

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MARCH 6, 2012 AGENDA

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

SYNOPSIS

An ordinance has been prepared to approve the vacation 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.

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:

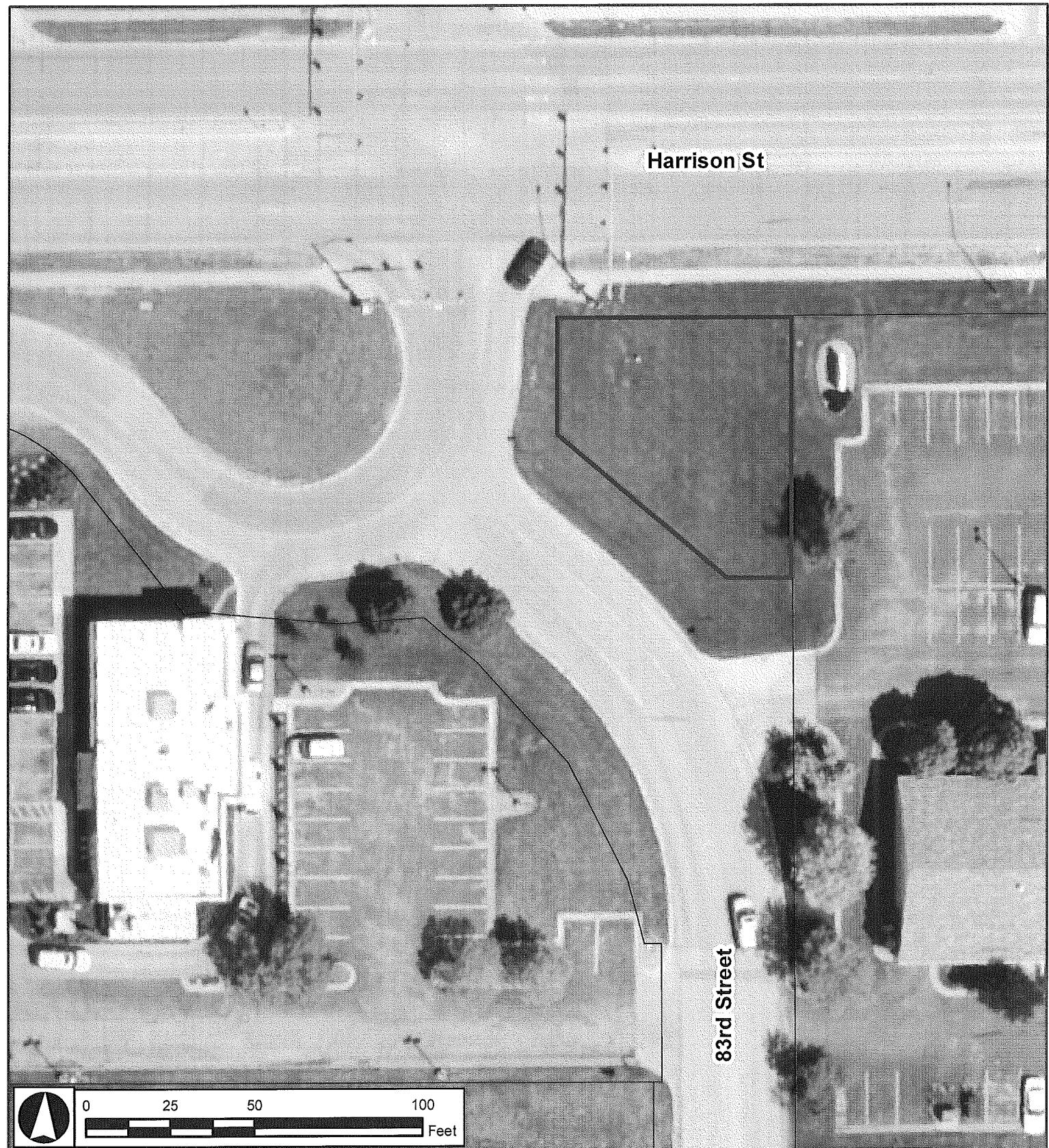
1. Easements to all existing utilities shall remain;
2. The pavement subsurface pipes that were constructed and terminate at about the proposed right-of-way acquisition line shall remain in place; and
3. Reimbursement to the Federal Highway Administration for monies expended in acquiring the right-of-way.

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 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. at 8201 Harrison Street, has been notified of this proposed right-of-way vacation and sale.

