

ALLEY VACATION
ORDINANCE NO. 9838-08
Status Vacated

Date 8/25/2008

Description:

The Alley to be Vacated is the East/West Alley North of LaSalle Avenue from Notre Dame Avenue East Along the North Lot Lines of Lots 7, 8, and 9 of Dunn's Subdivision for a Distance of 116 Feet and a Width of 10 feet being a part of the City of South Bend, Portage Township, St. Joseph County, Indiana

SD new
PC
Mail Kuehn

9838-08

0824389

RECORDED AS PRESENTED ON

07/23/2008 02:34:24PM

TERRI J. RETHLAKE
ST. JOSEPH COUNTY
RECORDER

REC FEE: \$21.42
PAGES: 5

GRANT OF EASEMENT

**EASEMENT RELATED TO
VACATION OF EAST/WEST ALLEY LOCATED NORTH OF LASALLE AVENUE**

THIS BLANKET ACCESS EASEMENT is granted this 27th day of July, 2008, by the Women's Care Center, Inc. ("Grantor"), a domestic not-for-profit corporation having offices located at 360 North Notre Dame Avenue, South Bend, Indiana 46617, in favor of the public for the limited purposes set forth herein.

RECITALS

WHEREAS, Grantor is the owner of property located at 360 North Notre Dame Avenue, within the City of South Bend, Indiana; and

WHEREAS, pursuant to South Bend Ordinance No. 9838-08 ("Vacation Ordinance") passed by the South Bend Common Council on May 27, 2008, the City vacated the east/west alley located north of LaSalle Avenue from Notre Dame Avenue east along the north lot lines of Lots 7, 8, and 9 of Dunn's Subdivision in order to provide for the expansion of the Women's Care Center ("Vacated Property"), subject to: a blanket access easement approved as to form by the Board of Public Works; the proper recording of such easement in the County Recorder's Office; and the filing of a copy of the same with the Office of the City Clerk; and

WHEREAS, in its Vacation Ordinance, the Common Council for the City of South Bend reserved certain rights related to utility easements unless such rights are released by the individual utilities; and

WHEREAS, the Parties desire to create a permanent easement for the purpose of permitting and enabling the public to pass over the Vacated Property for the purpose of ingress and egress to and from Lot 6 of Dunn's Subdivision for pedestrian and motor vehicle use; and

WHEREAS, a diagram that is attached hereto and incorporated herein as **Exhibit "A"** depicts the area to be designated as the Easement Area; and

WHEREAS, the City has determined that providing for the expansion of the Women's Care Center and providing for use of the Vacated Property under the terms of this Agreement is in the best interests of the City and its citizens.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor conveys this blanket access easement as follows:

1. Grantor hereby covenants that Grantor is lawfully seized and possessed of the parcel of real estate located at 360 North Notre Dame Avenue, South Bend, Indiana 46617, and depicted on *Exhibit "B"* as the Vacated Property and that Grantor has the good and lawful right to convey the rights and obligations described in this Agreement.
2. Grantor hereby grants a permanent easement to be used to permit and enable the public to pass over the Vacated Property for the purpose of ingress and egress to and from Lot 6 for pedestrian and motor vehicle use, upon and over the following-described real property located in the City of South Bend, St. Joseph County, State of Indiana:

See Exhibit "A".
3. The easement granted under this Agreement shall pertain to the surface rights and interests of the Grantor, for the use and benefit of the public, to the nature and extent that the public may desire said surface rights and interests to accomplish and carry out the general purpose of this conveyance as provided in this Agreement.
4. No member of members of the public have the right to sell or assign any interest in the Easement Area, and the public's right to use the Easement Area shall terminate in the event that the need for the use of the Easement Area is no longer reasonably necessary and is agreed to in the public record by the Common Council who made this a condition of vacation.
5. Grantor reserves the right to use and occupy the surface area on and over the Easement Area provided that such use and occupancy does not in any way conflict or obstruct the public's right to use the Easement Area for the purposes and intentions stated in this Grant of Easement.
6. The covenants set forth in this Grant of Easement shall run with the land and be binding upon and inure to the benefit of the Grantor and its heirs, legal representatives, successors and assigns.
7. This Grant of Easement may not be modified, amended or terminated without the prior written mutual consent of the Grantor and the Common Council who made the vacation subject to this condition.
8. This Agreement shall be governed by the laws of the State of Indiana.
9. This Agreement shall be recorded in the Office of the Recorder for St. Joseph

County, Indiana.

