

FACTSHEET

TITLE: STREET & ALLEY VACATION NO. 04009, requested by Joyce-Hinkley Ltd. Partnership and STS Real Estate Management Company, Ltd., to vacate the section of North 58th Street right-of-way between Colfax Avenue and the Murdock Trail.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/07/04
Administrative Action: 07/07/04

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

RECOMMENDATION: A finding of conformance with the Comprehensive Plan (8-0: Sunderman, Larson, Krieser, Taylor, Marvin, Pearson, Carroll and Carlson voting 'yes'; Bills-Strand absent).

ASSOCIATED REQUESTS: Change of Zone No. 04040 (04-159).

FINDINGS OF FACT:

1. This proposed street vacation request and the associated Change of Zone No. 04040 were heard at the same time before the Planning Commission, along with Special Permit No. 04032 for a domiciliary care facility.
2. This is a request to vacate an unimproved section of North 58th Street right-of-way between Colfax Avenue and the Murdock Trail.
3. The staff recommendation to find the proposed right-of-way vacation to be in conformance with the Comprehensive Plan is based upon the "Analysis" as set forth on p.3, concluding that the vacation of this right-of-way conforms with the Comprehensive Plan, provided easements are retained for public utilities.
4. The applicant's testimony is found on p.5-6. The bonding issue discussed by the applicant, Planning Commission and staff dealt with street and sidewalk improvements as part of the associated Special Permit No. 04032.
5. There was no testimony in opposition.
6. On July 7, 2004, the Planning Commission agreed with the staff recommendation and voted 8-0 to find the proposed right-of-way vacation to be in conformance with the Comprehensive Plan. The Planning Commission also recommended approval of the associated Change of Zone No. 04040 and adopted Resolution No. PC-00882, approving the associated Special Permit No. 04032 for the domiciliary care facility. The special permit approval was a final action, but is only effective if the change of zone and vacation application are approved by City Council.
7. The City Real Estate Division has recommended that if the area is vacated, it be sold to the abutting property owners for \$8,690.00, or \$4,345.00 for each half (p.9).
8. The City Clerk has determined that the provisions of Chapter 14.20 of the Lincoln Municipal Code have been satisfied.
9. The revised petitions have been submitted pursuant to Conditions #1.2, and the applicant has submitted a final plat pursuant to Condition #1.3.1.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: August 23, 2004

REVIEWED BY: _____

DATE: August 23, 2004

REFERENCE NUMBER: FS\CC\2004\SAV.04009

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for July 7, 2004 PLANNING COMMISSION MEETING

- P.A.S.:** Street and Alley Vacation #04009
- PROPOSAL:** Vacate the section of North 58th Street right-of-way between Colfax Avenue and Murdock Trail.
- LOCATION:** North 58th Street and Colfax Avenue
- LAND AREA:** 9,480 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.

<u>RECOMMENDATION:</u>	Conforms to the Comprehensive Plan
-------------------------------	------------------------------------

GENERAL INFORMATION:

LEGAL DESCRIPTION: North 58th Street right-of-way from the north line of Colfax Street north 142 feet to the easterly extension of the north lot line of Lot 12, Block 116, Havelock, located in Section 9 T10N R7E, Lancaster County, Nebraska.

SURROUNDING LAND USE AND ZONING:

North:	David H. Murdock Trail	I-1 Industrial
South:	North 58 th Street right-of-way	
East:	Commercial	I-1 Industrial
West:	Vacant	I-1 Industrial

ASSOCIATED APPLICATIONS: Change of Zone #04040; I-1 to R-5
Special Permit #04032; Domiciliary Care Facility

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan shows this area as Industrial. (F 25)

UTILITIES: LES and the Public Works and Utilities Department have facilities within this right-of-way area.

TRAFFIC ANALYSIS: This is an unimproved section of North 58th Street, and is not currently used for traffic purposes. This section is not planned for improvement within the current CIP or the Comprehensive Plan.

