission has downzoned property over the objection of owners to implement those plans. The Planning Commission has downzoned some people against their will, arguably depreciating their property values, for the purpose of implementing a subarea plan.

Hunzeker submitted that this process as we are engaged in today is broken. Thousands and thousands of tax dollars are spent on blight studies and more thousands, if not tens of thousands, on redevelopment plans. The Planning and Urban Development Departments create these voluminous reports to justify action by this body, by the City Council and by the Mayor to declare areas blighted and to adopt redevelopment plans, and private enterprises which come in and express interest in pursuing those plans are welcomed into the dark maze. What happens then is that the developer eagerly pursues amendments and demands of the staff thinking that their cooperation is going to gain a recommendation of approval. Months later, sometimes after more than \$100,000 has been expended, the objections of a handful of people send chills down the backs of the staff and an e-mail from some previously silent city official declares opposition to the project and the staff requests delays and rethinks its recommendations and essentially says they may reverse their professional recommendation based on that sort of opposition. The message that sends to developers is this – no plan adopted by the city can be relied upon to support any project which requires any further approval. No amount of time or money spent to satisfy staff concerns is of any benefit; no professional recommendation will stand in the face of any opposition; and finally, if you own property within the redevelopment area, don't do anything to improve it, to rehab it, to even maintain it, until city and neighborhood leaders come together and beg you to do something with it. Hopefully, at that time, the neighborhood will still be economically able to support the redevelopment project.

The applicant for this specific project, B&J Partnership, has probably done more rehab and redevelopment in this community of older commercial areas than the next five redevelopers combined. They are the anchor owner of the entire South Street corridor. They are the anchor owner in the Haymarket. They have made huge investments in this community and should be appreciated and encouraged to do more.

CVS Pharmacy is a national publicly held retail pharmacy chain. They anticipate investing 30 million dollars in this community in new stores; they have three locations where they are ready to start construction and four others (including 16<sup>th</sup> & South) that are in various states of assemblage and/or process. The corporate approval process for CVS to get approval to build something like this is rigorous and competition for their investment capital comes from all over the country. They, too, deserve fair treatment and ought to be welcomed to spend their money here rather than somewhere else. And if they perceive that their capital is not welcome here, they have plenty of other places to put it.

This project is at the intersection of two major arterial streets, where there is currently an Amigo's, Pizza Hut, old office building, and a historic landmark house. B&J Partnership has agreed to acquire property from Amigo's Holding Company and the Pizza Hut, and they have negotiated the termination of leases on both of those sites. They have been through and are still in the process of gaining Historic Preservation Commission approval to move the landmark

rather than demolish it. And they have worked for eight months with the staff to get this site plan as close as possible to the ideals that the staff was seeking.

Hunzeker then referred to the staff report, noting that this type of project is encouraged throughout the community; the change of zone will help create a larger developable redevelopment site; and the zoning will be mostly the same as the rest of the South Street corridor. The Comprehensive Plan provides that development in neighborhood commercial centers such as the South Street corridor shall transition from more intensive commercial uses to residential, and that more intensive commercial shall be located near the arterial street. "That's us."

There are several conditions including pedestrian traffic, screening, restricting the location of certain uses on the site, limiting signage and preserving an addition of new street trees, and the applicant agrees with all of those conditions.

The "hiccup" that nearly reversed the professional recommendation of staff has been resolved. The Planning Commission now has letters from both of the homeowners who are next to this site and who are not going to become part of this project. They have no objection to being rezoned O-2, and their letters also state that they have no objection to the special permit for the sale of alcoholic beverages on this site.

Hunzeker believes that after this length of time, to be here with 100% concurrence with the staff report, is nearly a miracle. It is very unusual not to at least have one or two little issues to resolve when we get to this point.

Larson noted that there are four properties being rezoned and inquired whether the applicant owns the other two. Hunzeker responded affirmatively.

