

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 3, 2012 AGENDA**

Subject:	Type:	Submitted By:
RIGHT-OF-WAY VACATION & CONVEYANCE — SOUTH SIDE OF HARRISON, EAST OF 83 RD STREET	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIR.

SYNOPSIS

On March 20, 2012, the Council tabled an ordinance for the vacation and conveyance of a portion of unused public right-of-way on the south side of Harrison Street, adjacent to Lot 1282-D1, La Vista, located east of 83rd Street. The applicant, CVS, had been asked to contact the abutting business, Bethany Funeral Home, to discuss signage issues. **Amendments to the ordinance have been made to include restrictions related to the signage and maintenance of the property by CVS.**

FISCAL IMPACT

Harrison Street was constructed using 80% Federal Highway Administration funding and 20% local match. Any proceeds from the sale of the right-of-way must be split with 80% being refunded to the State. The City will keep the other 20%, estimated to be \$5,314.60.

RECOMMENDATION

Approval.

BACKGROUND

The City of La Vista received a request by Nebraska CVS Pharmacies, LLC, to vacate a portion of the Harrison Street right-of-way (approximately 4,599 square feet) which is adjacent to Lot 1282-D1, La Vista. The developers of CVS/Parsley Place (Nebraska CVS Pharmacies, LLC) have also requested the ability to purchase the parcel, and intend to construct a multi-tenant project directory sign on the property. If approved, the vacation and conveyance of this part of the Harrison Street right-of-way would be subject to compliance with the following **(see attached redline of ordinance for changes)**:

1. Easements to all existing utilities shall remain;
2. The pavement subsurface pipes that were constructed and terminate at about the proposed right-of-way acquisition line shall remain in place;
3. Reimbursement to the Federal Highway Administration for monies expended in acquiring the right-of-way;
4. **CVS shall use the property for the sole purpose of constructing and maintaining a project directory sign and such sign shall be approved by the City. Specifically, subparagraph "b" identifies the project directory sign and gives the City Administrator authority to define the number of businesses to be colocated on the sign with CVS, with the actual businesses ultimately listed determined by negotiation**

of CVS and the businesses. The provision will provide area businesses an opportunity to negotiate for space on the sign. (Note: The City may also require as a condition of closing on the parcel an updated signage plan from CVS regarding its intentions with respect to other businesses to be listed on the sign, including evidence of binding agreements between CVS and area businesses that have been identified to colocate on the sign); and

5. CVS shall grant an easement to Professional Mortuary Services, Inc. (Bethany Funeral Home) to maintain their irrigation system and CVS shall maintain the lawn at the current level.

An appraisal and a review appraisal of the property was completed and submitted to the Right-of-Way Division of the Nebraska Department of Roads for approval. Their approval has been received subject to splitting the proceeds of the sale, with 80% being refunded to the State and 20% to be retained by the City. Attached is a letter from John Kottmann, City Engineer, summarizing the value of the parcel based on the appraisals and adjusting for expenses incurred by the applicant and the City.

An ordinance has been prepared to vacate and convey that portion of the Harrison Street right-of-way as shown on Exhibit A. A notice of the sale and the terms of the sale, Exhibit B, will then be published for three consecutive weeks in the newspaper. A remonstrance can be filed against the sale of the property if at least 30% of the electors voting in the last City election sign the remonstrance. A remonstrance against the sale must be filed within 30 days after the passage and publication of the ordinance. If a remonstrance is not filed, the City will prepare a deed in which the City quitclaims its interest in the vacated right-of-way to Nebraska CVS Pharmacy, LLC.

The property owner adjoining this portion of right-of-way, Professional Mortuary Services, Inc., dba Bethany Funeral Home at 8201 Harrison Street, had been notified by staff on two previous occasions of this proposed right-of-way vacation and sale. At the March 6th Council meeting, a representative of the applicant, CVS Pharmacies, was asked to contact the funeral home and discuss signage issues. A representative for CVS has been in contact with Paul Matukewicz at Bethany Funeral Home and did provide a drawing (see Exhibit C) showing the proposed sign location in relationship to the funeral home monument sign. The irrigation system and maintenance of the property was also discussed. An amended ordinance which addresses these issues is attached.

