

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF VACATING A PORTION)
OF A PUBLIC ROAD RIGHT-OF-WAY, MORE)
PARTICULARLY DESCRIBED IN) RESOLUTION NO. R-19-0008
EXHIBIT "A", AND LOCATED IN)
LANCASTER COUNTY, NEBRASKA)

WHEREAS, the Board of County Commissioners of Lancaster County, Nebraska, ("the Board"), pursuant to Neb. Rev. Stat. § 39-1722, received a report from the Lancaster County Engineer and the Lincoln-Lancaster County Planning Department regarding the vacation of the west 10 feet of the unnamed right-of-way adjacent to Lot 6 IT, Walton, Nebraska, legally described as:

A portion of right-of-way located adjacent to Lots 7-9, Block 3, Gieren's 1st Addition, Walton, Nebraska and Lots 6 & 17 in the south half of fractional Section 30, Township 10 North, Range 8 East of the 6th PM, Lancaster County, Nebraska ("the Right of Way") as depicted in Exhibit "A" to this Resolution, which is attached hereto and is hereby incorporated by this reference;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-108, the Board may acquire title to lands and may perform such duties concerning roads as may be prescribed by law;

WHEREAS, to maintain the 25-foot width of right-of-way, Grace Evangelical Lutheran Church ("Applicant") shall convey in fee simple absolute to Lancaster County, Nebraska, ("the County") the west 10 feet of Lots 7-9, Walton, Lancaster County, Nebraska, legally described as:

A portion of Lots 7-9, Block 3, Gieren's 1st Addition, Walton, Nebraska, Section 30, Township 10 North, Range 8 East of the 6th PM, Lancaster County, Nebraska ("the Property"),

as depicted in Exhibit “A” to this Resolution, which is attached hereto and is hereby incorporated by this reference, and as provided in Section I.A;

WHEREAS, in the event the Applicant fails to convey in fee simple absolute to the County, this Resolution shall become a nullity and entirely void, and no legal relation whatever shall arise between the Applicant and the County, or between the County and any person or property concerning the subject matter of this Resolution;

WHEREAS, upon the exact fulfillment of the condition precedent in Section I.A., the Right of Way shall be vacated without qualification and shall be transferred to private ownership in the Applicant as provided in Section I.C;

WHEREAS, pursuant to Neb. Rev. Stat. §§ 23-108 and 39-1722, the Board could not vacate the road without prior approval of the City of Lincoln (the “City”) because the road to be vacated, although outside the corporate limits of the City, was within the three-mile zoning jurisdiction of the City;

WHEREAS, on December 17, 2018, the City Council of the City voted to approve the vacation of the west 10 feet of the unnamed right-of-way adjacent to Lot 6 IT by resolution (Exhibit “B”); and

WHEREAS, pursuant to Neb. Rev. Stat. § 39-1725, the Board conducted a public hearing on February 5, 2019, regarding said vacation and conveyance;

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Lancaster County, Nebraska:

- I. That the provisions of this Resolution are subject to the following express condition precedent:

- A. On or before the thirtieth (30th) day following approval of this Resolution by the Lancaster County Board of County Commissioners, the Applicant must deliver to the County a warranty deed, in a form reasonably acceptable to the Lancaster County Attorney's Office, conveying the Property from the Applicant to the County in fee simple absolute ("the Warranty Deed").
- II. In the event of the nonoccurrence of the foregoing express condition precedent, which must be exactly fulfilled, then neither the County nor the Applicant, nor any of their officers, officials, employees, agents, agencies, departments, or offices, shall have any obligation to perform any of the duties, nor shall they have any power to enforce any of the provisions, of this Resolution. The foregoing express condition precedent may not be excused except by a separate written Resolution adopted by a lawful action of the Lancaster County Board of County Commissioners. If the foregoing condition fails, this Resolution shall become a nullity and entirely void, and no legal relation whatever shall arise between the Applicant and the County, or between the County and any person or property concerning the subject matter of this Resolution.
- III. In the event that the foregoing condition precedent is exactly fulfilled, then:
 - A. the Right of Way, as depicted in Exhibit "A", shall be vacated without qualification, shall no longer retain its character as a public road, and shall be transferred to private ownership in the Applicant;
 - B. the County Clerk shall, within thirty (30) days after the Applicant has delivered the Warranty Deed to the County:
 - 1. record the Warranty Deed with the Lancaster County Register of Deeds ("Register of Deeds");

2. deliver to the Applicant a quitclaim deed conveying the County's interest, if any, in the Right of Way from the County to the Applicant; and
3. record a certified copy of this Resolution with the Register of Deeds to be indexed against all affected lots; and

IV. In the event the foregoing condition precedent is exactly fulfilled, and the Board vacates the Right of Way without qualification and determines it shall no longer retain its character as a public road, the vacated Right of Way shall be privately owned by the Applicant.