Gaylor Baird inquired whether the applicant made any attempt to purchase the two homes in question being changed from residential to office use zoning as a part of this theoretical buffer. Hunzeker stated that there has been a variety of discussions between his client, the CVS agents and those homeowners, but at this point their agreement is confidential.

Esseks noted that among the objections from neighbors is that this development will create traffic problems for them. Hunzeker pointed out that circulation will be off of 16<sup>th</sup> Street and off of 15<sup>th</sup> Street. There has been a lot of discussion about the separation of the drive from South Street to meet the minimum standards. He believes they do meet the minimum standard, but barely. On 16<sup>th</sup> Street, there are currently at least two, and he thinks three curbcuts that serve the two fast food restaurants along 16<sup>th</sup> Street. In addition, there is an alley that runs behind those fast food locations that this applicant is proposing to vacate, and there is access that runs all the way to South Street. In terms of traffic impact on neighboring residential areas, Hunzeker does not believe this project will hurt it and may help it. In fact, he thinks it will help to the extent that the alley has been a kind of short cut to the north as opposed to coming back onto South Street or onto 15<sup>th</sup> Street before going north.

Hunzeker advised that the drive-thru transactions peak at 10 per hour in the 5:00-6:00 p.m. hour. They drop down to less than 2 per hour between 10 and 11 p.m., and drop down to less than 1 from 11:00 p.m. to midnight.

South 15<sup>th</sup> Street is a two-way street.

Larson noted that there is no traffic signal at 15<sup>th</sup> & South. Hunzeker agreed, but if you were going west from this site, going out to 15<sup>th</sup> Street and making a right turn onto South Street, it would be a fairly easy maneuver. There is not a turn lane on South Street at 15<sup>th</sup> Street. They intend to improve the pedestrian access to the site by taking the sidewalk currently existing against the curb on South Street and move it back 6' from the curb and place it partly on an easement on the applicant's property. A 6' separation from curb to sidewalk should improve the safety and certainly feels better. The problem is that when South Street was widened, there was not a lot of additional right-of-way taken. Hunzeker believes that was in large part because there were businesses that had buildings right up to the property line.

Francis inquired about the projected vehicle traffic count through a typical CVS pharmacy of this size. Hunzeker did not have those numbers, but based on what he has seen of the drive-thru traffic, it is a whole lot less than it would be for a Mexican food place or a pizza place. As far as the retail space involved, he did not have the number available.

The business hours of CVS will be 24-hours-day.

Esseks suggested that one of the concerns about traffic is the increase in the number of vehicles that will turn on 15<sup>th</sup> and then go north to what is now a largely residential area. Hunzeker does not know why anyone would go north on 15<sup>th</sup> Street unless they lived there. It's not an easy place to go through, especially if you are in a hurry. It is not a convenient way to go. If he were headed north and west or even north and east, he would be more inclined to get on South Street to get a much more direct route north. But, it's also better to have them on that street than going up the alley.

### Opposition

**1. William Carver**, 2202 Washington Street, testified in opposition on behalf of Near South Neighborhood Association. The Association was originally concerned because the applicant did not have the consent of the two property owners on the northwest corner and the precedent which that would set. A store the size of CVS could be located on this site without the rezoning; however, they could not get the liquor special permit without the rezoning. There is a Walgreens that did not receive a liquor license. Rezoning these two residential properties will meet the 100' buffer. Kabredlos at 17<sup>th</sup> & Washington was denied because of the 100' buffer. The tobacco store at 17<sup>th</sup> & Washington would like to get a liquor license but they would also have to deal with the 100' buffer. The Association's concern is the precedent that this could set. The Near South Neighborhood Association is not opposed to the project itself, but is opposed to the rezoning in order to get the liquor license.

Francis noted that the initial letter from Near South really did not take a stand, so she wanted to know what has changed between then and now. Carver noted that the Association did oppose the rezoning. They chose not to deal with the special permit or the street and alley vacation, because without the change of zone, those two things will not happen. He now understands the property owners have signed letters agreeing to the rezoning.