ALTERNATIVE USES: This parcel could currently be developed for any permitted use in the I-1 Industrial district. Associated application Change of Zone #04040 seeks to change the zoning on adjacent property on the west to R-5 Residential. Each abutting property owner intends to purchase their abutting half of the right-of-way. Assuming this vacation and the change of zone are approved, the west half of this right-of-way will be zoned R-5, and the east half will be zoned I-1. In addition, public utility easements have been requested over the entire vacated area. In this case, neither half of the right-of-way would realistically be developable on its own.

ANALYSIS:

1. This is a request to vacate an unimproved section of North 58th Street right-of-way between Colfax Avenue and Murdock Trail.
2. This vacation will create lots without frontage or access to a public street. As a condition of approval, a final plat should be submitted creating lots that conform to the subdivision ordinance.
3. LES and the Public Works and Utilities Department have facilities within this right-of-way. They have requested an easement over the entire vacated area for existing and future facilities.
4. Applicants have expressed an intent to purchase the right-of-way if vacated.
5. 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.
6. The petitions to vacate as submitted are deficient. In one case, it appears the prospective owner signed rather than the actual owner; however, the actual owner submitted their consent to the vacation. In the other case, the capacity of the signor is inaccurate. Both Applicants have agreed to submit revised petitions to the satisfaction of the Law Department.

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

- 1.1 Satisfy the provisions of Chapter 14.20 of the Lincoln Municipal Code.
- 1.2 Submit revised petitions to the satisfaction of the Law Department.
- 1.3 Prior to the transfer of title to the property:
 - 1.3.1 The abutting owners must submit a final plat that will create lots that front on and have access to public streets or private roadways and all requirements of the final plat have been completed except the transfer of ownership of the vacated street to the subdividers.

1.3.2 The City will retain an easement over the entire vacated area for existing and future public utilities.

Prepared by:

Greg Czaplewski
441.7620, gczaplewski@ci.lincoln.ne.us

Date: June 24, 2004

Applicants: Joyce-Hinkley LTD. Partnership
8101 "O" Street, Suite 100
Lincoln, NE 68510
489.3387

STS Real Estate Management Company, LTD
407 South 27th Avenue
Omaha, NE 68135
800.777.8326

Owners: NC+ Hybrids Cooperative
3820 North 56th Street
Lincoln, NE 68504
467.2517

STS Real Estate Management Company, LTD
407 South 27th Avenue
Omaha, NE 68135
800.777.8326

Contact: Mark Hunzeker
1045 Lincoln Mall, Suite 200
Lincoln, NE 68508
476.7621

**CHANGE OF ZONE NO. 04040
SPECIAL PERMIT NO. 04032
and
STREET & ALLEY VACATION NO. 04009**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 7, 2004

Members present: Sunderman, Larson, Krieser, Taylor, Marvin, Pearson, Carroll and Carlson; Bills-Strand absent.

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 street vacation.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted revisions to the conditions of approval in response to the concerns raised by the Health Department regarding hazardous materials. The conditions would require that hazardous materials would not be stored within 300' of the domiciliary care facility. There is no code requirement for this separation. Therefore, the developer and the Health Department have proposed new conditions that require two emergency shut-off switches for the HVAC system and additional conditions requiring that the permittee and the Health Department communicate if the storage of hazardous materials within 300' becomes known by either party. In that event, they agree to develop some type of evacuation plan. Czaplewski stated that the staff and the developer are in agreement with these changes.

Proponents

1. Mark Hunzeker appeared on behalf of the **Joyce Hinkley Partnership**. This is an expansion of Legacy Terrace, an existing domiciliary care facility at 58th & Fremont. This proposal adds 32 Alzheimer care units (in cooperation with Madonna), and nine assisted living units in eight townhomes and one single family unit.