ORDINANCE NO. _____

AN ORDINANCE VACATING, AND RESERVING AND RETAINING TITLE IN THE CITY TO, AND DIRECTING THE SALE AND CONVEYANCE OF, A PART OF HARRISON STREET RIGHT-OF-WAY LOCATED IN THE NW ¼ OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA; AND TO PROVIDE AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA:

Section 1. It is hereby declared necessary, expedient, proper and for the public good to vacate, and for the City to reserve and retain title to (for sale and conveyance of), a part of Harrison Street right-of-way located in the NW ¼ of Section 14, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, ("Property"); and said Property is hereby vacated and the City reserves and retains title thereto for sale and conveyance thereof as directed in Section 2 below.

Section 2. Upon request and payment of adequate consideration and such administrative costs and fees incurred by the City in connection with the vacation, sale and conveyance of the Property, the City shall provide a quitclaim deed selling and conveying the Property to Nebraska CVS Pharmacy, L.L.C. ("CVS"), subject to the rights, conditions and limitations set forth in this Section 2 below, and in accordance with the manner and terms of conveyance specified in Exhibit B attached hereto and incorporated herein by this reference, which rights, conditions, limitations, manner and terms are hereby deemed to be in the best interests of the City; and all of which rights, conditions, limitations, manner and terms shall continue in perpetuity and be binding on CVS and all successors or assigns of CVS or the Property.—~~Such conveyance shall be executed by the Mayor and City Clerk, who are hereby authorized to take such action.~~

a. In addition to any reserved rights provided ~~the City of La Vista elsewhere in this Ordinance or~~ in any document or instrument of conveyance or under applicable law, the following rights, conditions and limitations shall be reserved in perpetuity to the City of La Vista with respect to the Property:

- ia. the right to maintain, operate, repair, replace, extend and renew sewers and other improvements now existing in, on, over, under or across the Property and in the future to construct, maintain, repair, replace, extend and renew additional or other sewers and improvements;

- iiib. the right to authorize public utilities, cable television companies and other persons, systems or services to construct, maintain, repair, replace, renew, extend and operate now or hereafter installed water mains and gas mains, poles, lines, conduits, equipment and appurtenances above, in, on, over, across or below the surface of the ground for the purpose of serving the general public or abutting property;
- iiie. the right to authorize such connections or branch lines as may be ordered, desired or permitted by the City or such other utility, person, system or service; and
- ivd. the right to enter upon the Property to accomplish the above and any related or similar purposes at any and all times.

~~All or any vegetation now or hereafter upon the Property, including, but not limited to, trees, shrubs and crops, and all or any improvements and structures now or hereafter upon the Property, including, but not limited to, buildings, walls, fences, drives, paving and walks, may be damaged or removed by or as authorized by the City as necessary or appropriate in the exercise of the rights herein reserved without any requirement of restoration or compensation to any person.~~

- b. Due to unique dimensions of the Property and its proximity adjacent to public right of way, and CVS's representation of a desire to acquire the Property for the sole purpose of locating and maintaining a Project Directory Sign (as defined in the City of La Vista Zoning Ordinance), CVS and the City are in agreement that the Property shall be conveyed to CVS for the following purposes:
 - i. CVS shall construct, maintain and use a Project Directory Sign on the Property at the location specified in Exhibit C attached hereto and incorporated herein by reference;
 - ii. The sign shall be designed, constructed and used in accordance with all applicable laws, rules and regulations;
 - iii. The design and layout of the sign, vicinity covered by the sign, and the number of businesses within the vicinity to be colocated and listed on the sign with CVS, shall be subject to approval of the City Administrator, and the actual businesses ultimately listed on the sign shall be determined by reasonable, good faith negotiations between CVS and said businesses; and

iv. The remainder of the Property that is not used for the Project Directory Sign shall continue to be maintained as a lawn, as existing at closing, and for no other purposes.

("Permitted Purposes").