**2. Susan Melcher**, who lives in Near South, testified in opposition. Several things bother her – she does not oppose the development per se, but she opposes bending the rules for the liquor

permit. It seems that you have the distinction between commercial zoning and residential zoning for reasons. It is her understanding that if you change the zoning on these two houses, they will continue to be used as residences and not businesses, so it does not make any sense why you would say it is okay for them to do something contrary to what they are going to be. They are going to be commercial zoned, so why not operate as businesses? The obvious answer is that you are bending the rules to allow a business to sell liquor in less than the 100' buffer. She is not opposed to the business per se, she just thinks that whoever develops there should follow the existing rules without going through this process of bending rules. There are two other pharmacies within walking distance, i.e. Russ's and Walgreens. There are several liquor stores within walking distance. We do not need another pharmacy at this location. That street has a variety of shops – coffee house, grocery, fast food, retailers, paper seller, beauty salon, x-rated shop. Whether or not CVS builds there is not going to bring the whole neighborhood down, but all of the other business have found a way to follow the rules. This sets a bad precedent.

**3. Dennis Banks**, Pastor of Reach Out Christian Center, located at 2015 South 16<sup>th</sup> Street, testified in opposition. One of the proposals is to change the zoning for the house just to the south of his church from R-2 to O-2. Why are the owners in favor of changing the zoning? What are they planning to do with that property? It is right next door to the church. The church purchased this facility from Houses of Hope about a year ago and they have over 200 people a week attending AA and NA meetings. They are opposed to adding another place where people can purchase liquor as another temptation for the people who come in and out of this facility. Other than that, he believes the owners have done a good job in addressing the traffic issue, as long as they are not going to use the adjacent alley.

**4. Denise Connelly**, who lives in the Near South Neighborhood, testified in opposition. The Near South Board of Directors was told by the applicant that the two houses being changed to office/commercial zoning will remain residential. They want them rezoned in order to get the liquor license. Near South was also told that CVS would not come to this location if they cannot get a liquor license at this location. She does not believe this will increase the value of those two residential properties.

With respect to traffic, Connelly pointed out that the main traffic at this type of facility is the parking lot, as opposed to the drive-through. She likes CVS but she does not agree with rezoning an area to benefit a business. It's not like this is vacant land. There is revenue already being generated by those properties. It is not right to rezone this area when it is going to remain in residential use when the only reason to change it is for the liquor license.

**5. Sandy Wacker**, 1430 Peach Street, testified in opposition. She has talked to a lot of the neighbors about this project and one of the biggest concerns is the traffic. 15<sup>th</sup> Street is used a lot now and that will increase with the CVS facility. There is a lot of traffic through the alley. There are probably at least three locations where you can access that alley, one of them right behind the Chapin house. There are four blocks on Rose Street before you can have access on 16<sup>th</sup> Street. The neighbors are not opposed to this being a commercial location, but there needs to be a plan in place to deal with the extra traffic on 15<sup>th</sup> Street.

Another concern is the business bringing alcohol sales to a neighborhood that does not need another outlet to add to its problems. Alcohol issues are prevalent in the neighborhood and it discourages a new homeowner from choosing to buy in the neighborhood.

Wacker is now aware that the two homeowners are not opposed to the zoning change. She does not know why Mr. Chapin changed his mind since the last meeting. She is very concerned about setting this precedent. What would keep the Commission from not doing this for someone else? A lot of the neighbors are opposed to an additional location for the sale of alcohol.

Wacker inquired as to whether a traffic study was done. There is a lot of commercial area to the east.

**6. Brad Nelson**, who has lived for 12 years at 1464 Plum Street, testified in opposition. He moved into the neighborhood because it was nice and quiet. He talked with Craig Smith who informed him that there would be an office building; and then he heard it was going to be a Starbucks, which would have been acceptable; and then this latest project he found out about just a month ago in a flyer from Near South Neighborhood Association. He was shocked. There are no provisions in this plan for a vital neighborhood. He is extremely opposed.