- 10. The persons signing and delivering this Agreement on behalf of their respective party represent and certify that he/she is a duly authorized agent, representative, member or officer who has been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written above.

GRANTOR:

WOMEN'S CARE CENTER, INC.

Ann M. Manion

Signature

Ann Manion President

Printed Name and Title

STATE OF Indiana)
) SS:
St. Joseph COUNTY)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Women's Care Center, Inc., by Ann Manion and acknowledged the execution of this Grant of Easement as their voluntary act or deed.

WITNESS my hand and Notarial Seal this 23rd day of July, 2008.

Tracy Krings
 _____ Notary Public
 Resident of La Porte County, IN

My Commission Expires:

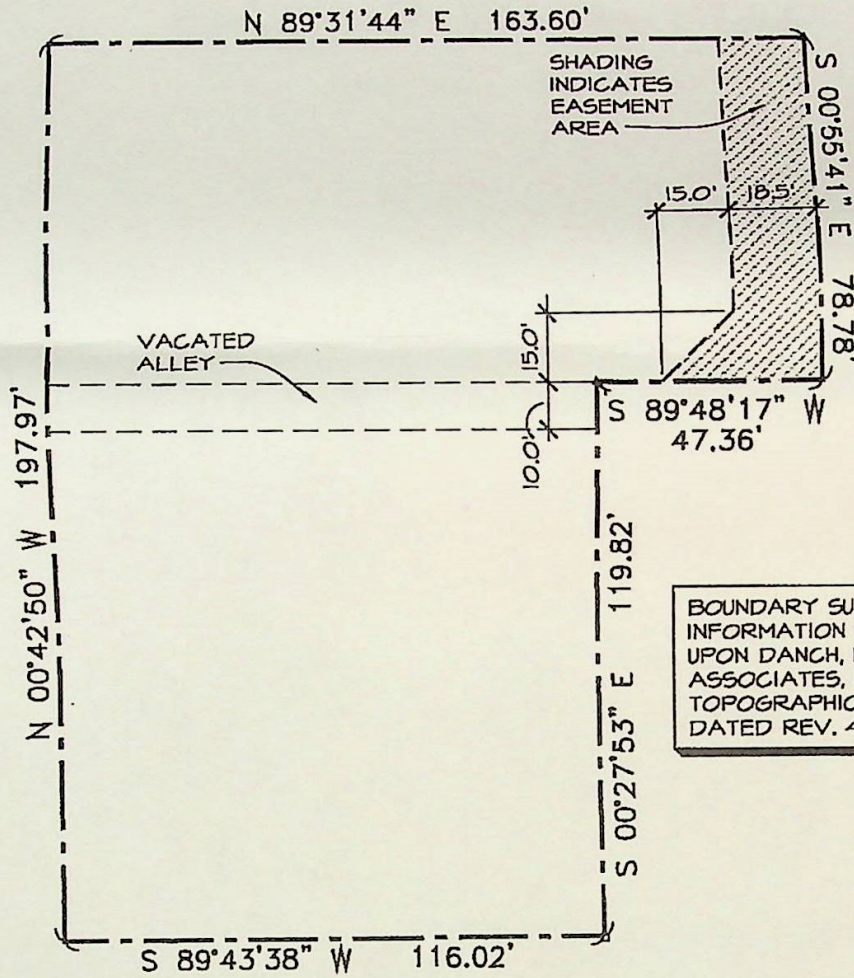


I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law (name)

Vicky Hines

This document was prepared by R. John Kuehn, Attorney, LaDue Curran & Kuehn LLC, 200 First Bank Building, 205 West Jefferson Boulevard, South Bend, Indiana, 46601, (574) 968-0760.

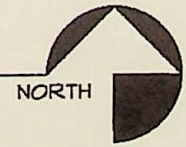
C/L NOTRE DAME AVENUE (R/W 66')



BOUNDARY SURVEY
INFORMATION BASED
UPON DANCH, HARNER &
ASSOCIATES, INC.
TOPOGRAPHIC SURVEY
DATED REV. 4/24/07.

