

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
SEPTEMBER 18, 2018 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
RIGHT OF WAY VACATION — PART OF GERTRUDE STREET WEST OF 81 <sup>ST</sup> STREET	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

An ordinance has been prepared to approve the vacation of a portion of unused public right-of-way west of 81<sup>st</sup> Street in order to sell the property to an abutting property owner. This property is proposed to be developed as a neighborhood dog park by the developer of the adjacent townhomes, Harvest Development.

**FISCAL IMPACT**

The proposal is to convey the property for \$1,000 plus City cost and expenses.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The City of La Vista received a request by Harvest Development (Bret Cain) to vacate and sell a portion of the Gertrude Street right-of-way west of 81<sup>st</sup> Street. The intended purchasers are the developers of the renovated Brentwood Townhomes, which are adjacent to the south. The proposal is to vacate the unused right-of-way and convey it to the developer for the purpose of a neighborhood dog park. Mr. Cain has consulted with the other abutting property owner and has indicated they are in support of the idea. Mr. Cain also proposes to install all of the improvements associated with the dog park, including fencing and other amenities, in the amount of approximately \$10,000. Mr. Cain proposes to make the dog park available for the entire neighborhood.

The proposal is to vacate and convey this part of the unused Gertrude Street right-of-way subject to compliance with conditions including the following:

1. Reservations for public utilities; and
2. The property shall be used as a neighborhood dog park or other open space for the neighborhood.

An ordinance has been prepared to vacate that portion of the Gertrude Street right-of-way as shown on Exhibit A. A notice of the sale and the terms of the sale, Exhibit B, will 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 Harvest Development III L.L.C.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE VACATING, AND RESERVING AND RETAINING TITLE IN THE CITY TO, AND DIRECTING THE SALE AND CONVEYANCE OF, A PART OF GERTRUDE STREET RIGHT-OF-WAY LOCATED IN THE NW ¼ OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> 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 Gertrude Street right-of-way located in the NW ¼ of Section 14, Township 14 North, Range 12 East of the 6<sup>th</sup> 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. Such vacation shall be effective upon completion of such sale and conveyance. The effective date of the vacation shall be the date that the quitclaim deed described in Section 2 below is filed with the Sarpy County Register of Deeds.

Section 2. Upon request and payment of adequate consideration and such 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 Harvest Development III L.L.C. ("Harvest Development"), 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 constitute covenants running with the land and continue in perpetuity and be binding on Harvest Development and all successors or assigns of Harvest Development or the Property.

- a. In addition to any reserved rights provided 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:
  - i. 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;
  - ii. 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;
  - iii. 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
  - iv. the right to enter upon the Property to accomplish the above or to enforce or exercise any other rights or requirements set forth in this Ordinance or under any applicable laws, rules, or regulations, and any related or similar purposes at any and all times.

- b. Due to unique location of the Property, including without limitation, its proximity adjacent to a townhome complex, and Harvest Development's representation of a desire to acquire the Property for the sole purpose of locating, constructing, maintaining, and making the Property available as a neighborhood dog park for use of the general public, Harvest Development and the City are in agreement that the Property shall be conveyed to Harvest Development for the following purposes and subject to the following conditions:
- i. Harvest Development at its sole cost and expense shall construct, maintain and use the Property as a neighborhood dog park that is accessible and available for use of the general public without charge or cost of admission and has such improvements, operations, and rules as satisfactory to the City Administrator from time to time in her sole discretion. Any use of the Property for any other purpose shall be subject to approval of the City Council in its sole discretion.
  - ii. Construction, maintenance, and use of the Property for the purposes described in subsection "i" above shall be subject to satisfaction of all applicable federal, state and local laws, rules, and regulations, including without limitation, any applicable permitting requirements;
  - iii. The design, layout, fencing and any other amenities or improvements of, on, or serving the Property, and all operating and maintenance rules or requirements applicable to the Property, shall be subject to approval of the City Administrator in her sole discretion; and
  - iv. All parts of the Property that have or are designed to have turf grass, and any part of the Property that at any time is not used for purposes described in this subsection "b," shall be maintained as a lawn, in a manner and condition equal to or better than existing at closing on Harvest Development's purchase of the Property, and for no other purposes.

("Permitted Purposes").

Harvest Development shall take title to the Property subject to the Permitted Purposes, and after closing on the Property, Harvest Development shall use the Property exclusively for the Permitted Purposes and for no other purposes. In addition to, and not in limitation of the foregoing, Harvest Development at all times shall maintain or contract for the maintenance of all turf grass and other areas designed to have the lawn on the Property in a healthy, clean, neat and trim manner, condition and appearance that is equal to or better than the level, manner, condition and appearance in effect upon closing on Harvest Development's purchase of the Property.

- c. 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 walls, fences, 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.