CVS shall take title to the Property subject to the Permitted Purposes, and after closing on the Property, CVS shall use the Property exclusively for the Permitted Purposes and for no other purposes. In addition to, and not in limitation of the foregoing, CVS at all times shall maintain or contract for the maintenance of the lawn on the Property in a healthy, clean, neat and trim manner, condition and appearance that is at or above the level, manner, condition and appearance in effect upon closing.

c. An irrigation system serves a tract of land owned by Professional Mortuary Services, Inc. adjacent to the east of the Property, which irrigation system is partly located in, on, over, under, across or below the surface of the Property ("Irrigation System"). Professional Mortuary Services, Inc., its successors and assigns shall have an easement for the present and future location, maintenance, operation, replacement, repair and renewal of said Irrigation System in, on, over, under, across or below the surface of the Property, and to enter upon the Property from time to time to exercise the rights granted by said easement. In addition, if any part of the Irrigation System is damaged, destroyed or rendered inoperable by any negligence, act or omission of CVS, CVS agrees to immediately repair, replace and restore said part and the Irrigation System to good and working condition and repair.

d. All or any vegetation now or hereafter upon the Property, including, but not limited to, lawns, trees, shrubs and crops, and all or any improvements and structures now or hereafter upon the Property, including, but not limited to, buildings, walls, fences, drives, paving, signs and walks, may be damaged or removed by or as authorized by the City as necessary or appropriate in the exercise of the rights herein reserved without any requirement of restoration or compensation to any person.

Such conveyance shall be executed by the Mayor and City Clerk, who are hereby authorized to take such action.

Section 3. The City Clerk is hereby authorized and directed to publish notice of the sale of the Property specified in Exhibit A and the terms of such sale in accordance with the requirements of Section 16-202 of the Revised Statutes of Nebraska.

Section 4. This ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

| PASSED AND APPROVED THIS 6TH-____TH DAY OF MARCH____, 2012.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

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EXHIBIT "B"