EXHIBIT "A"

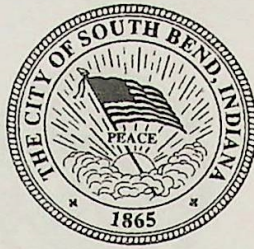
SCALE: 1" = 40'-0"



James Childs Architects
629 Lincolnway East, South Bend, IN 46901 Tel: 574.289.2052 Fax: 574.289.2550

DRAWN BY
PRL
DATE
6/19/08

**ADDITION TO THE
WOMEN'S CARE CENTER**
360 NORTH NOTRE DAME AVENUE
SOUTH BEND, INDIANA



Office of the City Clerk

John Voorde, City Clerk

August 25, 2008

MEMORANDUM

TO: Area Plan Commission
Board of Public Works
Building Department
Division of Engineering ✓
Fire Department
Northern Indiana Public Service Company
Police Department
Street Department
Bureau of Traffic & Lighting – Mark
Community & Economic Development – Pam Meyer
County Auditor – Paula
Water Works – North Station-Ed Herman

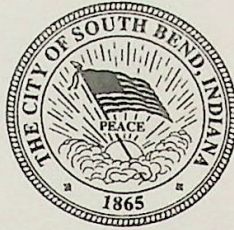
FROM: John Voorde, City Clerk

All proceedings with reference to Ordinance No. 9838-08 for the vacation of the following property:

THE ALLEY TO BE VACATED IS THE EASTWEST ALLEY NORTH OF LASALLE AVENUE FROM NOTRE DAME AVENUE EAST ALONG THE NORTH LOT LINES OF LOTS 7, 8 AND 9 OF DUNN'S SUBDIVISION FOR A DISTANCE OF 116 FEET AND A WIDTH OF 10 FEET BEING A PART OF THE CITY OF SOUTH BEND, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA

is closed and this area is vacated.

1316 COUNTY-CITY BUILDING
227 W. JEFFERSON BOULEVARD
SOUTH BEND, INDIANA 46601-1830



PHONE 574/ 235-9251
FAX 574/ 235-9171
TDD 574/ 235-5567

CITY OF SOUTH BEND STEPHEN J. LUECKE, MAYOR
BOARD OF PUBLIC WORKS

April 28, 2008

Mr. Tim Sexton
St. Joseph Regional Medical Center
4215 Edison Parkway
Mishawaka, Indiana 46545

RE: Alley Vacation – West Half of the First East/West Alley North of LaSalle Street and West of Notre Dame Avenue

Dear Mr. Sexton:

At its meeting on April 28, 2008, the Board of Public Works reviewed your petition to vacate the above alley. Upon review by the Engineering Division, Community & Economic Development, Fire Department, Police Department, Solid Waste Division and the City Attorney's Office, the following comments and recommendations were submitted:

Engineering stated that the petitioner must ensure accommodating Lot 6 with vehicular access need to work out access, and that solid waste trucks can traverse the route through the remaining alleys.

You will need a radius map showing properties within 150' of the proposed vacation and an executed Cross Access Agreement for your petition to the Common Council. **Please contact Tony Molnar at (574) 235-9254 prior to picking up your radius map.**

GARY A. GILOT, P.E.
PRESIDENT

CARL P. LITRELL, P.E.
MEMBER

DONALD E. INKS
MEMBER

1316 COUNTY-CITY BUILDING
227 W. JEFFERSON BOULEVARD
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PHONE 574/ 235-9251
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GARY A. GILOT, P.E.
PRESIDENT

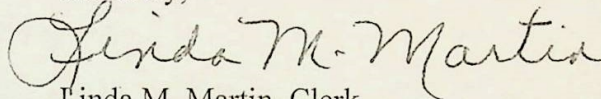
CARL P. LITRELL, P.E.
MEMBER

DONALD E. INKS
MEMBER

April 28, 2008
Sexton, Tim
Page 2 of 2

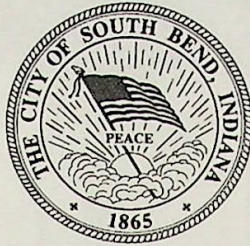
Once these concerns are addressed and you have the radius map, proceed to the City Clerk's office for your alley vacation packet. Once you return the petition to the City Clerk's office, they will forward a notice of First Hearing, upon which the Board of Public Works will forward their recommendations to them.