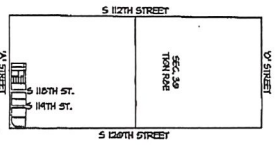
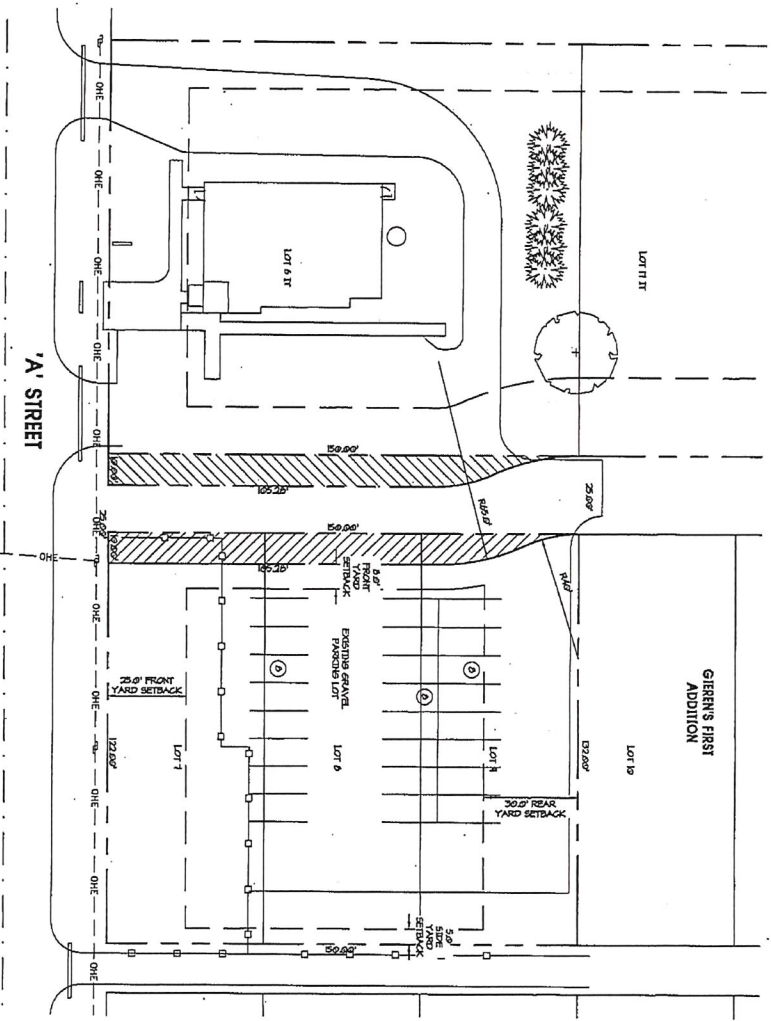
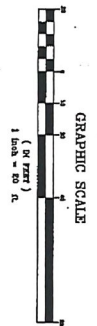
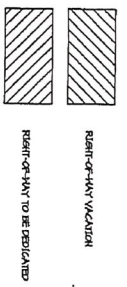
DATED this ____ day of _____, 20____, in the County-City Building, Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA

APPROVED AS TO FORM
this ____ day of
_____, 20____.

Deputy County Attorney

for PAT CONDON
Lancaster County Attorney



LEGAL DESCRIPTION:
GIBBENS BAY ADDITION TO WALTON BLOCK 3,
LOT 14, 9.31 AC. SEC. 39, R. 3E.

OWNER:
GRACE LUTHERAN CHURCH

ADDRESS:
1040 A STREET

ZONING:
R-2 - RESIDENTIAL URBAN
20' FRONT YARD SETBACK
20' REAR YARD SETBACK
5' SIDE YARD SETBACK



A91409

18R-282
Street & Alley Vacation No. 18004

Introduce: 12-10-18

RESOLUTION NO. 91409

1 WHEREAS, City of Lincoln approval of the vacation of approximately the west 10 feet of
2 the unnamed right-of-way adjacent to Lot 6 Irregular Tract generally located at 11640 A Street,
3 and more particularly described as follows:

4 A portion of right-of-way located adjacent to Lots 7-9, Block 3,
5 Gierens 1st Addition, Walton, Nebraska and Lots 6 & 17 in the south
6 half of fractional Section 30, Township 10 North, Range 8 East of
7 the 6th PM, Lancaster County, Nebraska, more particularly
8 described as follows:

9 Beginning at the northeast corner of Irregular Tract Lot 6, said point
10 of beginning;
11 thence southerly along said ROW, on an assumed bearing of S
12 $00^{\circ}06'15''$ E for a distance of 150.00'; thence N $89^{\circ}53'40''$ E for a
13 distance of 10.00'; thence N $00^{\circ}06'15''$ W for a distance of 105.28'
14 to a point of curvature; thence along a curve in a counterclockwise
15 direction, having a radius of 40.00', arc length of 17.60', delta angle
16 of $25^{\circ}12'32''$, a chord bearing of N $12^{\circ}42'31''$ W, and a chord length
17 of 17.46' to a point of reverse curvature; thence along a curve in a
18 clockwise direction, having a radius of 65.00', arc length of 28.60',
19 delta angle of $25^{\circ}12'32''$, a chord bearing of N $12^{\circ}42'31''$ W, and a
20 chord length of 28.37' to the Point of Beginning.

21 has been requested by the Lancaster County Board of Commissioners; and

22 WHEREAS, said right-of-way is located outside of the corporate limits of the City but
23 within the three-mile zoning jurisdiction of the City; and

24 WHEREAS, the Planning Commission has reviewed this application and found the
25 proposed street vacation to be in conformance with the Comprehensive Plan; and

26 WHEREAS, under Neb. Rev. Stat. § 23-108 (Reissue 1997) the Lancaster County Board
27 may not vacate said portion of approximately the west 10 feet of the unnamed right-of-way
28 adjacent to Lot 6 Irregular Tract without the prior approval of the City Council of the City of
29 Lincoln, Nebraska.

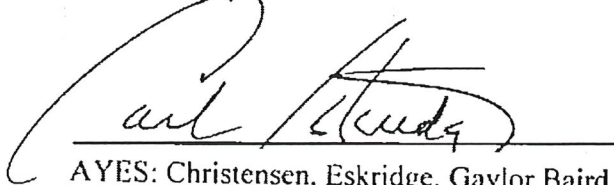
30 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln,

1 Nebraska:

2 That the vacation of that portion of approximately the west 10 feet of the unnamed
3 right-of-way adjacent to Lot 6 Irregular Tract, generally located at 11640 A Street, which is outside
4 of the corporate limits but within the three-mile zoning jurisdiction of the City of Lincoln, is hereby
5 approved.

6 BE IT FURTHER RESOLVED that the City Clerk transmit a copy of this
7 resolution to the County Clerk for Lancaster County.


Introduced by:



Approved as to Form:

AYES: Christensen, Eskridge, Gaylor Baird,
Lamm, Raybould, Shobe; NAYS: None;
ABSENT: Camp


City Attorney

Approved this 20th day of Dec., 2018:

Mayor

ADOPTED

DEC 17 2018

BY CITY COUNCIL

PETITION TO VACATE PUBLIC WAY
with
RELEASE AND WAIVER OF RIGHTS AND TITLE,
AND QUITCLAIM DEED TO CITY OF LINCOLN

TO THE HONORABLE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

The undersigned property owner(s) hereby petition you to vacate the following street, alley, or other public way, commonly known as: (i.e.: *Elm Street from 1st to 2nd St. or East-west alley, from the north line of 1st St. to the south line of 2nd St.*)

The west 10' adjacent Lot 6 IT

in the CITY OF LINCOLN, NEBRASKA, with the City reserving in said street, alley, or other public way such title, rights, easements, and privileges as it may deem necessary. In consideration of the vacation of the above-described street, alley, or other public way, we, and each of us, for ourselves, our heirs, personal representatives, successors, and assigns, hereby waive and release any and all claims, causes of action, rights of access, and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of such vacation; and hereby quitclaim unto the City of Lincoln, Nebraska, and to its successors and assigns forever, all right, title, interest, estate, and demand, both at law and in equity, in and to all of said street, alley, or other public way.

