

99-25183

FILED SARP1 CG. NE.
INSTRUMENT NUMBER
99-025183

CERTIFICATION
Counter 5
Verify SS
D.E. SS
99 AUG -9 PM 1: 19

STATE OF NEBRASKA)
COUNTY OF SARPY) SS.
CITY OF LA VISTA))

Proof SS
Fee \$ 204.50
ok Cash CDL

REGISTER OF DEEDS
Rebecca J. DeWitt

I, Rita M. Ramirez, the duly appointed, qualified, and acting Clerk of the City of La Vista, Sarpy County, Nebraska, hereby officially certify:

That at its August 3, 1999 meeting the City Council of the City of La Vista, Nebraska, did adopt Ordinance No. 778, 779 and 780 entitled:

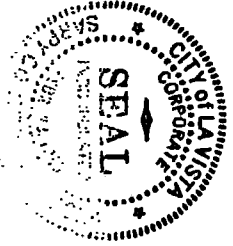
778 - AN ORDINANCE TO ANNEX CERTAIN REAL ESTATE TO THE CITY OF LA VISTA, NEBRASKA (APPLE GROVE, SID #174); TO MAKE PROVISION FOR EXTENSION OF BENEFITS TO INHABITANTS OF TERRITORY ANNEXED; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

779 - AN ORDINANCE TO ANNEX CERTAIN REAL ESTATE TO THE CITY OF LA VISTA, NEBRASKA (ARDMORE EAST, SID #167); TO MAKE PROVISION FOR EXTENSION OF BENEFITS TO INHABITANTS OF TERRITORY ANNEXED; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

780 - AN ORDINANCE TO ANNEX TO THE CITY OF LA VISTA, NEBRASKA IN THE GENERAL VICINITY AS MORE FULLY DESCRIBED HEREIN, MAYFAIR PARK TO 120TH STREET FROM THE BURLINGTON NORTHERN RAILROAD SOUTH TO GILES ROAD; TO MAKE PROVISION FOR EXTENSION OF BENEFITS TO INHABITANTS OF TERRITORY ANNEXED; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

I further certify that the attached documents are true and accurate copies of said ordinances.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of La Vista hereto this 6th day of August, 1999.



Rita M. Ramirez
Rita M. Ramirez, CMC
City Clerk

025183

99-30103F

EXHIBIT "A"

PARCEL A:

Lot One (1), in BROOK VALLEY II BUSINESS PARK, a Subdivision in Sarpy County, Nebraska

PARCEL B:

Lot Fifty-six (56), BROOK VALLEY BUSINESS PARK, a Subdivision in Sarpy County, Nebraska, except the North 100.00 feet in width thereof, TOGETHER WITH that part of Lot Fifty-five (55), BROOK VALLEY BUSINESS PARK, described as follows: Beginning at the Northeast Corner of said Lot 55; thence S87°38'24"W (assumed bearing) 240.18 feet on the North line of said Lot 55 to the Northwest corner thereof; thence S16°44'12"E 69.14 feet on the West line of said Lot 55; thence Southwesterly on the Westerly line of said Lot 55 on a 548.71 foot radius curve to the left, chord bearing S21°27'52"E, chord distance 90.45 feet, an arc distance of 90.55 feet; thence N65°09'37"E 223.71 feet on a non-tangent line to the Easterly line of said Lot 55; thence Northwesterly on the Easterly line of said Lot 55 on a non-tangent 175.00 foot radius curve to the right, chord bearing N13°36'00"W, chord distance 68.22 feet, an arc distance of 68.66 feet to the point of beginning.


PARCEL C:

Lot Fifty-five (55), BROOK VALLEY BUSINESS PARK, a Subdivision in Sarpy County, Nebraska, except that part described as follows: Beginning at the Northeast Corner of said Lot 55; thence S87°38'24"W (assumed bearing) 240.18 feet on the North line of said Lot 55 to the Northwest Corner thereof; thence S16°44'12"E 69.14 feet on the West line of said Lot 55; thence Southwesterly on the Westerly line of said Lot 55 on a 548.71 foot radius curve to the left, chord bearing S21°27'52"E, chord distance 90.45 feet, an arc distance of 90.55 feet; thence N65°09'37"E 223.71 feet on a non-tangent line to the Easterly line of said Lot 55; thence Northwesterly on the Easterly line of said Lot 55 on a non-tangent 175.00 foot radius curve to the right, chord bearing N13°36'00"W, chord distance 68.22 feet, an arc distance of 68.66 feet to the point of beginning

(55P)

COUNTER 2 G.P. 05
 VERIFY 12/28/10 P.E. 05
 PROOF _____
 FEES \$ 101.50
 CHECK # _____ CASH _____
 CHG 101.50 - GOL. CREDIT _____
 REFUND _____ NCR _____
 SHORT _____

FILED SARPY COUNTY NEBRASKA
 INSTRUMENT NUMBER
 2010-02853
 02/02/2010 9:12:26 AM
Lloyd J. Dowding
 REGISTER OF DEEDS



*✓ Court was CTO9 - 2825 for final determination
 as to validity of this instrument - but would not be effective until
 30 days after
 final determine*

**THIS PAGE ADDED
 FOR RECORDING
 INFORMATION.**

*Copies of same in
 T-Box*

**DOCUMENT STARTS ON
 NEXT PAGE.**

*Print of document
 action - allowed / LV
 to owner - pet's approval
 Supert's opinion lower
 of decision
 LV can*