Hunzeker acknowledged that they worked out the issues with the Health Department which deal with their concerns relative to the industrial zoning which abuts this property. In fact, this "downzones" a portion of the existing industrial property. Hunzeker believes this is an area where the higher and better use of some of the property is residential, and to the extent this property is successful, it will probably change the neighborhood toward residential. Hunzeker agreed with the proposed amended conditions and additional conditions of approval. There is no standard that exists in the ordinance as we apply it today, and the applicant wanted to be cooperative but didn't believe it was fair to impose a 300' setback when there is not any sort of hazardous materials or any likelihood that there will be.

With regard to Condition #2.7, which requires a bond in the amount of \$27,300 to guarantee construction of paving and sidewalk on North 58th Street, Hunzeker pointed out that the portion of North 58th Street which is unpaved is about ½ block which runs along the east side of this project. The property immediately east of that unpaved portion of 58th is the library, and to the west is a single family home and the Legacy Terrace. Legacy Terrace has a small portion of the frontage along that unpaved section of road; the single family house which is carved out of the corner of the block has the balance of the frontage on the west side; and the city owns all of the property on the east side of that area which is unpaved. The applicant is willing to pay for paving the Legacy Terrace frontage, and volunteers to avoid any imposition on their residential neighbor and will pay their portion of the cost of that paving. But Hunzeker believes it is only fair that the city pick up its half of that gap in paving of 58th Street. This is not a decision to be made by the Planning Commission and he requested that Condition #2.7 be deleted. If this condition is included, the applicant will appeal it to the City Council because there is a line item in the city budget every year for this type of thing. The applicant will then request a gap paving district to get this piece of unpaved local street paved in accordance with the city's long-standing policy of finishing up the paving of residential streets in the city limits.

Pearson asked Hunzeker whether he is certain that the bond amount is for the entire frontage. Hunzeker believes that it is.

Pearson asked Hunzeker whether the applicant thought there might be a hazardous occupancy in the adjacent perimeter of this property. Hunzeker stated that they did not know of any. However, he agreed that when it is an area zoned industrial there is always a possibility of some user that would have some use for hazardous chemicals. But there are a variety of uses in other zoning districts that allow for the use of hazardous chemicals. It is speculative to say just exactly how much one ought to impose in the way of cost to avoid that possibility. The proposed language is the same that has been used in other similar circumstances.

Carlson referred to the street vacation and wondered whether there is an attempt being made to put sidewalks and paving in the portion being vacated. Hunzeker responded, "no". The vacation portion is to the north, running from the north right-of-way line of Colfax up to the Murdock Trail. We're talking about the area between Fremont and vacated Benton Street.

There was no testimony in opposition.

Staff questions

Carlson asked staff to explain the bond amount in Condition #2.7. Dennis Bartels of Public Works stated that the bond amount is for all of the paving and the west sidewalk. This was based on the plan that was submitted. The plan that was submitted showed that it would be paved, so a bond amount was provided to guarantee that it would be paved as shown on the application. They do have the opportunity to request a district or request that the city subsidize, but without Council action we cannot guarantee that a district would be created. Bartels is not opposed to working with the applicant to get it paved.

Carroll wondered about waiving the bond. Bartels suggested that the Commission could waive the bond amount and say it has to be paved, and if they couldn't create a district, it would require them to post a bond in the future.

Marvin believes the issue is to create the district, but one of the other parties is the city, and this body is not capable of binding the city to a paving district. Bartels agreed, and he could not say whether the city would or would not create a district. Marvin suggested that if the City Council ordered the paving, then the gap financing dollars of the city would go to help pay for that district.

Czaplewski clarified that the applicant's submittal stated that they would do the paving. The note on the site plan says that the unpaved portion will be paved as part of this project. That is why the staff assumed that the applicant was going to pay for the entire improvement.

Response by the Applicant

Hunzeker stated that it is no secret that the applicant wants that street paved. We think that it is fair for the city to contribute its share of the cost of paving that street. If necessary, the applicant will submit a district request, but he believes it is appropriate to creating gap paving. Hunzeker does not know why the city didn't pave that street when the library was built. He just thinks it's one of those where the city's long-standing policy has been to get local streets within the city limits paved, and to use whatever means are necessary to do that, including but not limited to gap paving districts, which were invented to cover this kind of situation.