TO HAVE AND TO HOLD the above-described street, alley, or other public way together with all tenements, hereditaments, and appurtenances thereto belonging unto the City of Lincoln, Nebraska, and to its successors and assigns forever.

The undersigned hereby represent(s) that he, she, they, or it is(are) the owner(s) of the following described property in Lincoln, Lancaster County, Nebraska, abutting on said street, alley, or other public way: (Legal description from deed or abstract NOT street address, i.e. Lot 10, Block 500 Boardwalk Addition NOT 4500 Park Place Blvd.)

Lot 6 IT in Section 30-10-8

INFORMATION SHEET

An Information Sheet must be filled out completely by the owners of each parcel abutting the requested vacation. The attached Petition to Vacate Public Way must also be filled out completely according to the instructions contained in the Instruction Sheet.

1. Name of Petitioner (Current Titleholder/s) Grace Evangelical Lutheran Church

If more than one individual, indicate if you are:

_____ joint tenants with right of survivorship, OR _____ tenants in common

2. Petitioner's Address: 11640 A Street PO Box 262
Wilton, Nebraska 68461

3. Petitioner's Telephone Number: (402) 489-8693

4. Name of street, alley, or other public way sought to be vacated: unnamed street
adjacent Lot 6 I T

5. Legal description of Petitioner's property which abuts the public way sought to be vacated: Lot 6 I T

6. Why are you seeking to have this street, alley, or other public way vacated? To provide 25' set back
on east side of church, which is considered "front" area
for proposed church addition

7. What use or uses do you propose to make of the public way should it be vacated? The street will
only be used if there is future development.

8. Do you intend to purchase that portion of the vacated public way which abuts your property as described in the **Petition to Vacate Public Way** and/or other portions of the vacated public way?

We would propose to trade 6' of Grace _____ YES NO
Lutheran's vacated parking area for 6' of vacated right of way

9. Name and address of person to whom tax statement should be sent:
Grace Evangelical Lutheran Church
11640 A Street PO Box 262
Wilton, Ne 68461

The property will be appraised and the purchase price of the portion abutting your property must be paid by you to the City Clerk unless you have indicated that the portion abutting your property will be sold to any other abutting owner willing to pay the purchase price. The Vacation Ordinance will not be introduced before the City Council until the full price of the entire public way proposed to be vacated has been paid.

*** **IMPORTANT: BE SURE THAT THE PETITION TO VACATE PUBLIC WAY HAS BEEN PROPERLY EXECUTED BY ALL TITLEHOLDERS TO YOUR PROPERTY AND ATTACH IT TO THIS INFORMATION SHEET.**

DATED this 31 day of October, 2018.

Jewel Prucha for Grace Evangelical Lutheran Church

**(ALL TITLEHOLDERS OF THE REAL ESTATE DESCRIBED ON THE PRECEDING PAGE
MUST SIGN THIS PETITION BEFORE A NOTARY PUBLIC)**

STATE OF Nebraska)
) ss.
Lancaster COUNTY)

The foregoing instrument was acknowledged before me on this 31 day of October,
2018, by _____
(Please indicate name(s) and marital status of person(s) signing)



Christina Rhodes
Notary Public

STATE OF _____)
) ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me on this _____ day of _____,
20____, by _____
(Please indicate name(s) and marital status of person(s) signing)

(Seal)

Notary Public

SIGNATURE PAGE FOR INDIVIDUAL(S)

PLANNING DEPARTMENT SUMMARY REPORT

TITLE: STREET & ALLEY VACATION 18004 -
Vacate approximately the west 10 feet of right-of-way adjacent to 11640 A Street.

PLANNING COMMISSION RECOMMENDATION:
A finding of conformance with the Comprehensive Plan (9-0: Beckius, Campbell, Edgerton, Finnegan, Harris, Joy, Washington, Corr, and Scheer voting 'yes').

APPLICANT: Grace Evangelical Church

OPPONENTS: None present at hearing.

STAFF RECOMMENDATION: A finding of conformance with the Comprehensive Plan

REASON FOR LEGISLATION:

This is a request to vacate approximately the west 10 feet of the unnamed right-of-way adjacent to Lot 6 Irregular Tract. The street vacation is needed to allow the necessary setback for an addition to the church.

DISCUSSION / FINDINGS OF FACT:

1. On November 28, 2018, this requested street and alley vacation (Bill #18R-282), as well as the associated Special Permit 18043 (Bill #18R-277) to allow for a parking lot with waivers to setback and landscaping requirements, were removed from the Consent Agenda and had public hearing before the Planning Commission.
2. The staff recommendation to find the proposed street vacation to be in conformance with the Comprehensive Plan is based upon the "Analysis" as set forth on p.2, concluding that approval of this street vacation will enable the church to proceed with their plans to expand the church. The street will maintain 25' of right-of-way with the church dedicating 10 feet on the east side. The staff presentation is found on pp.10-11.
3. Testimony on behalf of the applicant is found on p.11. There was no testimony in support or in opposition to these requests; however, two separate communications expressing opposition by an adjacent property owner were submitted (see pp.15-17), as well as questions of the applicant relating to the approval process (see pp.13-14).
4. Staff discussion with the Planning Commission can be found on p.11.
5. On November 28, 2018, the Planning Commission agreed with the staff recommendation and voted 9-0 to find the proposed street vacation to be in conformance with the 2040 Comprehensive Plan.
6. On November 28, 2018, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend conditional approval of Special Permit 18043 (Bill # 18R-277).
7. The area to be vacated is in the City's 3-mile jurisdiction and, therefore, requires review by both the City Council and the County Board of Commissioners. With the dedication of 10 feet on the east side by the property owner, there are no funds to be paid for the vacate right.-of-way.