Nelson also pointed out that one of the residential property owners whose property is being rezoned, Scott Chapin, agreed that it was not good and he previously sent a letter in opposition. Now he has submitted a letter with no objection, so something happened that caused him to change his mind. He was hopeful that the neighborhood would have the opportunity to negotiate with the applicant to make changes and make it more a neighborhood friendly facade, etc. He wants the neighborhood to be a nice place so that people will want to move into the neighborhood. He does not want the property values to diminish.

Nelson also advised that he has had numerous problems with alcohol on his property. People have been arrested for urinating in his yard and being passed out in his yard. There are some low rent properties in the neighborhood. What is a store open 24-hours-a-day going to do to the neighborhood? If we want to revitalize our neighborhoods, we should think about doing it from the ground up. Neighborhoods are built by residents and we should be promoting a healthy environment so that it encourages people to take pride in their property and to want to be part of a place where you can walk and live. He wishes that the neighborhood could be involved in the planning more up-front.

#### Staff questions

In response to what uses are allowed in O-2, Eichorn explained that O-2 is an office district which does not allow much retail or residential. It allows churches, parking lots and other office type uses.

Sunderman wondered why staff suggests that O-2 is appropriate. Eichorn explained that we generally use O-2 or R-T as transition districts between heavily commercial districts to transition into residential districts. Office use of O-2 and R-T provides a buffer. That is why we felt this to be an appropriate area for that transition instead of expanding the B-3 further.

If this proposal is approved and the volume of traffic going north on 15<sup>th</sup> Street becomes a serious nuisance, if not a dangerous nuisance, Esseks wondered whether the city can take steps to slow down that traffic. Eichorn believes that there could be steps taken in terms of additional signage, perhaps no parking on 15<sup>th</sup>, an additional stop sign, etc., if traffic becomes an issue.

Taylor inquired as to the buffer north of CVS pharmacy. Eichorn explained that it would be the O-2 Suburban Office District zoning. Eichorn explained the zoning at the map. The O-2 will buffer the residential on the other side of the alley from the heavier commercial uses in B-3 along South Street.

Gaylor Baird asked staff to discuss the purpose of the 100' buffer and how it came about. What process was undertaken to establish that distance and with what kind of community input? Eichorn stated that the 100' separation protects the older areas, such as South Street and other areas zoned B-1 or B-3 – it limits the areas where businesses that sell alcohol can be located. Often-times, it can be challenging to redevelop in those sorts of areas because there are the restrictions of the 100' buffer. By limiting the sale of alcohol, it keeps a whole bunch of businesses that might be selling alcohol from clustering together in a particular area.

Gaylor Baird suggested that in this case, we would overturn that buffer and make it relatively meaningless. Therefore, we do stand the potential to have other applicants stand before us saying it is not fair if this particular location can get around that buffer.

Eichorn believes there was community input. The City Council decided that the 100' buffer would provide some sort of security to older neighborhoods so that they are not inundated with places that sell alcohol. The Planning Department found that the O-2 was appropriate and in accordance with the South Street Redevelopment Plan; we have used O-2 as a transition in other areas; and we found that O-2 would be appropriate on the merits of O-2 zoning in any particular area.

Eichorn also pointed out, however, that since the very beginning of discussion on this proposal, the Planning staff told the applicant that they would have to get the support of the two owners in order for the Planning Department to recommend approval. It was never the Planning staff intent to say we would support the change of zone to O-2 without the property owners' consent. At the time of the last Planning Commission hearing when staff asked for a four-week deferral, the Department had not had any response from those property owners one way or the other, despite the posting of the sign in their front yard, the letter notice and a visit to the homes, leaving a business card. Thus, staff moved forward as if these owners did not have an opinion. Shortly before the last public hearing, a letter was received from Mr. Chapin in opposition to certain things and Eichorn wanted to get more clarification from him. She has since spoken with him on several occasions and then the two letters were received this morning indicating no objection to the change of zone. Had these owners come back in opposition, the staff recommendation would have been changed.