*owner -
 tap into
 reflect
 City of La Vista*

LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS
 Steven J. Stastny, Deputy
 1210 GOLDEN GATE DRIVE, STE 1109
 PAPILLION, NE 68046-2895
 402-593-5773

psr
 City of La Vista
 8116 Park View Blvd.
 La Vista, NE 68128

CERTIFICATION

STATE OF NEBRASKA)
)
 COUNTY OF SARPY) SS.
)
 CITY OF LA VISTA)

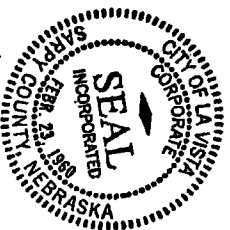
I, Pamela A. Buethe, the duly appointed, qualified, and acting City Clerk of the City of La Vista, Sarpy County, Nebraska, hereby officially certify:

That at its December 1, 2009 meeting the City Council of the City of La Vista, Nebraska, did adopt Ordinance No. 1107 entitled:

AN ORDINANCE TO ANNEX CERTAIN REAL ESTATE TO THE CITY OF LA VISTA, NEBRASKA (SID NO.59, OAKDALE PARK, BROOK VALLEY BUSINESS PARKS, AND SID NO. 214, PAPIO VALLEY 1 AND 2 BUSINESS PARKS, SUBDIVISIONS AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA, AND CERTAIN ADJACENT LAND; TAX LOT 6B LOCATED IN SECTION 19, T14N, R12E OF THE 6TH P.M., TAX LOT 8 LOCATED IN SECTION 18, T14N, R12E OF THE 6TH P.M., TAX LOT 6C1 LOCATED IN SECTION 19, T14N, R12E OF THE 6TH P.M., TAX LOT 15 AND VAC ROW ADJ LOCATED IN SECTION 18, T14N, R12E OF THE 6TH P.M., TAX LOT 13 LOCATED IN SECTION 19, T14N, R12E OF THE 6TH P.M., TAX LOT 14 LOCATED IN SECTION 19, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA; AND PORTIONS OF ANY ADJOINING STREET RIGHT-OF-WAY), AS MORE FULLY DESCRIBED HEREIN; TO MAKE PROVISION FOR EXTENSION OF SERVICES TO INHABITANTS OF TERRITORY ANNEXED; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

I further certify that the attached document is a true and accurate copy of said ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of La Vista hereto this 25th day of January, 2010.



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

ORDINANCE RECORD

Ne. 728-Form 6a & Consent Inc., 2006

8

ORDINANCE NO. 1107

AN ORDINANCE TO ANNEX CERTAIN REAL ESTATE TO THE CITY OF LA VISTA, NEBRASKA (SID NO.59, OAKDALE PARK, BROOK VALLEY BUSINESS PARKS, AND SID NO. 214, PAPIO VALLEY 1 AND 2 BUSINESS PARKS, SUBDIVISIONS AS SURVEYED, PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA, AND CERTAIN ADJACENT LAND; TAX LOT 6B LOCATED IN SECTION 19, T14N, R12E OF THE 6TH P.M., TAX LOT 8 LOCATED IN SECTION 18, T14N, R12E OF THE 6TH P.M., TAX LOT 6C1 LOCATED IN SECTION 19, T14N, R12E OF THE 6TH P.M., TAX LOT 15 AND VAC ROW ADJ LOCATED IN SECTION 19, T14N, R12E OF THE 6TH P.M., TAX LOT 13 LOCATED IN SECTION 19, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA; AND PORTIONS OF ANY ADJOINING STREET RIGHT-OF-WAY), AS MORE FULLY DESCRIBED HEREIN; TO MAKE PROVISION FOR EXTENSION OF SERVICES TO INHABITANTS OF TERRITORY ANNEXED; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

WHEREAS, the Mayor and City Council of the City of La Vista, in compliance with Nebraska Revised Statutes, Section 16-117, have adopted a resolution stating that the City is considering the annexation of certain land, have approved a plan for the extension of City services to said land, and have complied with the publication, mailing and public hearing requirements required by said statute; and

WHEREAS, the Planning Commission of the City of La Vista has held a hearing to consider the proposed annexation and plan to provide services, and the Mayor and City Council has obtained the recommendation of the Planning Commission of the City of La Vista to annex the below described land and provide services in accordance with the plan; and

WHEREAS, the Mayor and City Council of the City of La Vista find the below described territory to be contiguous or adjacent to the City of La Vista, Nebraska, and is urban or suburban in character and not agricultural land which is rural in character; and

WHEREAS, the Mayor and City Council of the City of La Vista have determined that sewerage facilities will be sufficient to serve said territory and said territory will be serviced by the water utility franchised by the City and that the City is in a position to extend police and fire protection and other municipal services to said below-described territory, so that the inhabitants of said territory shall receive substantially the services of other inhabitants of the City of La Vista, Nebraska.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. The following described territory situated in Sarpy County, Nebraska to-wit:

LOTS 1, 2A, 2B, 3 THROUGH 8, 13 THROUGH 18, 19A, 21A, 21B, 22, 26, 27, 28A, AND 28B, OAKDALE PARK, A SUBDIVISION IN SARPY COUNTY, NEBRASKA, AND ALL PUBLIC STREETS LYING WITHIN SAID OAKDALE PARK;

TOGETHER WITH PART OF 108TH, STREET RIGHT-OF-WAY AND PART OF HARRISON STREET RIGHT-OF-WAY ADJOINING SAID OAKDALE PARK;