Carlson asked for Hunzeker's response to the city's contention that the site plan showed the paving. Hunzeker agreed that it shows the paving, but it does not say this applicant will pave it. The intent was that the applicant would request the creation of a district, if necessary, in order to get that done.

CHANGE OF ZONE NO. 04040

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 7, 2004

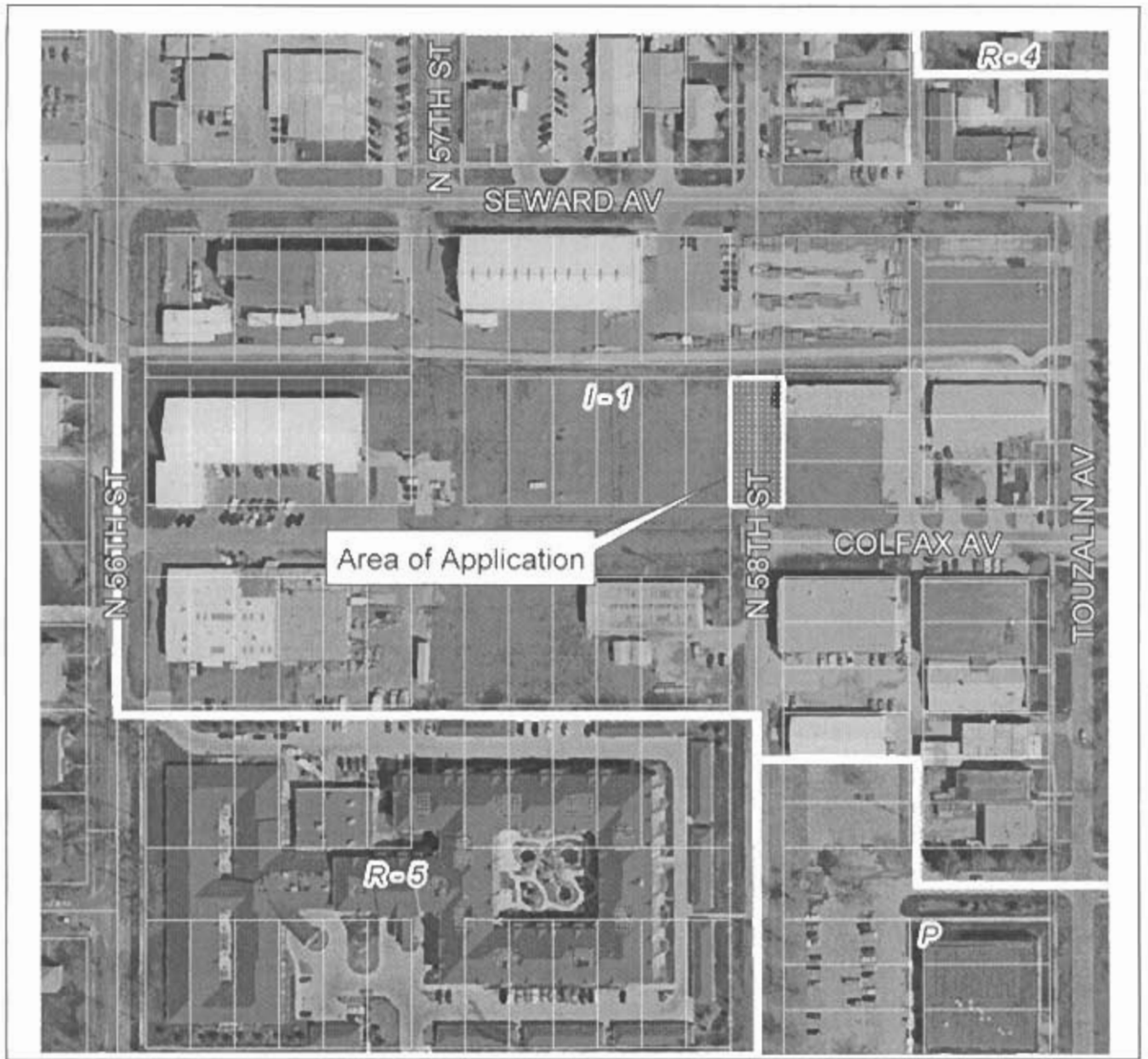
Marvin moved approval, seconded by Larson and carried 8-0: Sunderman, Larson, Krieser, Taylor, Marvin, Pearson, Carroll and Carlson voting 'yes'; Bills-Strand absent. This is a recommendation to the City Council.