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Proposed Right of Way Vacation

83rd and Harrison Streets

February 13, 2012
CAS



ORDINANCE NO. _____

AN ORDINANCE DIRECTING THE CONVEYANCE OF CERTAIN REAL ESTATE ADJACENT TO HARRISON STREET RIGHT-OF-WAY LOCATED IN THE NW $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, AND THE MANNER AND TERMS THEREOF; 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 convey certain real estate adjacent to Harrison Street right-of-way located in the NW $\frac{1}{4}$ 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"), subject to the following conditions and limitations reserved in perpetuity to the City of La Vista:

- 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 2. Upon request and payment of adequate consideration and such administrative costs and fees incurred by the City in connection with this conveyance, the City shall provide a quitclaim deed to Nebraska CVS Pharmacy, L.L.C., the Property specified in Exhibit A, conveying that portion of said Property that abuts said person's property and reserving the rights specified in Section 1 above, in accordance with the manner and terms of conveyance specified in Exhibit B, which is attached hereto and incorporated herein by this reference. 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 DAY OF MARCH, 2012.

CITY OF LA VISTA

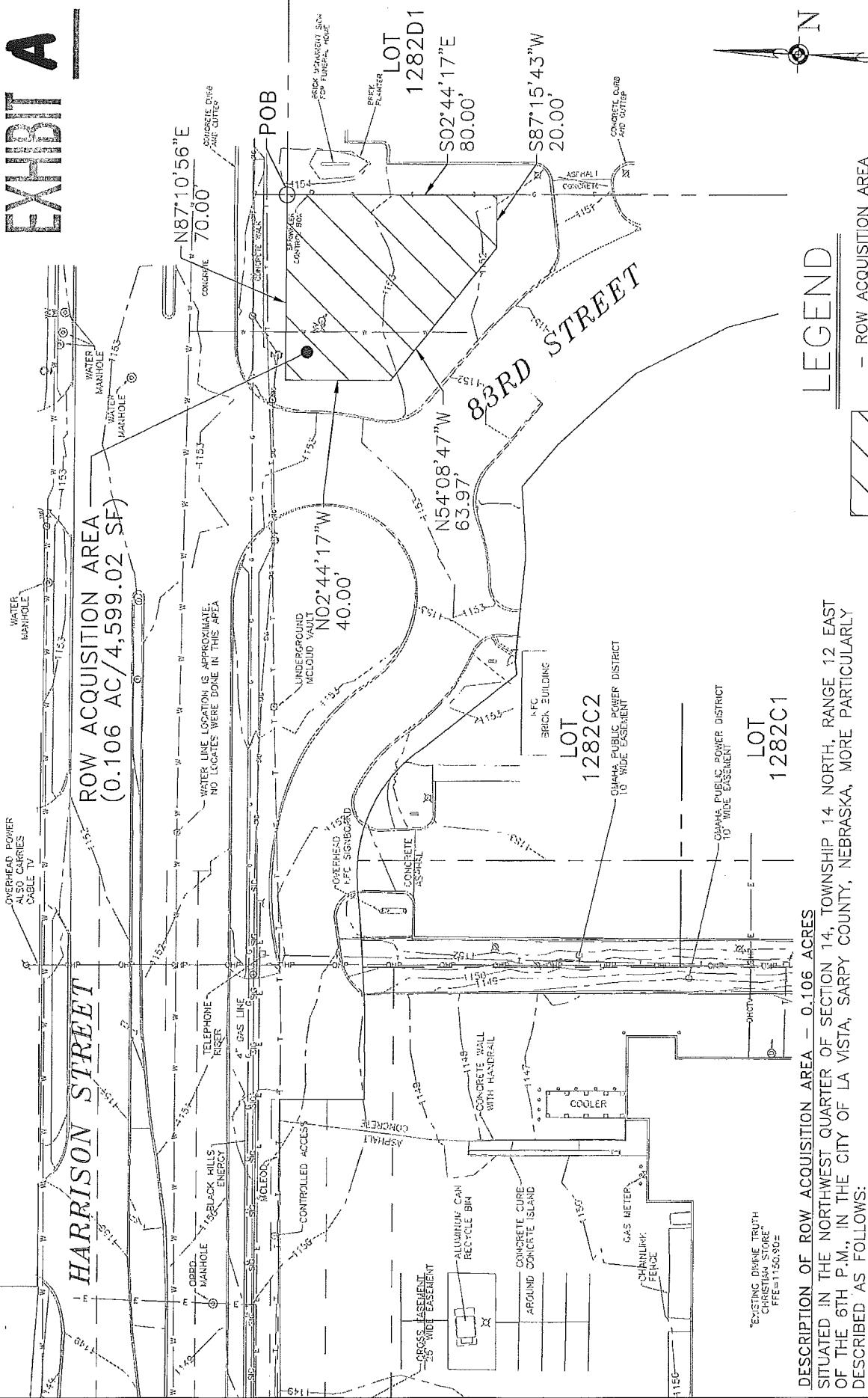
Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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ABCD



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, SO24°47'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.