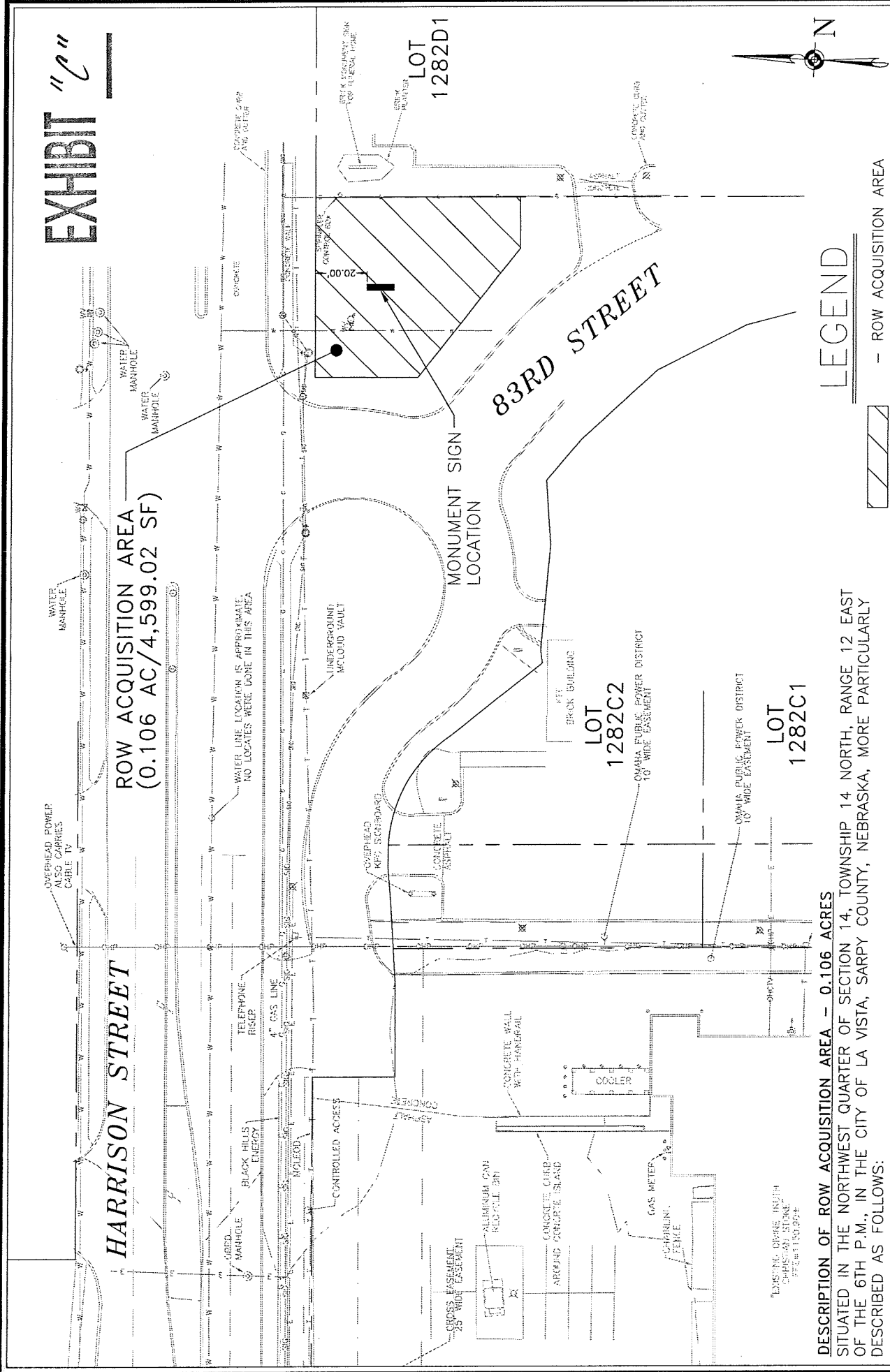
MANNER AND TERMS OF SALE

Manner of Sale: Quitclaim Deed from City to Nebraska CVS Pharmacy, L.L.C. vacated right-of-way, with reservation of easements and other rights.

Terms of Sale:

- 1) Legal Description: BEGINNING AT THE NORTHWEST CORNER OF LOT 1282D1, LA VISTA, SARPY COUNTY, NEBRASKA, AND A POINT IN THE SOUTH RIGHT OF WAY LINE OF HARRISON STREET, THENCE ALONG THE WEST LINE OF SAID LOT 1282D1 AND THE EAST RIGHT OF WAY LINE OF 83RD STREET, S02°44'17"E FOR 80.00 FEET; THENCE LEAVING SAID WEST LINE OF LOT 1282D1 AND THE EAST RIGHT OF WAY LINE OF 83RD STREET, S87°15'43" FOR 20.00'; THENCE N54°08'47"W FOR 63.97 FEET; THENCE N02°44'17"W FOR 40.00 FEET; THENCE N87°10'56"E FOR 70.00 FEET TO THE POINT OF BEGINNING CONTAINING 4,599.02 SQUARE FEET OR 0.106 ACRES MORE OR LESS.
- 2) Consideration to be paid to City: \$26,573 (Appraised at \$36,972 less \$1,800 paid to City for cost of appraisal, \$900 paid to City of cost or review appraisal, \$2,000 for platting expense, and \$5,519 paid to City for administrative fees), plus legal and advertising fees.
- 3) Method of Payment: Cash at closing.
- 4) Closing Date: As parties may agree.
- 5) Purchaser: Nebraska CVS Pharmacy, L.L.C.

EXHIBIT "C"




DESCRIPTION OF ROW ACQUISITION AREA - 0.106 ACRES

SITUATED IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., IN THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1282D1, LA VISTA, SARPY COUNTY, NEBRASKA, AND A POINT IN THE SOUTH RIGHT OF WAY LINE OF HARRISON STREET, THENCE ALONG THE WEST LINE OF SAID LOT 1282D1 AND THE EAST RIGHT OF WAY LINE OF 83RD STREET, S02°44'17"E FOR 80.00 FEET; THENCE LEAVING SAID WEST LINE OF LOT 1282D1 AND THE EAST RIGHT OF WAY LINE OF 83RD STREET, S87°15'43" FOR 20.00'; THENCE N54°08'47"W FOR 63.97 FEET; THENCE N02°44'17"W FOR 40.00 FEET; THENCE N87°10'56"E FOR 70.00 FEET TO THE POINT OF BEGINNING CONTAINING 4,599.02 SQUARE FEET OR 0.106 ACRES MORE OR LESS.

LEGEND

 - ROW ACQUISITION AREA

1"=50'

SEC - HARRISON ST & 83RD ST

LA VISTA, NEBRASKA

ROW ACQUISITION EXHIBIT

JUNE 1, 2011