Gaylor Baird indicated that she is not arguing that O-2 is not an appropriate transition, because when you ask yourself if these two owners wanted to have a true office function, that seems like a legitimate rezoning. But is staff not troubled by the fact that this would be a 24-hour liquor store right next to residential? There is no plan to make those houses an office use. Doesn't the developer need to purchase those properties in order to create the zoning situation? Eichorn believes that to be a question for the developer. The staff's interpretation of the code is that O-2 is appropriate for this location.

Esseks asked staff to clarify that a vote for this change of zone is not “bending the law”. The law requires a 100' separation between an enterprise that sells alcohol and other things in a residential “district”. If we rezone those three properties, that 100' buffer is realized. Eichorn agreed.

### Response by the Applicant

Hunzeker explained the creation of the 100' buffer. He was a party to that legislation. In fact, he drafted it. It is not the product of any desire to protect anyone from anything other than his client (which was then an organization called the Retail Package Beverage Association), and the purpose of that 100' separation was to make it difficult to find a place to do business in competition with the traditional off-sale stores. We drafted that ordinance for the very purpose of protecting those old retail outlets from competition. The City Council at that time was a little frustrated by the State Liquor Commission not taking its recommendations into account and we simply created this process for the special permit as a means of having a public hearing and opportunity for there to be input on a particular site in order for the City Council to have a better basis to go to the Liquor Commission and in some cases recommend denial. That's all it is. It really never had anything to do with the protection of residential areas. In fact, the original ordinance had a 100' separation between the licensed premises and residential “uses”, not residential districts, because there are a number of places where residential uses are on commercially zoned property, and it was changed to residential “districts” as a means of making it more restrictive. The suggestion that we are in some way “bending rules” is not the case. All of the rules are being complied with, and the two property owners whose property is being rezoned to O-2 to accommodate that are in favor of it. In fact, the third property owner, Dennis Walls, has also written a letter in support. So three of the four closest residential owners have now said they favor this project.

With respect to traffic, Hunzeker pointed out that Public Works did not make any comments or have any issues with the traffic. This proposal eliminates access to one arterial street and consolidates three accesses into one on 16<sup>th</sup> Street.

With respect to the liquor for consumption off the premises, Hunzeker suggested that virtually all of the objections to this project could be made against any redevelopment of this site. There is no evidence that increasing the number of locations for alcohol sales increases consumption. The sale of alcohol in this context is a red herring issue. Just as the ownership of the two houses along 15<sup>th</sup> Street, it doesn't make this project any less compliant with the Comprehensive Plan, the South Street Corridor Redevelopment Plan or the Blight Study. The city laid out the welcome – “we're open for redevelopment in this corridor.” We have two very responsible, very capable private parties who came knocking at the door and they were told they were welcome.

Eight months later and over \$100,000 later, the questions before the Commission are three: Do our duly adopted plans have any meaning whatsoever? Do we deal with private enterprise which responds to our plans in good faith? Or, do we abandon our duly adopted plans and repudiate good faith dealings in the face of modest political opposition. The answers are yes, yes and no. Hunzeker requested approval.

Taylor stated that he is convinced that nothing has been done to bend the law or twist the law. But, we have to listen to the conscience of the community that is involved here. It does mean more liquor. This is a very fragile neighborhood. We definitely welcome CVS pharmacy because it is needed, but he is opposed to creating a buffer for the purpose of alcohol sales. Hunzeker suggested that the opposition of the Near South Neighborhood and others who have suggested that they are not opposed to this projected but for the sale of alcohol, is either misinformed or disingenuous. When we went to the neighborhood we made it very clear that we could not have this project at all without the sale of alcohol at this location. It is not a choice of whether you have the store with no alcohol or have the store with alcohol. It's either have the store with alcohol or no store.