SUMMARY REPORT PREPARED BY: Geri Rorabaugh, Administrative Officer

DATE: December 3, 2018

REVIEWED BY: David R. Cary, Director of Planning

DATE: December 3, 2018

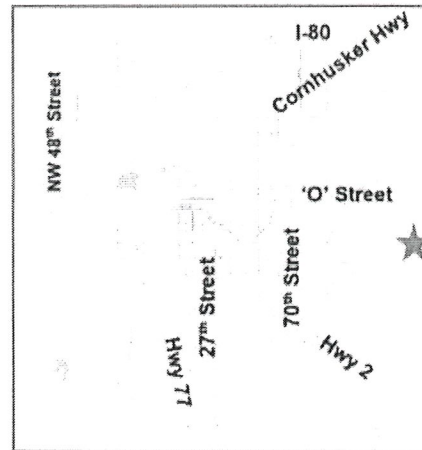
LINCOLN/LANCASTER COUNTY PLANNING COMMISSION STAFF REPORT
FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMBER Street and Alley Vacation #18004	FINAL ACTION? No	DEVELOPER/OWNER Grace Evangelical Lutheran Church
PLANNING COMMISSION HEARING DATE November 28, 2018	RELATED APPLICATIONS SP # 18043	PROPERTY ADDRESS/LOCATION 11640 A St.

RECOMMENDATION: CONFORMS TO THE COMPREHENSIVE PLAN

BRIEF SUMMARY OF REQUEST

To vacate approximately the west 10 feet of the unnamed right-of-way adjacent to Lot 6 Irregular Tract. The street vacation is needed to allow the necessary setback for an addition to the church.



JUSTIFICATION FOR RECOMMENDATION

Approval of this street vacation will enable the church to proceed with their plans to expand the church. The street will maintain 25' of right-of-way with the church dedicating 10 feet on the east side.

APPLICATION CONTACT
Lowell Provancha, 402-580-0659

STAFF CONTACT
Tom Cajka, (402) 441-5662 or
tcajka@lincoln.ne.gov

COMPATIBILITY WITH THE COMPREHENSIVE PLAN

The request is in conformance with the Comprehensive Plan. Shifting the right-of-way to the east allows continued access to the lots to the north.

KEY QUOTES FROM THE 2040 COMPREHENSIVE PLAN

P. 10.14 - Local streets and alleys are not included in the functional classification.

P. 10.15 - Local or residential streets provide the greatest access. These streets provide very limited opportunities for through traffic; their primary function is to provide access to adjacent properties.

ANALYSIS

1. This request is to vacate approximately the west 10 feet of the unnamed street adjacent Lot 6 I.T. in Walton for Grace Evangelical Lutheran Church. The Church is requesting the street vacation to meet the setback for an addition to the church. It is not feasible to vacate the entire right-of-way because it would leave platted lots without any frontage. It is the only access for 3 lots to the north.
2. To maintain the 25' width of right-of-way the Church will be dedicating 10 feet on the east side adjacent the parking lot. The 25' right-of-way was dedicated with Gierens 1st Addition to Walton. The additional 25 feet would be dedicated when the area to the west develops.
3. This is an unimproved street. There are no plans to improve this street. Although the street is unimproved, there is a gravel drive that provides access to lots to the north. There are no utilities within the area to be vacated.
4. The area to be vacated is in the City's 3-mile jurisdiction. Vacation of right-of-way within the 3-mile jurisdiction require approval by both the City Council and the County Board of Commissioners.
5. Associated with this application is a special permit for a parking lot on the east side of the street.
6. There is no cost for the vacation due to the dedication of 10 feet on the east side.

EXISTING LAND USE & ZONING: R-2 Residential Church

SURROUNDING LAND USE & ZONING

North:	AG, Agriculture	Farm ground
	R-2, Residential	Vacant
South:	R-2, Residential	Single family dwellings
East:	R-2, Residential	Parking lot
West:	R-2, Residential	Single family dwellings