TOGETHER WITH TAX LOTS 8A1A AND 8A2, EXCEPT THAT PART TAKEN FOR 104TH STREET RIGHT-OF-WAY, TAX LOTS 8A1B, 8B, 8C1, 8C2A, 8C3A AND 8C4, ALL LYING WITHIN THE WEST 1/2 OF THE NW1/4 OF SECTION 16, T14N, R12E OF THE 6TH P.M., IN SAID SARPY COUNTY;

TOGETHER WITH PART OF GERTRUDE STREET RIGHT-OF-WAY, AND HARRISON STREET RIGHT-OF-WAY ADJOINING SAID TAX LOTS;

TOGETHER WITH THAT PART OF THE SW1/4 OF THE NW1/4 OF SAID SECTION 16 LYING WEST OF LOT 1, AND SOUTH OF LOT 2A, SAID OAKDALE PARK;

TOGETHER WITH PART OF 108TH STREET RIGHT-OF-WAY ADJOINING SAID PART OF THE SW1/4 OF THE NW1/4 OF SAID SECTION 16;

ORDINANCE RECORD

Ordinance No. 1107

No. 72-B-Review & Consent Re. Ord.

TOGETHER WITH LOTS 1B, 2B, 4A, 4B, 5A, 5B, 6, 12, 13B, 14, 15A, 15B, LOT 16 (REPLAT OF LOTS 16, 17, 18B, 21B, 22 AND 23); LOTS 18A, 19, 20, 21A, 24A, 24B, 25, 27, 28A1, 32, 33C, 47, 48, 49, 50A, 50B, 51, 52, 53, 54, 55A, 55B, 56B, LOT 57 AND THE NORTH 100 FEET OF LOT 56, LOTS 58, 59, 60 AND OUTLOT B, BROOK VALLEY BUSINESS PARK, A SUBDIVISION IN SAID SARPY COUNTY;

TOGETHER WITH LOTS 1 AND 2, BROOK VALLEY BUSINESS PARK REPLAT 1, A SUBDIVISION IN SAID SARPY COUNTY;

TOGETHER WITH LOTS 1 AND 2, BROOK VALLEY BUSINESS PARK REPLAT 2, A SUBDIVISION IN SAID SARPY COUNTY; AND ALL PUBLIC STREETS LYING WITHIN SAID BROOK VALLEY BUSINESS PARK, AND SAID BROOK VALLEY BUSINESS PARK REPLATS 1 AND 2;

TOGETHER WITH PART OF 108TH STREET RIGHT-OF-WAY AND HARRISON STREET RIGHT-OF-WAY ADJOINING SAID BROOK VALLEY BUSINESS PARK AND SAID BROOK VALLEY BUSINESS PARK REPLATS 1 AND 2;

TOGETHER WITH TAX LOT 1A2, LYING NORTH OF THE CHICAGO BURLINGTON & QUINCY RAILROAD WITHIN THE SE1/4 OF SECTION 17, T14N, R12E OF THE 6TH P.M., SAID SARPY COUNTY, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF HARRISON STREET AND THE NORTHERLY EXTENSION OF THE WEST LINE OF 104TH STREET;

THENCE SOUTHERLY ON THE WEST LINE OF 104TH STREET TO THE EAST LINE OF THE W1/2 OF THE NW1/4 OF SAID SECTION 16;

THENCE SOUTHERLY ON THE EAST LINE OF SAID W1/2 TO THE SE CORNER THEREOF;

THENCE WESTERLY ON THE SOUTH LINE OF SAID W1/2 TO THE SW CORNER THEREOF;

THENCE WESTERLY ON THE NORTH LINE OF THE SE1/4 OF SAID SECTION 17 TO THE EASTERLY LINE OF LOT 28A1, SAID BROOK VALLEY BUSINESS PARK;

THENCE SOUTHERLY ON THE EAST LINE OF SAID LOT 28A1 TO THE NORTHERLY LINE OF SAID TAX LOT 1A2;

THENCE SOUTHEASTERLY ON THE NORTHERLY LINE OF SAID TAX LOT 1A2 TO THE WEST LINE OF SAID 108TH STREET;

THENCE SOUTHERLY ON THE WEST LINE OF SAID 108TH STREET TO THE NORTHERLY LINE OF SAID CHICAGO BURLINGTON & QUINCY RAILROAD;

THENCE WESTERLY ON THE NORTHERLY LINE OF SAID RAILROAD TO THE SW CORNER OF OUTLOT B SAID BROOK VALLEY BUSINESS PARK;

THENCE NORTHERLY ON THE WESTERLY LINE OF SAID BROOK VALLEY BUSINESS PARK AND ITS NORTHERLY EXTENSION TO THE CENTERLINE OF HARRISON STREET;

THENCE EASTERLY ON THE CENTERLINE OF HARRISON STREET TO THE POINT OF BEGINNING;

TOGETHER WITH ALL OF TAX LOT 1A1A1A, LYING WITHIN THE SE1/4 AND ALL OF TAX LOT 2B2 LYING WITHIN THE SW1/4 OF SAID SECTION 17;

TOGETHER WITH PART OF 110TH STREET RIGHT-OF-WAY ADJOINING SAID TAX LOT 1A1A1A;

TOGETHER WITH LOTS 1 THROUGH 7, LOTS 9, 10, 11B, 12, 13, LOTS 14A AND 14B, REPLAT OF LOT 14, LOTS 15, 16A, 16B, 17A, 17B, 18, 19, 20, LOTS 22 THROUGH 37, VACATED VIRGINIA STREET LYING WEST OF 114TH STREET AND EAST OF 117TH STREET, BROOK VALLEY II BUSINESS PARK, A SUBDIVISION IN SAID SARPY COUNTY;