Hunzeker further stated that knowing the history of the arbitrary 100' separation requirement, it is very frustrating that we have this issue arise with respect to a project which is clearly in conformance with the Comprehensive Plan and all of the redevelopment plans for this corridor, as well as in compliance with the staff's recommendation. And yet, the sale of alcohol becomes the focus. It is part and parcel of this application. Without it we will not have the project.

**CHANGE OF ZONE NO. 10003**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 7, 2010

Larson moved approval, subject to a conditional zoning agreement, seconded by Esseks. Francis stated that her biggest concern was the lack of the owners' permission for the change of zone and that changed today with the letters we received, so she will be in support.

Esseks commented that the applicants have put together sufficient land for the project, including agreement of two private owners whose land is essential to achieve the 100' separation. He does not feel comfortable judging whether CVS or its alcohol sales are appropriate for this location. He does not have that professional background, and the community's Comprehensive Plan and the South Street Redevelopment Plan do not make those choices for us, so he feels he should vote yes.

Gaylor Baird believes the critical issue in this case boils down to whether or not we intend to uphold a buffer between places that sell alcohol and residential uses. It is not a question of whether or not it is legitimate for CVS to sell alcohol. It is a question of whether or not the Commission is willing to contradict the Comprehensive Plan. There is the real fact that people perceived that buffer as providing some safeguard in their home value and the potential negative consequences of having alcohol consumed near their home. And for all the other businesses that have been following this rule, we have to be prepared to answer to future applicants. In this case, the buffer is purely theoretical. She does not understand labeling residential homes as O-2 with no plan for that kind of function or change to occur. In effect, we are allowing alcohol sales without the buffer next to residences without any change to the residences. There are unintended consequences of the decision to support this application without a true buffer. This development could still occur without the alcohol permit. If they could purchase the properties and truly make them office space or eliminate the residential use, this development could still occur. We do not know if that discussion has occurred.

We have heard from a number of residents and their voices count for something. Gaylor Baird is concerned about setting a precedent for future additional outlets for alcohol in the neighborhood. It is not just a neighborhood of crime and problems, but actually a neighborhood

of people working to restore historic homes. It is an award-winning neighborhood. "I don't think we bend the rules if we support this. We change the rule of a 100' buffer." She cannot support the application as it stands despite her support for a project of such nature and trying to redevelop in an older neighborhood.

Taylor stated that he really would like to support this project but he finds it very difficult, especially in terms of the O-2 for those residences. It is obvious to him that the only reason those property owners are not objecting is because of some influence that they are receiving from the applicant. In other words, it is not their idea. He would be more comfortable if it seemingly was their idea, just as much as it was the idea of CVS to appropriate that property. He is not comfortable with the way this is being done. He cannot support this project.

Esseks suggested that it is difficult for the Commissioners to put themselves in the heads of these two property owners. They have agreed. Why they have agreed is not clear and we can speculate. My speculation is that the applicant has been able to persuade both of these gentlemen that it is in their interest to go to O-2, and that it can provide them with some interesting opportunities such as combining the properties and making them into office, etc. These homes are not exactly brand new or in outstanding shape. They face a commercial development right to the south. The land has already been cleared. He believes that the Commission should trust the decisions of the property owners. It is not a bad place to have O-2.

Cornelius stated that he has reviewed the ordinance for the special permit and interpreted that there is a 100' buffer required between the sale of alcohol and residential "districts", and that is different from residential "uses". Further, as has been pointed out, we have two property owners who own land which have heard that O-2 is an appropriate zone and those owners have said yes, for whatever reason. "I am not qualified to judge their reason. It is enough for me to hear that they said yes." Cornelius also believes that this is an attempt to use a zoning district for exactly what it is intended to be - a buffer between a more intense use and a less intense use, and secondarily, to provide the necessary buffer required by ordinance for a special permit to sell liquor. He will support the motion.

Larson believes it has been established that the applicant has met all of the legal issues completely. He understands the reluctance of some to vote for it because of the moral or ethical issue of the 100' separation, but the two properties that are affected have indicated that, for whatever reason, they favor the application. Thus, he believes we have met the meaning of the 100' separation whether it was for the protection of the homeowner or for competitive reasons. He will vote in favor.