STREET & ALLEY VACATION NO. 04009

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

July 7, 2004

Marvin moved to find the proposed street vacation to be in conformance with the Comprehensive Plan, seconded by Larson and carried 8-0: Sunderman, Larson, Krieser, Taylor, Marvin, Pearson, Carroll and Carlson voting 'yes'; Bills-Strand absent. This is a recommendation to the City Council.



2002 aerial

Street & Alley Vacation #04009 N. 58th St. & Colfax Ave.

Havelock Ave.

Zoning:

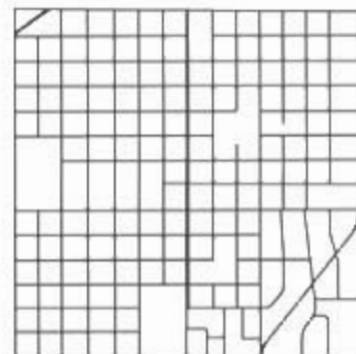
- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-1 Residential Transition District
- B-1 Local Business District
- B-2 Planned 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. 9 T10N R7E



Zoning Jurisdiction Lines
City Limit Jurisdiction

N. 56th St.



N. 70th St.

Adams St.

08

INTEROFFICE MEMORANDUM

TO: Mayor Seng
& City Council Members

FROM: Clinton W. Thomas

DEPARTMENT: City Council Office

DEPARTMENT: Real Estate Division

ATTENTION:

DATE: July 30, 2004

COPIES TO: Joan Ross
Marvin Krout
Dana Roper
Byron Blum

SUBJECT: Street & Alley Vacation No. 04009
North 58th Street; Colfax Avenue to
Murdock Trail

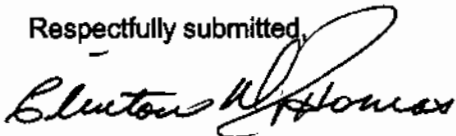
A request had been made to vacate a portion of 58th Street lying north of Colfax Avenue. The area was viewed and appears as open, grass area blending into the vacant adjoining lots. There was no physical evidence of any utilities, but Public Works has indicated the existence of water mains within the area to be vacated. Along with Lincoln Electric System, they have requested easements be retained over the entire area for existing and future utilities.

While the area of the street to be vacated is sufficient in size to provide a small, buildable lot; the retention of utility easements would preclude any of the area being buildable. Therefore, dividing the lot and selling it in halves will not detract from value. Since the area is unbuildable, it is considered to have value only as assemblage into the abutting property where it will take on the value of the area into which it assembled. It is expected a prospective buyer would not pay 100% of the value they expect to have once the property is assembled; however, a value in the range of 30% to 35% of the abutting land value would be considered to be reasonable. In this case, the abutting land value is estimated in the range of \$2.50 to \$3.00 per square foot. Using, a value of 1/3 of the estimated abutting land value of \$2.75 would give a reasonable value to the area to be vacated in this writer's opinion. The calculations are as follows:

$$9,480 \text{ sq. ft.} \times \$2.75/\text{sq. ft.} \div 3 = \$8,690$$

Therefore, it is recommended, if the area be vacated, it be sold to the abutting property owners for \$8,690.00, or \$4,345.00 for each half.

Respectfully submitted,



Clinton W. Thomas
Certified General Appraiser #990023

dge