APPROXIMATE LAND AREA: 1,500 square feet

LEGAL DESCRIPTION: See attached

Prepared by

Tom Cajka, Planner

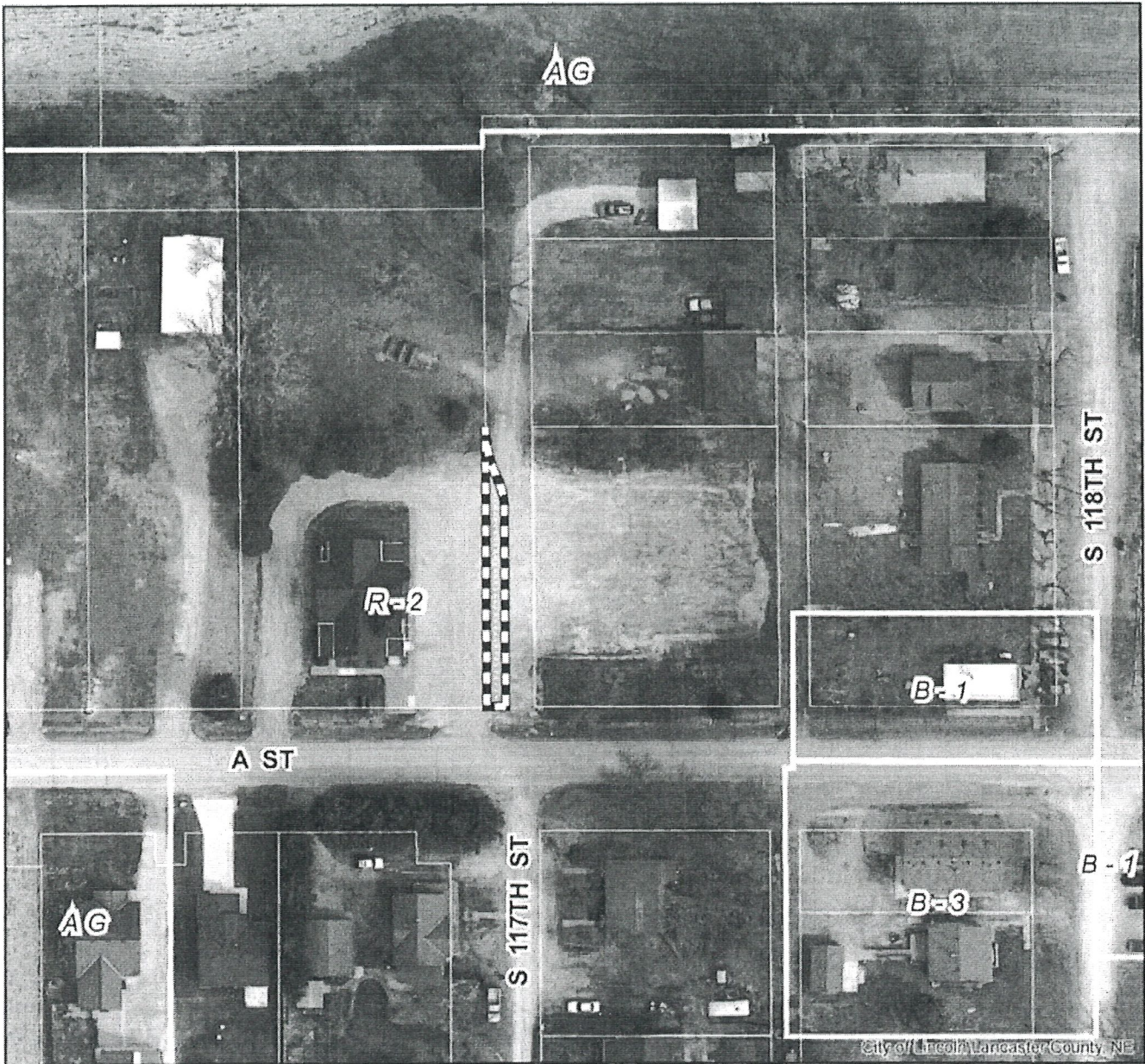
Date: November 13, 2018

Applicant: Grace Evangelical Lutheran Church
 11640 "A" Street
 Walton, NE 68461
 402-489-8693

Contact: Lowell Provancha
4501 S. 80th Street
Lincoln, NE 68516
402-580-0659
lprovancha@yahoo.com

Owner: Same as applicant

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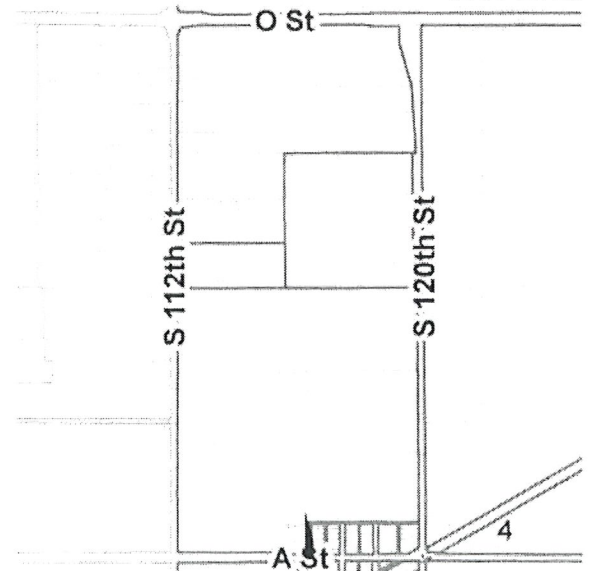
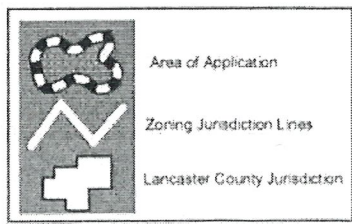
City of Lincoln Lancaster County, NE
2018 aerial

Street and Alley Vacation #: SAV18004
S 117th St & A 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.30 T10N R08E



ROW Vacation

A portion of Right-Of-Way located in the south half of fractional Section 30, T10N, R 8E of the 6th PM, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the northeast corner of Irregular Tract Lot 6, said point of beginning;
Thence southerly along said ROW, on an assumed bearing of S 00°06'15" E for a distance of 150.00';
Thence N 89°53'40" E for a distance of 10.00';
Thence N 00°06'15" W for a distance of 105.28' to a point of curvature;
Thence along a curve in a counterclockwise direction, having a radius of 40.00', arc length of 17.60', delta angle of 25°12'32", a chord bearing of N 12°42'31" W, and a chord length of 17.46' to a point of reverse curvature;
Thence along a curve in a clockwise direction, having a radius of 65.00', arc length of 28.60', delta angle of 25°12'32", a chord bearing of N 12°42'31" W, and a chord length of 28.37' to the Point of Beginning.

ROW Dedication

A portion of Lots 7-9, Block 3, Gieren's First Addition, located in the south half of fractional Section 30, T10N, R 8E of the 6th PM, Lancaster County, Nebraska, more particularly described as follows:

Beginning at the northwest corner of Lot 9, said point of beginning;
Thence southerly along the existing ROW, on an assumed bearing of S 00°06'21" E for a distance of 150.00' to the southwest corner of Lot 7;
Thence N 89°53'39" E for a distance of 10.00';
Thence N 00°06'21" W for a distance of 105.28' to a point of curvature;
Thence along a curve in a counterclockwise direction, having a radius of 40.00', arc length of 17.60', delta angle of 25°12'32", a chord bearing of N 12°42'35" W, and a chord length of 17.46' to a point of reverse curvature;
Thence along a curve in a clockwise direction, having a radius of 65.00', arc length of 28.60', delta angle of 25°12'32", a chord bearing of N 12°42'35" W, and a chord length of 28.37' to the Point of Beginning.