Taylor stated that he does not disagree with any of the comments or decisions made by the other Commissioners, but he is still opposed.

Sunderman stated that he will support the application. He believes the O-2 is an appropriate buffer and the owners are in favor. As far as the B-3 where CVS is coming in, he believes it will improve traffic flow by reducing three access points to S. 16<sup>th</sup> down to one and eliminating one access to South Street. 15<sup>th</sup> Street is still a concern but it will be a concern no matter what is developed here. He believes it is a good plan that has been well thought-out.

Motion for approval, subject to conditional zoning agreement, carried 5-2: Cornelius, Larson, Esseks, Francis and Sunderman voting 'yes'; Gaylor Baird and Taylor voting 'no'; Lust and Partington absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 10008**

**ACTION BY PLANNING COMMISSION:**

April 7, 2010

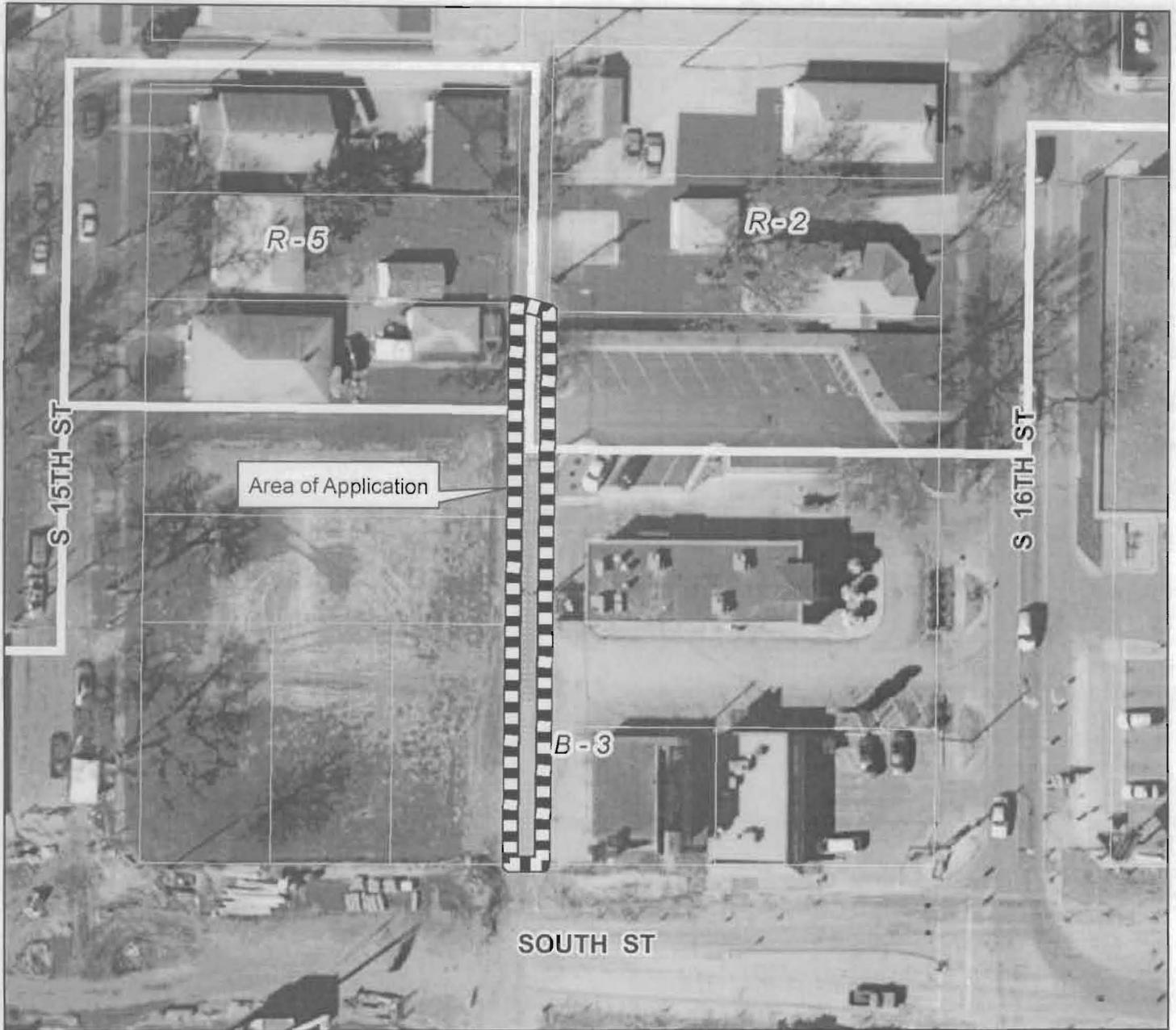
Cornelius moved to approve the staff recommendation of conditional approval, seconded by Francis and carried 5-2: Cornelius, Larson, Esseks, Francis and Sunderman voting 'yes'; Gaylor Baird and Taylor voting 'no'; Lust and Partington absent. This is a final action, unless appealed to the City Council within 14 days.