TOGETHER WITH LOT 1, BROOK VALLEY II BUSINESS PARK REPLAT ONE; A SUBDIVISION IN SAID SARPY COUNTY;

ORDINANCE RECORD

D

No. 728 - Revised & Corrected No. 6944

Ordinance No. 1107

TOGETHER WITH LOTS 1 AND 2, BROOK VALLEY II BUSINESS PARK REPLAT 2, A SUBDIVISION IN SAID SARPY COUNTY, AND ALL PUBLIC STREETS LYING WITHIN SAID BROOK VALLEY II BUSINESS PARK AND SAID BROOK VALLEY II BUSINESS PARK REPLATS ONE AND 2;

TOGETHER WITH PART OF 120TH STREET RIGHT-OF-WAY AND ALL OF 114TH STREET RIGHT-OF-WAY ADJOINING SAID BROOK VALLEY II BUSINESS PARK; ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT INTERSECTION OF THE CENTERLINE OF 120TH STREET AT THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID BROOK VALLEY II BUSINESS PARK;

THENCE NORTHERLY ON THE CENTERLINE OF 120TH STREET TO THE SOUTHERLY LINE OF GILES ROAD;

THENCE EASTERLY ON THE SOUTHERLY LINE OF GILES ROAD TO THE NORTHERLY EXTENSION OF THE EAST LINE OF 114TH STREET;

THENCE SOUTHERLY ON THE EAST LINE OF 114TH STREET TO THE EASTERLY EXTENSION OF THE SOUTH LINE OF BROOK VALLEY II BUSINESS PARK;

THENCE WESTERLY ON THE SOUTH LINE OF BROOK VALLEY II BUSINESS PARK TO THE POINT OF BEGINNING;

TOGETHER WITH LOTS 1 AND 2, PART OF LOT 3A, LOTS 4, 5, 6, 7A, 7B AND 8, PAPIO VALLEY I BUSINESS PARK, A SUBDIVISION IN SARPY COUNTY, NEBRASKA; AND ALL PUBLIC STREETS LYING WITHIN SAID PAPIO VALLEY I BUSINESS PARK;

TOGETHER WITH LOTS 1 THROUGH 9, PAPIO VALLEY 2 BUSINESS PARK, A SUBDIVISION IN SAID SARPY COUNTY, AND ALL PUBLIC STREETS LYING WITHIN SAID PAPIO VALLEY 2 BUSINESS PARK;

TOGETHER WITH PART OF OLD GILES ROAD RIGHT-OF-WAY AND 120TH STREET RIGHT-OF-WAY ADJOINING SAID PAPIO VALLEY I BUSINESS PARK AND SAID PAPIO VALLEY 2 BUSINESS PARK, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF 120TH STREET AND THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID PAPIO VALLEY 2 BUSINESS PARK;

THENCE WESTERLY ON SAID SOUTH LINE AND ITS EASTERLY EXTENSION TO THE SW CORNER OF LOT 4, SAID PAPIO VALLEY 2 BUSINESS PARK;

THENCE NORTHERLY ON THE WEST LINE OF SAID PAPIO VALLEY 2 BUSINESS PARK TO THE SOUTH LINE OF SAID PAPIO VALLEY I BUSINESS PARK;

THENCE WESTERLY ON THE SOUTH LINE OF SAID PAPIO VALLEY I BUSINESS PARK TO THE SW CORNER THEREOF;

THENCE NORTHERLY ON THE WEST LINE OF SAID PAPIO VALLEY I BUSINESS PARK TO THE NW CORNER THEREOF;

THENCE EASTERLY ON THE NORTH LINE OF SAID PAPIO VALLEY I BUSINESS PARK TO THE SOUTHERLY LINE OF OLD GILES ROAD RIGHT-OF-WAY;

THENCE WESTERLY ON THE SOUTHERLY LINE OF OLD GILES ROAD RIGHT-OF-WAY TO THE SOUTH LINE OF THE CHICAGO BURLINGTON AND QUINCY RAILROAD RIGHT-OF-WAY;

THENCE NORTHEASTERLY ON THE SOUTH LINE OF SAID RAILROAD RIGHT-OF-WAY TO THE NORTHERLY LINE OF OLD GILES ROAD RIGHT-OF-WAY;

THENCE EASTERLY ON THE NORTHERLY LINE OF OLD GILES ROAD RIGHT-OF-WAY TO THE INTERSECTION OF THE NORTHERLY EXTENSION OF THE CENTERLINE OF 120TH STREET;

ORDINANCE RECORD

No. 228-Ordinance & Chapter Law, Omaha

Ordinance No. 1107

THENCE SOUTHERLY ON THE CENTERLINE OF 120TH STREET TO THE POINT OF BEGINNING;

TOGETHER WITH TAX LOT 8 IN THE SE 1/4 OF SECTION 18, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA;

TOGETHER WITH TAX LOT 15 & VAC ROW ADJ IN THE SE 1/4 OF SECTION 18 T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA;

TOGETHER WITH TAX LOT 6B IN THE NORTHEAST 1/4 OF SECTION 19, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA;

TOGETHER WITH TAX LOT 6C1 IN THE NORTHEAST 1/4 OF SECTION 19, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA;

TOGETHER WITH TAX LOT 13 IN THE NORTHEAST 1/4 OF SECTION 19, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA;

TOGETHER WITH TAX LOT 14 IN THE NORTHEAST 1/4 OF SECTION 19, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA;

TOGETHER WITH RAILROAD RIGHT-OF-WAY ADJOINING SAID TAX LOTS IN SAID SECTIONS 18 AND 19, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA;

TOGETHER WITH GILES ROAD RIGHT-OF-WAY, WEST GILES ROAD RIGHT-OF-WAY, AND OLD GILES ROAD RIGHT-OF-WAY IN SAID SECTIONS 18 AND 19 ADJOINING SAID TAX LOTS.