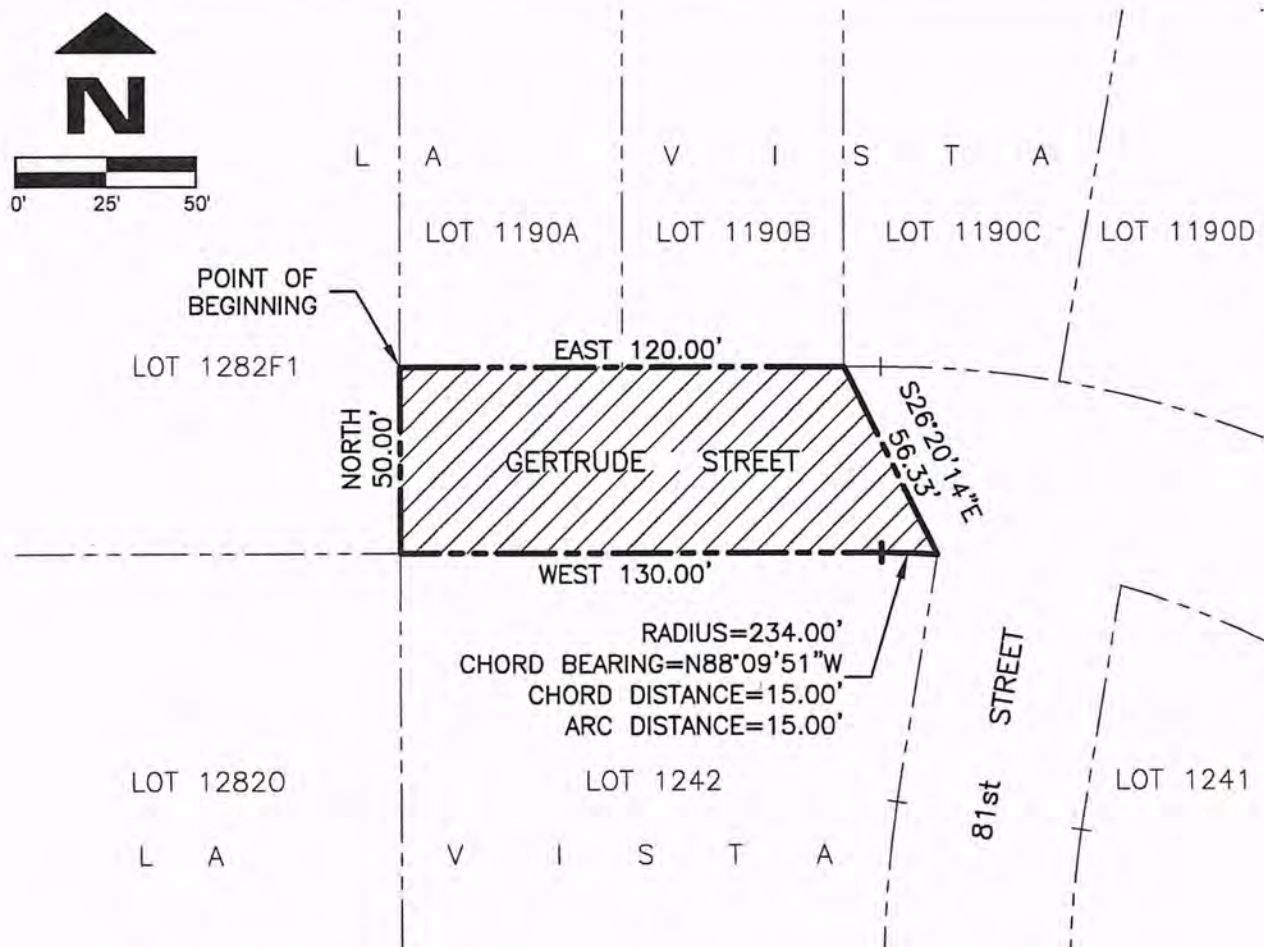
PASSED AND APPROVED THIS 18TH DAY OF SEPTEMBER, 2018.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk



### LEGAL DESCRIPTION

THAT PART OF THE GERTRUDE STREET RIGHT-OF-WAY LYING WITHIN THE NW  $\frac{1}{4}$  OF SECTION 14, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, ADJACENT TO LOTS 1190A, 1190B AND 1242, LA VISTA, A SUBDIVISION IN SAID SARPY COUNTY, DESCRIBED AS FOLLOWS, BEGINNING AT THE SW CORNER OF SAID LOT 1190A;

THENCE EAST (ASSUMED BEARING) 120.00 FEET ON THE SOUTH LINES OF SAID LOT 1190A AND 1190B TO THE SE CORNER OF SAID LOT 1190B;

THENCE S26°20'14"E 56.33 FEET TO THE NE CORNER OF SAID LOT 1242;

THENCE NORTHWESTERLY ON THE NORTH LINE OF SAID LOT 1242 ON A 234.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N88°09'51"W, CHORD DISTANCE 15.00 FEET, AN ARC DISTANCE OF 15.00 FEET;

THENCE WEST 130.00 FEET ON THE NORTH LINE OF SAID LOT 1242 TO THE NW CORNER THEREOF;

THENCE NORTH 50.00 FEET ON THE WEST END OF GERTRUDE STREET TO THE POINT OF BEGINNING.