Sincerely,



Linda M. Martin, Clerk

- C: Jeff Gibney, CED
Tony Molnar, Engineering
Janice Talboom, City Clerk's Office
Carl P. Littrell, City Engineer



**INTER-OFFICE MEMORANDUM
BOARD OF PUBLIC WORKS**

TO: ✓ Carl Littrell, Engineering Department
John Byorni, Area Plan Commission (235-9813 fax)
Jeff Gibney, Community & Economic Development
✓ Chris Dressel, Community & Economic Development
✓ Bob Mathia, Community & Economic Development
✓ Federico Rodriguez, Fire Department
Andre Price, Solid Waste
✓ Stephen Goen, Police Department
Cheryl Greene, City Attorney's Office
Jim Bettin, NIPSCO (jrbettin@nisource.com or 284-2220 fax) **For Informational
Purposes Only**

FROM: Linda M. Martin, Clerk *LM*

RE: Request for Recommendation - Alley Vacation
Location: West Half of the First East-West Alley North of LaSalle Street and
West of Notre Dame Avenue
(Preliminary Review)

DATE: April 18, 2008

DUE: April 29, 2008

FAX OR E-MAIL TO: 235-9171 / lmartin@southbendin.gov

RETURN RECOMMENDATION PAGE ONLY. ATTACHMENTS NOT REQUIRED.

COMMENTS & RECOMMENDATIONS:

BY: _____ **DATE:** _____

NOTE: THIS ALLEY WAS VACATED UNDER ORD # 8385-93 WITH CONDITIONS NOT MET - NEW PETITION ALLEY TO BE VACATED

NORTH

- "A" MC HENRY SUB.
- "B" WARD'S SUB.
- "C" WADE MINOR SUB.
- "D" FREIDLINE MINOR SUB.
- "E" WEISS HOME'S REPLAT OF COTRELL'S 1ST.
- "F" WEISS HOME'S 2ND REPLAT.
- "G" WAYNE ST. PLAZA MINOR.

PETITIONER:

WOMEN'S CARE CENTER

TIM SEXTON
ST JOE REG. MED CENTER
4215 EDISON PKWY

MISHAWAKA, IN
46545

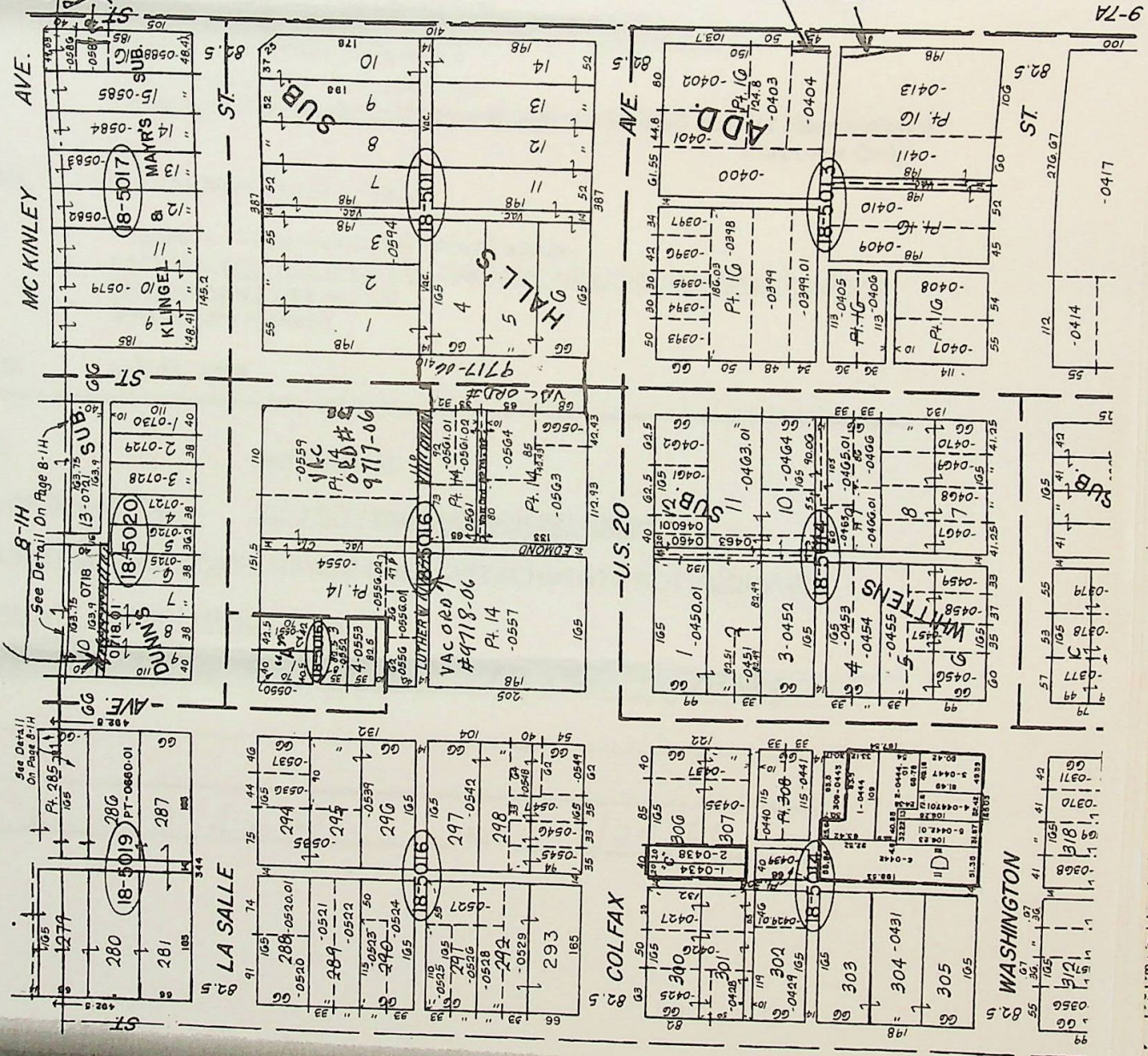
R/W DEED 274-3373
#3004

R/W DEED #3195

APPROVED
Board of Public Works

APR 28 2008

Handwritten signatures and initials





**INTER-OFFICE MEMORANDUM
BOARD OF PUBLIC WORKS**

TO: Carl Littrell, Engineering Department
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Purposes Only**

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DATE: April 18, 2008

DUE: April 29, 2008

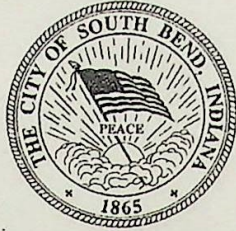
FAX OR E-MAIL TO: 235-9171 / lmartin@southbendin.gov

RETURN RECOMMENDATION PAGE ONLY. ATTACHMENTS NOT REQUIRED.

COMMENTS & RECOMMENDATIONS:

Recommendation for approval. No other comments

BY: *Chris D. [Signature]* **DATE:** 4/24/08



**INTER-OFFICE MEMORANDUM
BOARD OF PUBLIC WORKS**

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Cheryl Greene, City Attorney's Office
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DATE: April 18, 2008

DUE: April 29, 2008

FAX OR E-MAIL TO: 235-9171 / lmartin@southbendin.gov

RETURN RECOMMENDATION PAGE ONLY. ATTACHMENTS NOT REQUIRED.

COMMENTS & RECOMMENDATIONS:

*I have no objection to this vacation
request*

BY: *Bob Mathia* **DATE:** *4/21/08*



**INTER-OFFICE MEMORANDUM
BOARD OF PUBLIC WORKS**

TO: Carl Littrell, Engineering Department
John Byorni, Area Plan Commission (235-9813 fax)
Jeff Gibney, Community & Economic Development
Chris Dressel, Community & Economic Development
Bob Mathia, Community & Economic Development
Federico Rodriguez, Fire Department
Andre Price, Solid Waste
Stephen Goen, Police Department
Cheryl Greene, City Attorney's Office
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Purposes Only**

FROM: Linda M. Martin, Clerk *lme*

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(Preliminary Review)

DATE: April 18, 2008

DUE: April 29, 2008

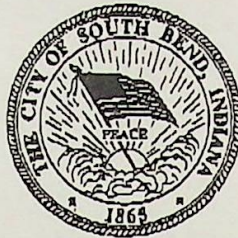
FAX OR E-MAIL TO: 235-9171 / lmartin@southbendin.gov

RETURN RECOMMENDATION PAGE ONLY. ATTACHMENTS NOT REQUIRED.

COMMENTS & RECOMMENDATIONS:

*I have been told that the petitioner will accommodate
Lot 6 with vehicular access and that solid waste
trucks can traverse the route through the remaining alleys.*

BY: Carl R. Littrell DATE: 4/21/08 *Thus, no objection.*



**INTER-OFFICE MEMORANDUM
BOARD OF PUBLIC WORKS**

TO: Carl Littrell, Engineering Department
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Chris Dressel, Community & Economic Development
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RETURN RECOMMENDATION PAGE ONLY. ATTACHMENTS NOT REQUIRED.