PETITION TO VACATE PUBLIC WAY
with
RELEASE AND WAIVER OF RIGHTS AND TITLE,
AND QUITCLAIM DEED TO CITY OF LINCOLN

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The West 10' adjacent Lot 6 IT

in the CITY OF LINCOLN, NEBRASKA, with the City reserving in said street, alley, or other public way such title, rights, easements, and privileges as it may deem necessary. In consideration of the vacation of the above-described street, alley, or other public way, we, and each of us, for ourselves, our heirs, personal representatives, successors, and assigns, hereby waive and release any and all claims, causes of action, rights of access, and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of such vacation; and hereby quitclaim unto the City of Lincoln, Nebraska, and to its successors and assigns forever, all right, title, interest, estate, and demand, both at law and in equity, in and to all of said street, alley, or other public way.

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Lot 6 IT in Section 30-10-8

INFORMATION SHEET

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1. Name of Petitioner (Current Titleholder/s) Grace Evangelical Lutheran Church

If more than one individual, indicate if you are:
_____ joint tenants with right of survivorship, OR _____ tenants in common

2. Petitioner's Address: 11640 A Street PO Box 262
Walton, Nebraska 68461

3. Petitioner's Telephone Number: (402) 489-8693

4. Name of street, alley, or other public way sought to be vacated: unnamed street
adjacent Lot 6 IT

5. Legal description of Petitioner's property which abuts the public way sought to be vacated: _____
Lot 6 IT

6. Why are you seeking to have this street, alley, or other public way vacated? To provide 25' set back
on east side of church, which is considered "front" area
for proposed church addition

7. What use or uses do you propose to make of the public way should it be vacated? The street will
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8. Do you intend to purchase that portion of the vacated public way which abuts your property as described in the
Petition to Vacate Public Way and/or other portions of the vacated public way?

We would propose to grade 6' of Grace _____ YES NO
Lutheran's vacated parking area for 6' of vacated right of way

9. Name and address of person to whom tax statement should be sent:
Grace Evangelical Lutheran Church
11640 A Street PO Box 262
Walton, Ne 68461

The property will be appraised and the purchase price of the portion abutting your property must be paid by you to the City Clerk unless you have indicated that the portion abutting your property will be sold to any other abutting owner willing to pay the purchase price. The Vacation Ordinance will not be introduced before the City Council until the full price of the entire public way proposed to be vacated has been paid.

*** IMPORTANT: BE SURE THAT THE PETITION TO VACATE PUBLIC WAY HAS BEEN PROPERLY EXECUTED BY ALL TITLEHOLDERS TO YOUR PROPERTY AND ATTACH IT TO THIS INFORMATION SHEET.

DATED this 31 day of October, 2018.

Swell C Prucha for Grace Evangelical Lutheran Church

**(ALL TITLEHOLDERS OF THE REAL ESTATE DESCRIBED ON THE PRECEDING PAGE
MUST SIGN THIS PETITION BEFORE A NOTARY PUBLIC)**

STATE OF Nebraska)
) ss.
Lancaster COUNTY)

The foregoing instrument was acknowledged before me on this 31 day of October,
2018, by _____
(Please indicate name(s) and marital status of person(s) signing)



Christina Rhodes
Notary Public

STATE OF _____)
) ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me on this _____ day of _____,
20____, by _____
(Please indicate name(s) and marital status of person(s) signing)

(Seal)

Notary Public

SIGNATURE PAGE FOR INDIVIDUAL(S)

Design Associates

of Lincoln, Inc.



ARCHITECTS • PLANNERS • ENGINEERS

October 30, 2018

Mr. David Cary
Director of Planning
City of Lincoln / Lancaster County
555 South 10th Street, Ste. 213
Lincoln, NE 68508

Re: Vacation of Public Ways Petition with Waiver
Grace Evangelical Lutheran Church

Dear Mr. Cary:

On behalf of Grace Evangelical Lutheran Church, owner of Irregular Tracts 6 & 17, Lots 7-9, Block 3, Cierens 1st Addition to Walton, S ½ Frae Sec 30-10-8, we submit this application for a Vacation of Public Ways Petition with Waiver.

Through a recent application for a building permit for an addition to the church, an issue was raised, the existing right-of-way between Irregular Tracts 6 & 17 and Lots 7-9. In order to accommodate the proposed building addition, we request that a portion of this right-of-way be vacated. A similar deed of right-of-way will essentially shift it to the east, maintaining the access to the north. This right-of-way is not currently improved and no improvements are proposed with the proposed building addition.

Please feel free to contact us (402) 474-3000 if we can provide any additional information or answer any questions that will assist in the review of this application.

Sincerely,

A handwritten signature in black ink that reads "Jeremy Williams". The signature is written in a cursive style with a large, prominent 'J' and 'W'.

Jeremy Williams, P.E.

SPECIAL PERMIT 18043 AND STREET AND ALLEY VACATION 18004

**SPECIAL PERMIT 18043, TO ALLOW FOR A PARKING LOT WITH WAIVERS, GENERALLY
LOCATED AT 11640 A STREET;**

PUBLIC HEARING:

November 28, 2018

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington.

Staff Recommendation: Conditional Approval.

There were no ex parte communications disclosed on this item.

AND

**STREET AND ALLEY VACATION 18004, TO VACATE APPROXIMATELY 10 FEET OF
RIGHT-OF-WAY ADJACENT TO PROPERTY GENERALLY LOCATED AT 11640 A STREET;**

PUBLIC HEARING:

November 28, 2018

Members present: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington.

Staff Recommendation: Conformance with the Comprehensive Plan.

There were no ex parte communications disclosed on this item.

Staff Presentation: George Wesselhoft, Planning Department, stated this is the site of Grace Evangelical Lutheran Church. When the church submitted an application for a building permit, a review revealed that there was no special permit issued for the existing parking lot to the east. The special permit is necessary in this zoning district. There are two waivers requested. The first is to reduce the front yard setback to eight feet. The second is a waiver from design standards related to the landscape requirement for screening.

Corr asked for clarification about which drive was an alley or a street. Wesselhoft said there is unnamed right-of-way on the west side; it is not a street.

Tom Cajka, Planning Department, stated this was pulled from the Consent Agenda due to a letter received in opposition. The opposition is not due to the vacation, but expressed concerns about County maintenance of the alleys and streets. There is also a drive that comes across his lot that people use as an alley. He would like to fence the area off, but since it is right-of-way, he cannot. There is also a garage to the north that is built into the alley. Staff would like to maintain the right-of-way with the partial

street vacation, so the church will deed 10 feet on the east side of the road so that the 25 feet will still be maintained. There are no utilities in the area so there is no need for easements. The reason for this change is for an addition the church would like to make on the east side.