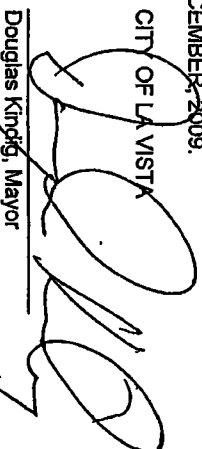
be and the same hereby is, annexed to and included within the corporate limits of the City of La Vista, Sarpy County, Nebraska, and that the inhabitants thereof shall, from and after the effective date of this ordinance, be subject to the ordinances and regulations of the City of La Vista, Sarpy County, Nebraska.

SECTION 2. That the inhabitants of the above-described territory annexed to the City shall receive substantially the services of other inhabitants of such City as soon as practicable, in accordance with Neb. Rev. Stat. Section 16-120 and the Plan to Extend Services to Oakdale Park, Brook Valley Business Parks, Papio Valley 1 & 2 Business Parks, various tax lots and adjoining street rights-of-way, which Plan, as amended and submitted to the City Council, is hereby ratified, affirmed and approved. Adequate plans and necessary City Council action to furnish such services shall be adopted not later than one year after the date of annexation.

SECTION 3. This ordinance shall be in full force and effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 1ST DAY OF DECEMBER, 2009.

CITY OF LA VISTA


Douglas Kindig, Mayor

ATTEST:


Pamela A. Bueth, CMC
City Clerk

CERTIFICATION

STATE OF NEBRASKA)
)
 COUNTY OF SARPY) SS.
)
 CITY OF LA VISTA)

I, Pamela A. Bueth, the duly appointed, qualified, and acting Clerk of the City of La Vista, Sarpy County, Nebraska, hereby officially certify:

That the attached document is a true and accurate copy of the map outlining the areas annexed into the City of La Vista which became effective on December 11, 2009.

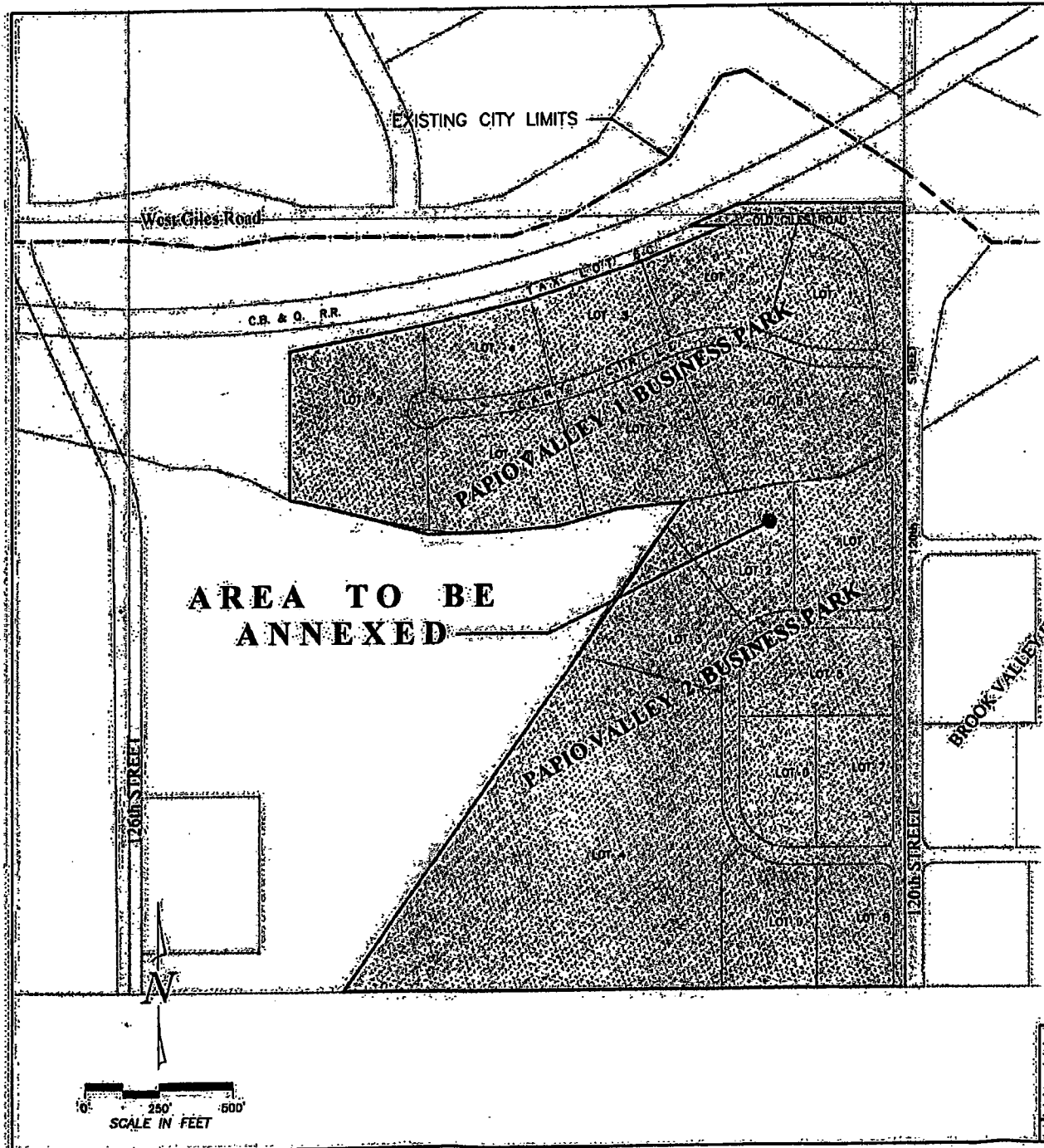
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of La Vista hereto this 25th day of January, 2010.