COMMENTS & RECOMMENDATIONS:

OK

SBRD
BY: Alc Federico Rodriguez DATE: 4-22-08

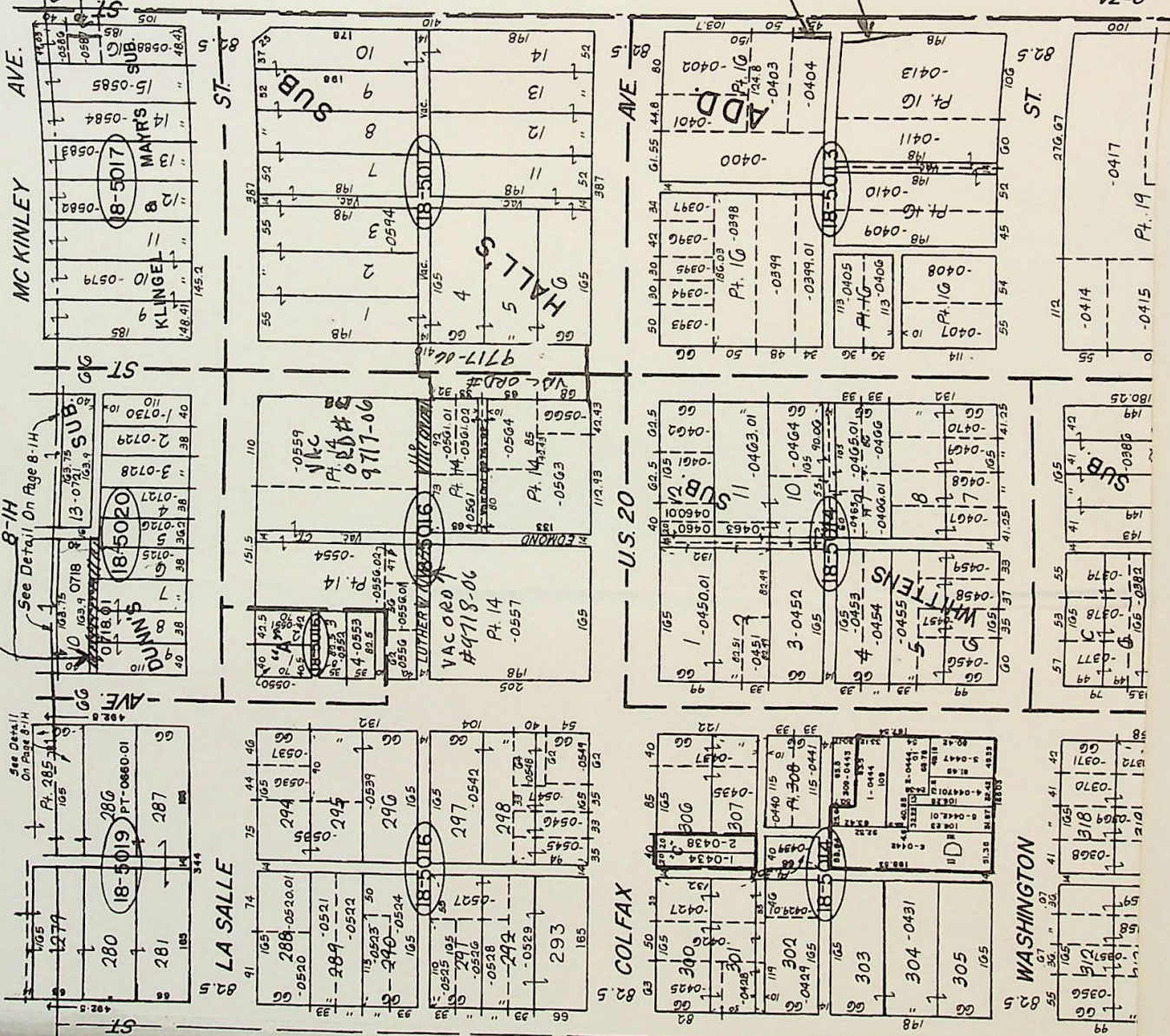
Pl. 19
-0415
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143
105-0382
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1372
121
121
59
58
120
120
8

NOTE: THIS ALLEY WAS VACATED UNDER ORD # 8385-93 WITH CONDITIONS NOT MET - NEW PETITION ALLEY TO BE VACATED

△ NORTH

- "A" MC HENRY SUB.
- "B" WARD'S SUB
- "C" WADE MINOR SUB.
- "D" FREIDLINE MINOR SUB.
- "E" WEISS HOME'S REPLAT OF COTRELL'S 1ST.
- "F" WEISS HOME'S 2ND REPLAT
- "G" WAYNE ST. PLAZA MINOR

PETITONER:
 WOMEN'S CARE CENTER
 TIM SEXTON
 ST JOE REC-MED CENTER
 AZIS EDISON PKWY
 MISHAWAKA, IN 46545
 R/W DEED # 2004
 R/W DEED # 3195