Corr asked if 117th Street will be better aligned. Cajka said it may not be exact, but it will be closer.

Washington asked if there was an option to give a waiver on the building addition. Cajka said they would have needed to go to Board of Zoning Appeals for that type of variation.

Corr wondered if there was any solution for the homeowner who wrote the letter. Cajka said if he could get all of the surrounding homeowners to agree, he could seek a vacation. They would have to pay the fee for that application but, if granted, he would be allowed to install a fence.

Washington asked if the City or County will end up having to maintain 117th Street so people could access the north lots. Cajka said this is within the City 3-mile area, but the County would still maintain the road. There is right-of-way even in the city that is only on paper and not even developed. Washington wondered if each owner to the north could access from 117th or 118th if the alley was vacated. Cajka said that is correct.

Corr asked if the lot will remain gravel. Wesselhoft said yes. They were granted a waiver from servicing requirements many years ago by the City Council.

Proponents:

Lowell Provancha, 4501 S. 80th Street, came forward as a member of the church council and representative of the applicant. This project does not affect the alley or trespass on the property of the person who submitted the letter in opposition. We have always allowed access to the right-of-way for Lots 7-12 and this will not limit access. It is possible he would not have problems if the alley to the north was not closed.

Edgerton asked if the alley went through to the north at one point. Provancha said yes, it has been closed for a number of years now.

There was no additional public testimony.

SPECIAL PERMIT 18043
ACTION BY PLANNING COMMISSION:

November 28, 2018

Beckius moved approval; seconded by Finnegan.

Beckius said this seems appropriate and will allow 117th Street to get closer to proper alignment. The complaints from the neighbor are unrelated to this application.

Corr agreed. She encouraged the property owner with complaints to speak with neighbors to seek the vacation of the alley. Putting up signs could also help.

Campbell commented that the property with the garage in the alley may lose access and need to change the orientation of the garage. Corr noted that it is possible the garage should never have been built in that location.

Motion carried, 9-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Washington and Scheer voting 'yes'.

STREET AND ALLEY VACATION 18004
ACTION BY PLANNING COMMISSION:

November 28, 2018

Campbell moved approval; seconded by Washington and carried 9-0: Beckius, Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Washington and Scheer voting 'yes'.

PLANNING

Subject:

From:

Sent:

To: visitor987@yahoo.com

Cc: shenrichsen@lincoln.ne.gov

dcary@lincoln.ne.gov

[<tcajka@lincoln.ne.gov](mailto:tcajka@lincoln.ne.gov)

Subject:

Mr. Elliot,

We recognize that the fact the process for the church project has taken longer than it would normally take and that the right of way that is at issue was not identified as street right of way initially but instead as an alley. I would point out, however, that even though the building permit was first submitted on July 13, 2018, the Planning Department did not become aware of this project until two weeks ago and at that point we noted the right of way in question was platted as a street, not as an alley.

There is a significant difference respective of Zoning Ordinance requirements in particular building setbacks depending on whether it was a street or alley. Specifically, a property that has frontage on a street right of way has a front yard on that street. A corner lot, for example, would have two front yard setbacks, which for R-2 zoning is 25 feet. Otherwise, if the right of way to the east of the church were an alley it would be considered a side yard and for a place of religious assembly would have a side yard of 15 feet.

The street in question provides access to several lots to the north not owned by the church. Legally it would not be proper to remove the street access to these other private lots.

During the review process for the project, it was discovered that the church previously never applied for a building permit for their parking lot to the east, so that is why a Special Permit is required for the parking lot.

We have found a way working with the church's design consultant to shift the right of way of the street to the east so as to maintain the north south right of way street route but allow for the church addition. The church if they submit the Special Permit by tomorrow (10/31) would be considered at Planning Commission on November 28th. Potentially there could be a City Council hearing and action on December 17th and County Board on December 18th.

As of now, we don't have a street right of way or special permit application, but we anticipate the church submitting it soon if they decide to proceed accordingly.

Upon application by the church your email and this response will be forwarded to the Planning Commission as part of the application record. If you have further questions in this matter, please contact me. Thank you.

George Wesselhoft, AICP, LEED AP ND
Planner
Lincoln/Lancaster County Planning Department
555 S. 10th Street, Suite 213
Lincoln, NE 68508
ph: (402) 441-6366
fax: (402) 441-6377

From: <mailto:visitor987@yahoo.com>

Sent:

To: dcary@lincoln.ne.gov

shenrichsen@lincoln.ne.gov

<tcajka@lincoln.ne.gov>

Subject:

Subject: Planning Commissioners

I am trying to contact the Lancaster County Planning Commissioners. Can't seem to find emails for them so was hoping someone there could forward this note.

I have some questions about the amount of time it is taking to get plans approved for an addition to the church in Walton. People have been working on getting approval for construction since July.

The people working on this project have been told one thing but then the planning commission or an agency of the city, either denies the statement or changes their thinking. Example. Before the building plans were even started, they were told the 'street' next to the church was actually an alley and there would not be a problem with vacating the alley to accommodate adding 10' to the east side of the church. Now the alley is a street! If that is the case, why has it not been maintained for the last 50 years? The church has rocked it and kept it clear of snow.

The church has been trying to get approval for this much needed project since late spring with delay after delay but yet a building in Walton was torn down and a new structure built within a couple of months. Why didn't they have the delays the church is facing? Perhaps they started their process in 2017??

I would think the planning commission, especially the member from the Walton area, would welcome an improvement to any building in Walton. The more the town grows, the better it is for Lancaster County.

I hope the commissioners and the planning department with the city can find a way to get started on this project.

Thank you for passing on my comments/concerns.