Pamela A. Bueth
 Pamela A. Bueth, CMC
 City Clerk

City of La Vista Annexation

October 2009



T² THOMPSON, DRESSEN & DORNER, INC.
Consulting Engineers & Land Surveyors
10836 OLD MILL ROAD OMAHA, NEBRASKA 68164
PHONE: 402.330.8880 FAX: 402.330.8886 EMAIL: TDMAIL@T2DCO.COM
WEBSITE: WWW.T2DCO.COM

JOB # 171-363

DWG: 171-363 ANNEXATION, OCTOBER, 2009.DWG

9

CERTIFICATION

STATE OF NEBRASKA)
)
 COUNTY OF SARPY) SS.
)
 CITY OF LA VISTA)

I, Pamela A. Buethe, the duly appointed, qualified, and acting Clerk of the City of La Vista, Sarpy County, Nebraska, hereby officially certify:

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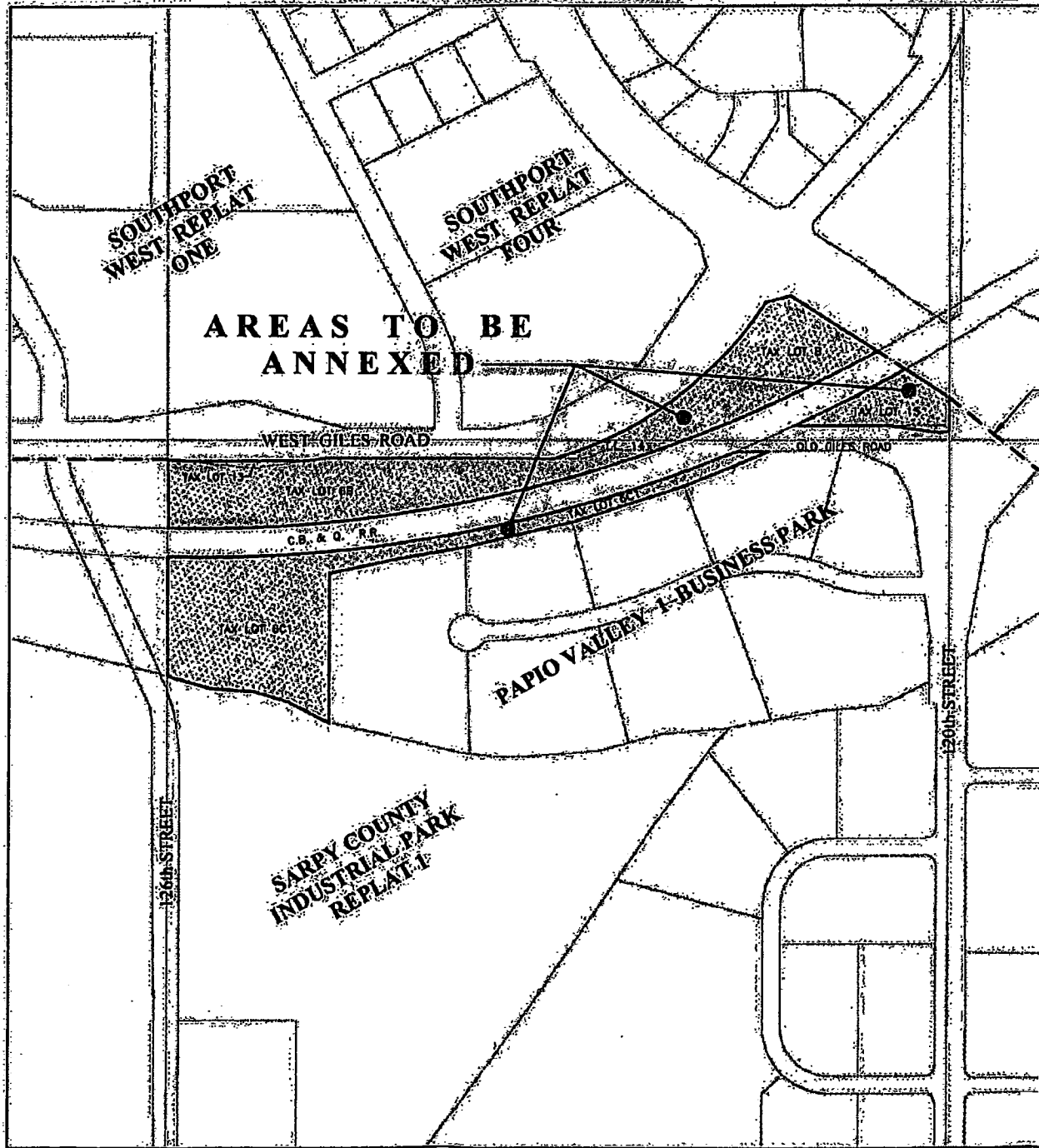
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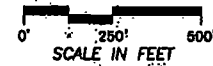
Pamela A. Buethe
 Pamela A. Buethe, CMC
 City Clerk