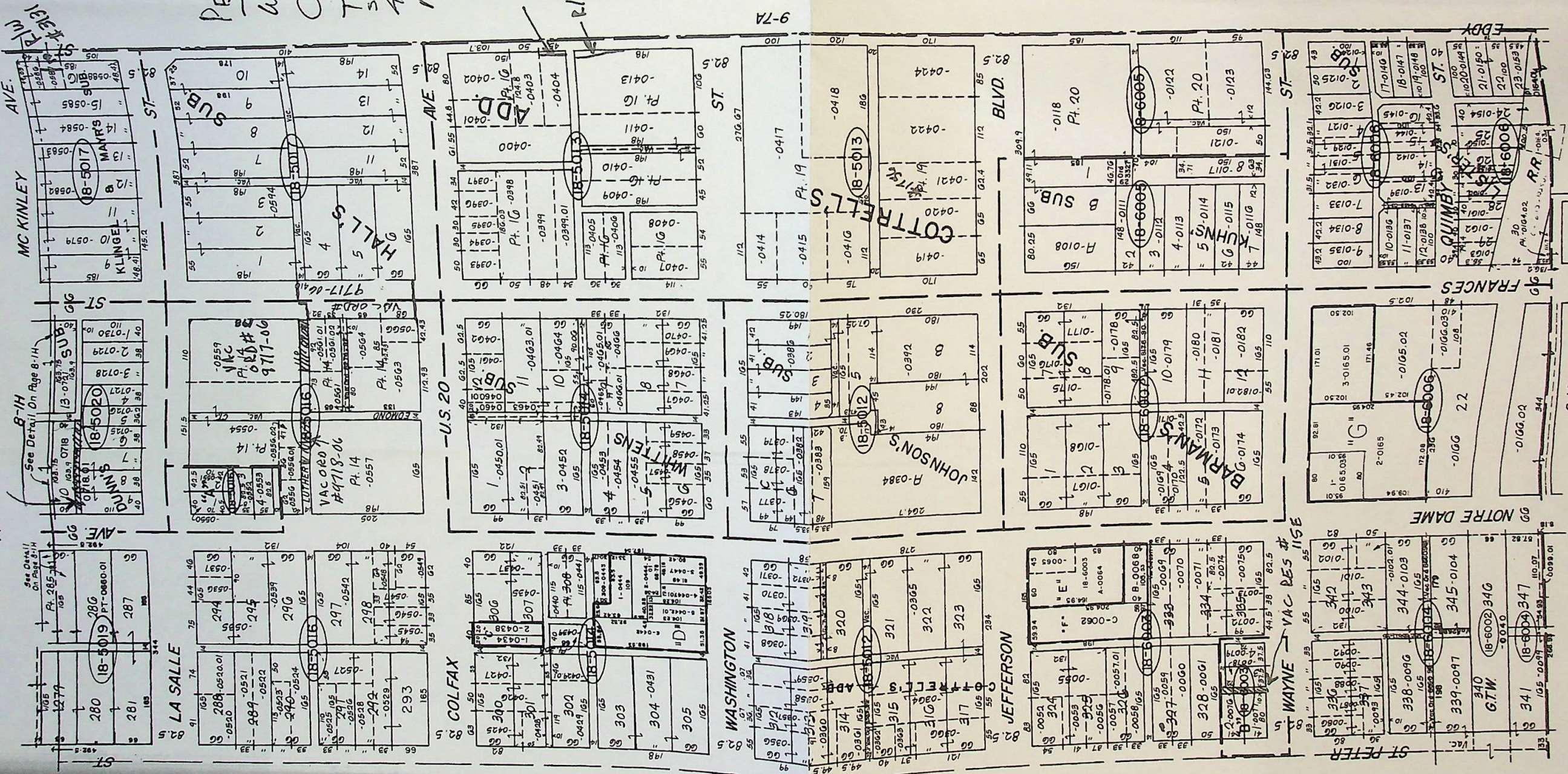


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 CONDITIONS NOT MET - NEW PETITION
 ALLEY TO BE VACATED

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PETITONER:
 WOMEN'S CARE
 CENTER
 TIM SEXTON
 ST JOE RES MED CENTER
 AZIS EDISON PKWY
 MISHAWAKA, IN
 RW DEED 46545
 DEED 274-3373
 RW DEED #3195



PORTAGE TWP.
 E 1/2 NE 1/4 SEC. 12 T.37N. R.2E.