Tom Elliott

PLANNING

From: WebForm <none@lincoln.ne.gov>
Sent: Tuesday, November 27, 2018 4:31 PM
To: Geri K. Rorabaugh
Cc: Brenda J. Thomas
Subject: InterLinc - Comment on PC Agenda Item

Planning Dept. - Comment on PC Agenda Item

Date : 11/27/2018 4:31:10 PM

Name Ben Brabec
Email brabec-2012@hotmail.com
Application Number or Name SAV18004, SP18043
Location Walton, NE
Submittor's Position In Opposition
Comments I am in opposition of the proposed projects of Street & Alley Vacation 18004 and Special Permit 18043. The applicant already uses the pursued area as a parking lot during church service. Visit any Sunday you wish to validate my claim. By word of mouth, it is my understanding that the church will be swapping part of another lot they own for the expansion of the lot where the church structure is sitting so they can build an addition on to the church. This way they remain within building code regarding how far a structure must be from a road. Good for them. But when you assess the use of other alleys and right of ways throughout the immediate community of Walton, almost everyone is out of regulation. For example, the tenants/neighbors to my north use the alley way between lots 3, 4, 5, 6 and 7, 8, 9, and 10 to access their driveway on lot 2. Unfortunately, this leads to trespassing on my lot 3, where they use my driveway to re-arrange cars as they wish, and also to enter and exit their lot as they see fit, as if it's a continuation of the alley way or their own driveway. I have never given anyone permission to use my property for any reason whatsoever. This leads to property destruction, for example, cracking their trucks axle and spilling differential fluid all over the cement on my driveway, as well as killing the grass on my property as they turn into the alley way and creating a big mud/water pit between my house and garage on lot 10 whenever it rains or when snow melts. I and my family have to walk through this every day multiple times as we come and go since we park our cars in the garage. The city does not maintain these alley ways to re-rock or mow grass that grows up to your shoulders. I've even witnessed a propane truck use my driveway to exit the alley after filling the tank of the tenant to my south on lots 4 - 5. It drove in from the South and was too big to reverse back out or turn around, as the alley is no longer a thru-alley as you will understand why shortly. What if the prior owner who poured the concrete slab on my driveway did not pour it thick enough for a large multi-ton vehicle and it cracked up my cement? I'm glad it didn't. I've spoken with the city via email in the past asking how I may obtain the alley and they say without a signed petition by everyone who neighbors it, I cannot obtain it legally. I would like to put a fence up joining my lots so at a minimum we have some privacy and keep the neighbors from ruining our lawn and driveway. When I asked about the neighbors usage of the alley who live on lots 1 and 12, and 2 and 11 where they have built a permanent structure on this alley way and turned it into their yard since they don't use it to access their property (as I mentioned above, it is no longer a thru-alleyway) the city had nothing constructive or purposeful to say simply stating how they (the tenants/owners) must not have done it legally. No action has been taken by the city to remedy this

issue. So why can't I put up a fence? They are using it how they please, so why can't I? I simply want to keep my property to myself without constant trespassing and having my property being taken advantage of to enter and exit as well as keeping my grass from being killed and more accidents happening causing hazardous chemical waste to be spilled on my driveway. I urge the planning commission to visit the immediate community of Walton and re-assess the right of ways and alley ways running throughout before allowing anyone to obtain any part of them legally. They are still platted (supposedly) as they were for a town-structure built in the late 1800's. There are so many inconsistencies in use of these alleys/streets/right of ways that they either need to be obtainable by all who surround them, or not at all and abode by properly. The applicant's proposed projects are not necessary and the vacation/modification of the right of ways/alley ways its proposing are not fair for the whole community. If their proposed projects are truly legally obtainable and deemed fair, I will propose a project to swap the westernmost section of my lot 10 for the space between my lots 3 and 10 that are currently zoned as the alley way to have one continuous lot that I can keep neighbors from trespassing on every single day (yes, I am not exaggerating, every single day). This would actually also help expand 117th street toward the East as the applicants proposed project seemingly does into lots 7, 8, and 9 and could help continue the street straight North if needed in the distant future if the town were to expand North as the city limits of Lincoln come closer. If I could do this in the same way as the church is doing, I would be in full support of their decision. But for now, I am not, and I will remain in opposition of any modification to any right of way, street, or alley way in Walton so long as I receive a notification from any department of the city as I have received for these proposed projects.

IP: 162.250.116.86

Form: <http://www.lincoln.ne.gov/city/plan/boards/pc/PubCommentForm.htm>

User Agent: Mozilla/5.0 (Windows NT 6.1) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/70.0.3538.102 Safari/537.36

PLANNING

From: WebForm <none@lincoln.ne.gov>
Sent: Wednesday, November 28, 2018 11:30 AM
To: Geri K. Rorabaugh
Cc: Brenda J. Thomas
Subject: InterLinc - Comment on PC Agenda Item

Planning Dept. - Comment on PC Agenda Item

Date : 11/28/2018 11:29:54 AM

Name Mikayla Brabec
Email mikayla_brabec@yahoo.com
Application SAV18004 AND SP18043
Number or Name
Location Walton
Submittor's Position In Opposition
Comments In addition to the letter that my husband (Benjamin Brabec) has already submitted, I have a couple of things I would like to add.

If we are still saying the 117th is a street and not an alley way it should be accessible from A street without having to drive through the church's parking lot to access our back lot. Looking at the map it shows there is no way to drive to our back lot without driving over their property, which as my husband has stated is one of our biggest problems with having an alley way running through our property. There is a ditch where 117th street meets A street.

I stand with the church when I say that if the city is going to continue to call this a street and not an alley they need to maintain it. Not just with this street in question but also the other streets in Walton. It seems like all of the streets are maintained by the residents around them. Prime example there were huge holes in 118th that were filled by someone who was tired of hitting it when pulling onto A St. I am not opposed to having the church rezoned and using it for what they want. I am opposed to the city disregarding our complaints in the past about people using alley ways as private properties like my husband has mentioned. All I'm asking is for the city to look at the alley ways and streets to make sure that those are being properly maintained and used as public alleys. We HATE that people drive over our property and are ruining our grass spilling fluid on our driveway to access a "public alley". Our neighbor has built a garage on the "public alley". The church is maintaining their public alley. I don't want to drive on the church's lot to access a public street.

IP: 216.170.54.84

Form: <http://www.lincoln.ne.gov/city/plan/boards/pc/PubCommentForm.htm>

User Agent: Mozilla/5.0 (Windows NT 6.3; WOW64; Trident/7.0; rv:11.0) like Gecko