City of La Vista Annexation

October 2009



EXISTING
CITY LIMITS



T D **2 THOMPSON, DRESSEN & DORNER, INC.**
Consulting Engineers & Land Surveyors
10836 OLD MILL ROAD - OMAHA, NEBRASKA 68154
PHONE: 402.330.8880 - FAX: 402.330.8888 - EMAIL: TD2@LVA@TD2CO.COM
WEBSITE: WWW.TD2CO.COM

JOB # 171-363 DWG # 171-363 ANNEXATION, OCTOBER 2009 .OUTLOTS.DWG

2010-02853

T

[Courts Homepage](#)[Case Search](#)[Name Search](#)[Have Questions?](#)**Case Summary**

In the District Court of Sarpy County
The Case ID is CI 09 0002325

United States Cold S v. City of La Vista

The Honorable Max J Kelch, presiding.

Classification: Injunctions

Filed on 12/16/2009

This case is Appealed as of 04/02/2012

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE	
United States Cold Storage Inc	Bryan S Hatch 1299 Farnam Street, Suite 150 Omaha 402-930-1731
United States Cold Storage Inc owes \$200.00	
Defendant ACTIVE	
City of La Vista	Gerald I Friedrichsen 10050 Regency Circle, Ste 200 Omaha 402-342-1000
c/o Pamela A. Beuthe, City Clerk	
8116 Park View Boulevard	
La Vista	Omaha 402-342-1000
Defendant ACTIVE	
S I D 59	Scott D Jochim 2120 S. 72nd St., Suite 1200 Omaha 402-391-6777
Attn: J. Michael Price	
10602 Olive Street	
La Vista	Omaha 402-391-6777
Defendant ACTIVE	
Doug Kindig	Gerald I Friedrichsen 10050 Regency Circle, Ste 200 Omaha 402-342-1000
Mayor of La Vista	
8116 Park View Boulevard	
La Vista	Omaha 402-342-1000
Defendant ACTIVE	
Brenda Carlisle	Gerald I Friedrichsen 10050 Regency Circle, Ste 200 Omaha 402-342-1000
La Vista City Councilmember	
8116 Park View Boulevard	
La Vista	Omaha 402-342-1000
Defendant ACTIVE	
Ron Sheehan	Gerald I Friedrichsen 10050 Regency Circle, Ste 200 Omaha 402-342-1000
La Vista City Councilmember	
8116 Park View Boulevard	
La Vista	Omaha 402-342-1000
Defendant ACTIVE	
Alan Roman	Gerald I Friedrichsen 10050 Regency Circle, Ste 200 Omaha 402-342-1000
La Vista City Councilmember	
8116 Park View Boulevard	
La Vista	Omaha 402-342-1000
Defendant ACTIVE	
Mark Ellerbeck	Gerald I Friedrichsen 10050 Regency Circle, Ste 200 Omaha 402-342-1000
La Vista City Councilmember	
8116 Park View Boulevard	
La Vista	Omaha 402-342-1000

Defendant ACTIVE	
Mike Crawford	Gerald I Friedrichsen
La Vista City Councilmember	10050 Regency Circle, Ste 200
816 Park View Boulevard	
La Vista NE 68128	Omaha
	402-342-1000
	NE 68114
Defendant ACTIVE	
Terrilyn Quick	Gerald I Friedrichsen
La Vista City Councilmember	10050 Regency Circle, Ste 200
816 Park View Boulevard	
La Vista NE 68128	Omaha
	402-342-1000
	NE 68114
Defendant ACTIVE	
Kelly Seli	Gerald I Friedrichsen
La Vista City Councilmember	10050 Regency Circle, Ste 200
816 Park View Boulevard	
La Vista NE 68128	Omaha
	402-342-1000
	NE 68114
Defendant ACTIVE	
Anthony Gowan	Gerald I Friedrichsen
La Vista City Councilmember	10050 Regency Circle, Ste 200
816 Park View Boulevard	
La Vista NE 68128	Omaha
	402-342-1000
	NE 68114

Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	12/16/2009	\$35.00
Plaintiff	Filing Fee - State	12/16/2009	\$5.00
Plaintiff	Automation Fee	12/16/2009	\$8.00
Plaintiff	NSC Education Fee	12/16/2009	\$1.00
Plaintiff	Dispute Resolution Fee	12/16/2009	\$0.75
Plaintiff	Indigent Defense Fee	12/16/2009	\$3.00
Plaintiff	Uniform Data Analysis Fee	12/16/2009	\$1.00
Plaintiff	J.R.F.	12/16/2009	\$6.00
Plaintiff	Filing Fee-JRF	12/16/2009	\$2.00
Plaintiff	Legal Aid/Services Fund	12/16/2009	\$5.25
Plaintiff	Complete Record	12/16/2009	\$15.00
Defendant	Tape Transcription Fees	04/13/2012	\$101.00
Plaintiff	Tape Transcription Fees	04/26/2012	\$4.75