Job Number: 171-18-1(EX)  
thompson, dreessen & dörner, inc.  
10836 Old Mill Rd  
Omaha, NE 68154  
p.402.330.8860 f.402.330.5866  
td2co.com

Date: JULY 23, 2018  
Drawn By: RJR  
Reviewed By: JDW  
Revision Date:

## EXHIBIT "A"

CITY OF LAVISTA

Book  
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**MANNER AND TERMS OF SALE**

**Manner of Sale:** Quitclaim Deed from City to owner of property abutting the south boundary of the Property described below", with reservation of easements and other rights.

**Terms of Sale:**

1) Legal Description:

THAT PART OF THE GERTRUDE STREET RIGHT-OF-WAY LYING WITHIN THE NW  $\frac{1}{4}$  OF SECTION 14, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, ADJACENT TO LOTS 1190A, 1190B AND 1242, LA VISTA, A SUBDIVISION IN SAID SARPY COUNTY, DESCRIBED AS FOLLOWS, BEGINNING AT THE SW CORNER OF SAID LOT 1190A;

THENCE EAST (ASSUMED BEARING) 120.00 FEET ON THE SOUTH LINES OF SAID LOT 1190A AND 1190B TO THE SE CORNER OF SAID LOT 1190B;

THENCE S26'20'14"E 56.33 FEET TO THE NE CORNER OF SAID LOT 1242;

THENCE NORTHWESTERLY ON THE NORTH LINE OF SAID LOT 1242 ON A 234.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N88'09'51"W, CHORD DISTANCE 15.00 FEET, AN ARC DISTANCE OF 15.00 FEET;

THENCE WEST 130.00 FEET ON THE NORTH LINE OF SAID LOT 1242 TO THE NW CORNER THEREOF;

THENCE NORTH 50.00 FEET ON THE WEST END OF GERTRUDE STREET TO THE POINT OF BEGINNING.

- 2) Consideration to be paid to City: \$1,000.00, plus reimbursement of engineering, legal, advertising, and other costs and expenses incurred by the City in connection with vacation or conveyance of such Property.
- 3) Method of Payment: Cash at closing.
- 4) Closing Date: As parties may agree.
- 5) Purchaser: Harvest Development III L.L.C.

**VACATION AND CONVEYANCE OF EXCESS RIGHT-OF-WAY  
GERTRUDE STREET WEST OF 81<sup>ST</sup> STREET**

Ordinance vacating right-of-way	City Council 9/18/2018
Publish ordinance	9/26/2018
Publish Notice of Real Estate Sale for 3 weeks immediately after passage and publication of ordinance	10/3, 10/10, 10/17
Passage of 30 days after publication of ordinance (without filing of remonstrance)	10/29/2018
Closing	10/30/2018 (or such later date as agreed)

## **NOTICE OF REAL ESTATE SALE**

NOTICE IS HEREBY GIVEN that at an open and public meeting of the Mayor and the City Council of the City of La Vista held at 7:00 P.M. on September 18, 2018, the City exercised by ordinance its power to sell and convey real estate by directing by ordinance the conveyance of the following parcel of real estate by quitclaim deed on the terms specified:

That part of the Gertrude Street right-of-way lying within the NW ¼ of Section 14, T14N, R12E of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, adjacent to Lots 1190A, 1190B and 1242, La Vista, a subdivision in said Sarpy County, described as follows, beginning at the SW corner of said Lot 1190A; thence east (assumed bearing) 120.00 feet on the south lines of said Lot 1190A and 1190B to the SE corner of said Lot 1190B; thence S26°20'14"E 56.33 feet to the NE corner of said Lot 1242; thence northwesterly on the north line of said Lot 1242 on a 234.00 foot radius curve to the left, chord bearing N88°09'51"W, chord distance 15.00 feet, an arc distance of 15.00 feet; thence west 130.00 feet on the north line of said Lot 1242 to the NW corner thereof; thence north 50.00 feet on the west end of Gertrude Street to the point of beginning.

Purchaser: Harvest Development III L.L.C.