SEC - HARRISON ST & 83RD ST
LA VISTA, NEBRASKA
ROW ACQUISITION EXHIBIT

JUNE 1, 2011

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).
- 3) Method of Payment: Cash at closing.
- 4) Closing Date: As parties may agree.
- 5) Purchaser: Nebraska CVS Pharmacy, L.L.C.

TIMELINE
VACATION AND CONVEYANCE OF EXCESS RIGHT-OF-WAY
HARRISON AND 83RD STREETS

| | |
|---|---------------------|
| Ordinance vacating right-of-way | City Council 3/6/12 |
| Publish ordinance | 3/15/12 |
| Publish Notice of Real Estate Sale for 3 weeks | 3/15, 3/22, 3/29 |
| Passage of 30 days after last publication (without filing of remonstrance) | 4/30/12 |
| Closing | After 4/30/12 |



February 24, 2012

Mr. Chris Solberg, City Planner
Via: Inter-Office Mail

RE: CVS Pharmacy, La Vista, Nebraska
Excess Right-of-Way Acquisition, 83rd & Harrison
Proposed Purchase Price

Chris:

We have obtained an initial appraisal and a review appraisal in accordance with the procedures established by the Nebraska Department of Roads and the FHWA. This is required since the excess right- of- way parcel under consideration was initially acquired with the use of Federal funds. We have sent both the initial and review appraisals to the Nebraska Department of Roads Right-of-Way Division for comment. They have advised that we may proceed to arrive at a valuation for the subject parcel based upon these appraisals. The initial appraisal has been provided to you previously. We received the review appraisal on September 16, 2011. A copy is enclosed herewith.

The initial appraisal rendered an opinion of value at \$22,000. The review appraisal rendered an opinion of value at \$36,800. Both appraisals agreed on a value of \$8 per square feet. The difference in the opinions relates to which fees and costs of the process are deductible or not. Some of the costs were previously billed to the CVS since they requested the process be undertaken and some costs were (or will be) incurred directly by CVS. The creation of this parcel will require a plat to be prepared and recorded since the parcel being created is less than 10 acres in size. We anticipate that this would be done as an administrative plat if the process successfully proceeds past the public hearing stage which will be at the expense of CVS. The largest expense item in the initial appraisal is the "entrepreneurial profit". The comparables were based on private party sales and the appraiser included an allowance for 30 percent profit. The City is not undertaking this process for profit, but does need to cover it's administrative costs. I estimate this effort to be in the range of 15 percent. The City will also be required to submit 80% of the proceeds to the Federal Highway

City Hall
8116 Park View Blvd.
La Vista, NE 68128-2198
p: 402-331-4343
f: 402-331-4375

Community Development
8116 Park View Blvd.
p: 402-331-4343
f: 402-331-4375

Fire
8110 Park View Blvd.
p: 402-331-4748
f: 402-331-0410

Golf Course
8305 Park View Blvd.
p: 402-339-9147

Library
9110 Giles Rd.
p: 402-537-3900
f: 402-537-3902

Police
7701 South 96th St.
p: 402-331-1582
f: 402-331-7210

Public Works
9900 Portal Rd.
p: 402-331-8927
f: 402-331-1051

Recreation
8116 Park View Blvd.
p: 402-331-3455
f: 402-331-0299

Administration via the Nebraska Department of Roads since the right-of-way was acquired with federal-aid monies.

In view of the foregoing a reconciled value is set forth as follows:

4,599 Square Feet @ \$8.00 per Square Foot = \$ 36,792

Less Expenses to Applicant:

| | |
|-----------------------|------------|
| Initial Appraisal Fee | \$ (1,800) |
| Review Appraisal Fee | \$ (900) |
| Platting Expense | \$ (2,000) |

Adjustments to Appraisal:

| | |
|----------------------|-------------|
| Deduct Profit Factor | \$ (11,038) |
|----------------------|-------------|

Add Expenses incurred by City:

| | |
|---------------------|---------|
| Administrative Fees | \$5,519 |
| (15% of \$36,792) | |

Value of Parcel: \$26,573

The information presented above is my recommendation for a method to resolve the differing professional opinions that we have received from qualified appraisers.

Prepared by:

John M. Kottmann

John M. Kottmann, P.E.
City Engineer