**STREET & ALLEY VACATION NO. 10002**

**ACTION BY PLANNING COMMISSION:**

April 7, 2010

Francis moved to find the alley vacation to be in conformance with the Comprehensive Plan, seconded by Cornelius and carried 5-2: Cornelius, Larson, Esseks, Francis and Sunderman voting 'yes'; Gaylor Baird and Taylor voting 'no'; Lust and Partington absent. This is a recommendation to the City Council.



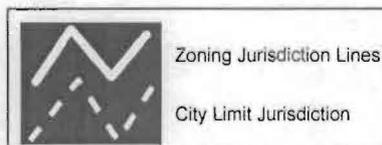
2007 aerial

## Street & Alley Vacation #10002 S 16th & South St

### 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

One Square Mile  
Sec. 36 T10N R06E



## 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 16, 2010

COPIES TO: Teresa J. Meier  
Marvin Krout  
Rod Confer  
Byron Blum, Bldg & Safety  
Jean Preister, Planning

SUBJECT: Street & Alley Vacation No. 10002  
a portion of north/south alley between  
S. 15<sup>th</sup> St. & S. 16<sup>th</sup> St.; from South St.  
north approximately 210 feet

A request has been made to vacate a portion of the north/south alley between South 15<sup>th</sup> Street and South 16<sup>th</sup> Street north of South Street approximately 210 feet. The area was viewed and is a rock-surfaced alley running north from South Street. Overhead electric transmission and distribution lines, cable, and telephone lines were located in the alley. No other utilities were apparent in the alley. A request has been made to retain easements over the entire area for these utilities.

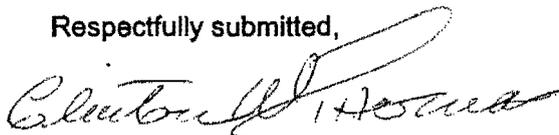
Public Works has also asked that the existing alley return on South Street be removed and a turn around be built at the north end of the vacated alley; or, that a public access easement be granted to alleviate the dead-end situation that will be created by the vacation of a portion of this alley.

It is estimated that the easements being retained plus the cost of removing the alley access, installing a curb and gutter, and a turn around would exceed the value of a narrow strip of land such as this. As such, a nominal amount of \$0.15 per square foot is considered appropriate. The area to be vacated is 3,255 square feet. The calculations are as follows:

$$3,255 \text{ sq. ft.} \times \$0.15/\text{sq. ft.} = \$488.25 \text{ Called } \$490$$

Therefore, it is recommended if the area be vacated it be deed to the abutting land owner for \$490 with the retention of the appropriate easements.

Respectfully submitted,



Clinton W. Thomas  
Certified General Appraiser #990023