

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MARCH 20, 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 6, 2012, the Council tabled an ordinance which had been prepared to approve 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 was asked to contact the abutting business, Bethany Funeral Home, to discuss signage issues.*

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:

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; and
3. Reimbursement to the Federal Highway Administration for monies expended in acquiring the right-of-way.

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. An update will be provided at the meeting.

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ORDINANCE NO. 1170

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., 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 manner and terms are hereby deemed to be in the best interests of the City. Such conveyance shall be executed by the Mayor and City Clerk, who are hereby authorized to take such action. In addition to any reserved rights provided the City of La Vista 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:

a. 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;

b. 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;

c. 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

d. 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.

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 20TH DAY OF MARCH, 2012.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST

Pamela A. Buethe, CMC
City Clerk