GRANT OF EASEMENT

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VACATION OF EAST/WEST ALLEY LOCATED NORTH OF LASALLE AVENUE**

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See Exhibit "A".

3. The easement granted under this Agreement shall pertain to the ~~air~~-surface and ~~subsurface~~ rights and interests of the Grantor, for the use and benefit of the public, to the nature and extent that the public may desire said ~~air~~, surface and ~~subsurface~~ rights and interests to accomplish and carry out the general purpose of this conveyance as provided in this Agreement.
4. No member of members of the public have the right to sell or assign any interest in the Easement Area, and the public's right to use the Easement Area shall terminate in the event that the need for the use of the Easement Area is no longer reasonably necessary and is agreed to in the public record by the Common Council who made this a condition of vacation.
5. Grantor reserves the right to use and occupy the surface area on and over the Easement Area provided that such use and occupancy does not in any way conflict or obstruct the public's right to use the Easement Area for the purposes and intentions stated in this Grant of Easement.
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8. This Agreement shall be governed by the laws of the State of Indiana.

Linda Martin - RE: Fwd: Easement

From: Gary Gilot
To: Cheryl Greene; John Kuehn; Kathy Farrand
Date: 7/18/2008 2:59 PM
Subject: RE: Fwd: Easement
CC: Timothy Sexton
Attachments: Timothy Sexton

Thank you John and Tim for offering the draft. Cheryl wanted to be sure Kathy Farrand felt this was responsive to Council intent.

I inserted an Exhibit A from Tony Molnar.

I think the grant of blanket easement across the Women's Care Center parcel to lot 6 as the only other property on the east west west of the bisector north south alley is what Council intended with the track changes markup I have provided attached---would like Kathy to proof and sign off.

I believe on behalf of Board of Public Works that this is what we recommended and what the Common Council intended by it's action on this. Hopefully Kathy can confirm soon so you can execute and record and get an official copy to the Clerk so you can start your project. Have a great weekend.

Regards,
 Gary

>>> On 7/18/2008 at 11:35 AM, in message <3BC8F5681CAB0346AA607C959828805E0FF406@server.LCK-Law.local>, "John Kuehn" <JKuehn@LCK-Law.com> wrote:

All:

Attached is one suggestion for the easement as Gary has described to Tim. Gary, you mentioned to Tim that you might have a form for the easement, and I'd be happy to review that for the WCC if you could e-mail or fax it to me.

Thanks to everyone for your continued assistance in getting this last piece of the puzzle in place.

Best regards,

John Kuehn

LADUE CURRAN & KUEHN LLC

ATTORNEYS AND COUNSELORS AT LAW

R. John Kuehn

200 First Bank Building | 205 West Jefferson Boulevard | South Bend, Indiana 46601

(574) 968-0778 (direct) | (574) 968-0760 (office) | (574) 968-0761 (facsimile) | (574) 850-2295 (cell)

jkuehn@lck-law.com | www.lck-law.com

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-----Original Message-----

From: Timothy Sexton [mailto:sextont@sjrmc.com]

Sent: Tuesday, July 15, 2008 11:35 AM

To: Cheryl Greene; Gary Gilot

Subject: Re: Fwd: Easement

Cheryl/Gary - I am sorry to be a pest but has progress been made on the unilateral grant of easement. Once again, I will do what ever is necessary on our end to get this completed. I believe this is the only thing we need to do before moving forward with construction. I look forward to hearing back from you. Tim

Tim Sexton

Vice President, Community Development

The Foundation of Saint Joseph Regional Medical Center

4215 Edison Lakes Parkway, Suite 300, Mishawaka, IN 46545

574-247-8795 (Office)

This message (including and attachments) is intended only for the use of the addresses and may contain information that is privileged and confidential. If you are not the intended recipient or an authorized representative of the intended recipient, the use, dissemination or reproduction of this communication is prohibited and may be a violation of federal or state law and regulations. If you have received this transmission in error please destroy all copies of the message and its attachments and notify the sender immediately.

>>> "Gary Gilot" <GGILOT@southbendin.gov> 7/11/2008 12:52 PM >>>

Cheryl-

Talked to Tim Sexton. Neighbor won't sign anything....other agendas. Council vacated subject to recording a blanket access easement---not the usual mutual cross access easement, but a unilateral grant of easement across property wholly owned by party A to party B....in this case party B is any adjoining property along that alley and their guests---I would just say they are unilaterally granting an access easement to "the public". No other party need sign but the grantor(like a deed of dedication of an easement on a plat). I will find and send a sample.

Gary