Purchase Price: \$1,000.00, plus City costs and expenses

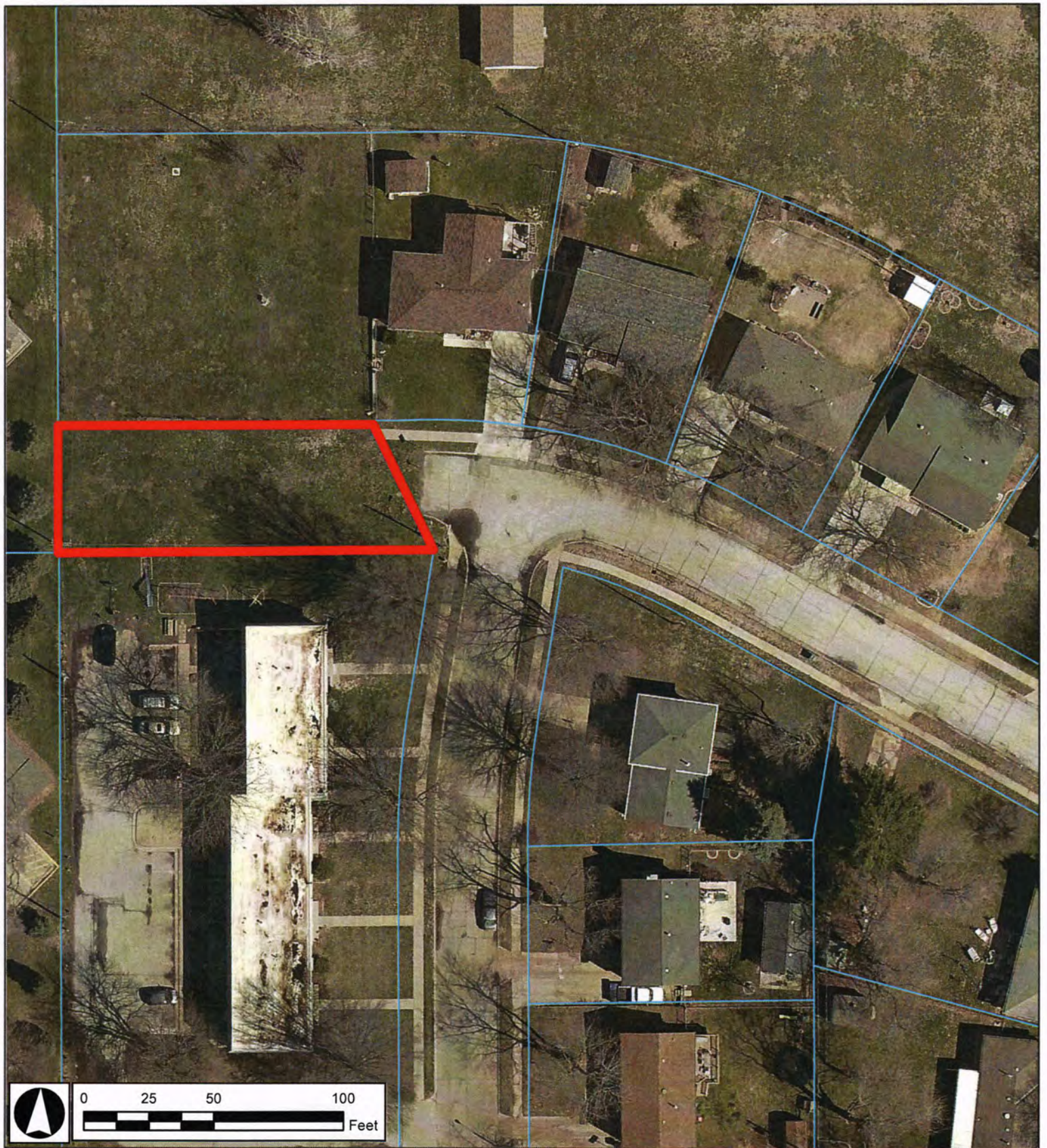
Method of Payment: Cash at closing

Closing Date: As parties may agree

The property will be sold to the specified purchaser after 30 days have elapsed since the passage and publication of the ordinance authorizing and directing the sale. The ordinance was published on September 26, 2018. The parcel of property will not be sold for a period as specified in the Nebraska statutes to the extent identified in a valid and timely filed remonstrance against such sale. A remonstrance petition against the sale of the parcel of property must be signed by registered voters of the City equal in number to thirty percent of the registered voters of the City voting at the last regular City election held therein and such remonstrance must be filed with the City Council within 30 days after the passage and publication of the ordinance approving and directing the sale. If the date for filing the petition falls upon a Saturday, Sunday, or legal holiday, the signatures must be collected within the 30-day period, but the filing will be considered timely if filed or postmarked on or before the next business day.

Pamela A. Buethe, CMC  
City Clerk





**Project Vicinity Map**



**Right of Way Vactation:  
Part of Gertrude Street West of 81st Street**

9/11/18  
CRB