Defendant	Service Fees	01/24/2012	\$25.55
Defendant	Sup Ct Filing Fee	04/02/2012	\$125.00
Plaintiff	Sup Ct Filing Fee	04/02/2012	\$125.00
Defendant	Sup Ct Cost Bond	04/02/2012	\$75.00
Plaintiff	Sup Ct Cost Bond	04/02/2012	\$75.00

Financial Activity

Trust held by the court is \$276.00
 No fee money is held by the court

Payments Made to the Court

Receipt	Type	Date	For	Amount
364952	Check	04/02/2012	S I D 59	\$125.00
			Sup Ct Filing Fee	\$125.00
364953	Check	04/02/2012	S I D 59	\$75.00
			Sup Ct Cost Bond	\$75.00
364965	Check	04/02/2012	United States Cold Sto	\$200.00
			Holding Acct	\$200.00
361590	Check	12/30/2011	S I D 59	\$1.00
			Holding Acct	\$1.00
336766	Check	12/16/2009	United States Cold Sto	\$82.00
			Petition	\$35.00
			Filing Fee - State	\$5.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75

			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$2.00
			Legal Aid/Services Fun	\$5.25
			Complete Record	\$15.00

Payments Made by the Court

Check	Date	To	Amount
9074689	04/03/2012	Nebraska Supreme Court	\$125.00

Register of Actions

05/14/2012 Bill of Exceptions

This action initiated by party S I D 59
Bill of Exceptions Volumes 1, 2 & 3 is a lrg brwn box-exhibits

04/26/2012 Transcript Issued

This action initiated by party United States Cold Storage Inc
Supplemental Transcript issued C.O.A. (Costs \$4.75)

04/13/2012 Request

This action initiated by party United States Cold Storage Inc
Request in letter form for Supplemental Transcript to be prepared
Image ID 000278749D59

04/13/2012 Transcript Issued

This action initiated by party S I D 59
Transcript issued C.O.A. (Costs \$101.00) Per Atty B.Hatch for pltf clk to
prepare (1) transcript for C.O.A.

04/04/2012 Appellate Court Letter of Acceptanc

Court of Appeals Case Number: A-12-000271
Image ID D00109281D59

04/03/2012 Cert-Supreme Ct/Crt of Appis

Image ID D00109269D59

04/03/2012 Appellate Court Letter of Acceptanc

Court of Appeals Case Number: A-12-000267
Image ID D00109241D59

04/03/2012 Cert-Supreme Ct/Crt of Appis

Image ID D00109230D59

04/03/2012 Praecipe-Appeal Transcript
This action initiated by party United States Cold Storage Inc
Image ID 000278742D59

04/02/2012 Filing Not Otherwise Specified
This action initiated by party United States Cold Storage Inc
Deposit in Lieu of Cost Bond
Image ID 000278764D59

04/02/2012 Praecipe-BOE
This action initiated by party United States Cold Storage Inc
Copy to Stefanie A. on 4-3-2012
Image ID 000278739D59

04/02/2012 Subsequent Appeal During Appeal
This action initiated by party United States Cold Storage Inc
Image ID 000278767D59

04/02/2012 Filing Not Otherwise Specified
This action initiated by party S I D 59
Cash Deposit in Lieu of Bond
Image ID 000278745D59

04/02/2012 Praecipe-BOE
This action initiated by party S I D 59
Copy to Stefanie A. this date
Image ID 000289269D59

04/02/2012 Praecipe-Appeal Transcript
This action initiated by party S I D 59
Image ID 000289272D59

04/02/2012 Notice-Appeal to Crt of Appeals
This action initiated by party S I D 59
Image ID 000289275D59

03/08/2012 Notice Issued on Bryan S Hatch
The document number is 00108759
Notice of Dismissal-Civil
Image ID D00108759D59

03/08/2012 Notice Issued on Gerald I Friedrichsen
The document number is 00108758
Notice of Dismissal-Civil
E-MAILED gfriedrichsen@fitzlaw.com

Image ID D00108758D59
03/06/2012 Order
This action initiated by Judge Max J Kelch
Order re: PLF's 1st, 2nd & 3rd causes of action are dismissed/Costs taxed
to PLF
Image ID 000284062D59

03/06/2012 Order

This action initiated by Judge Max J Kelch
Order Re: 1st & 2nd causes of action of Cross-Claim of SID 59 are
dismissed

Image ID 000284059D59

02/08/2012 Stipulation

This action initiated by party S I D 59

Image ID 000280429D59

02/03/2012 Return-Subpoena-Civil

The document number is 00107721
Served 01/26/2012, Lancaster County Sheriff
Personal Service on Karen Barrett
Image ID 000280212D59

01/31/2012 Trial

Evidence adduced on Complaint & Cross-claim of DEF/Matter taken under
advertisement

Image ID 000277008D59

01/25/2012 Answer to Cross-Claim

This action initiated by party City of La Vista
Answer to the Cross Claims of S I D No. 59

Image ID N12025HG0D59

01/25/2012 Order

This action initiated by Judge Max J Kelch
Motion for Summary Judgment filed by Cross-claim PIF-SID #29 is denied
Image ID 000277544D59

01/24/2012 Hearing

Findings made on Motion for Summary Judgment/Matter taken under
advertisement

Image ID 000277689D59

01/24/2012 Return-Subpoena-Civil

The document number is 00107739
Served 01/23/2012
Personal Service on Danny Pittman

Served by #927.

Image ID N12024GK1D59

01/19/2012 Subpoena Issued on Danny Pittman

The document number is 00107739
Image ID D00107739D59

01/19/2012 Return-Subpoena-Civil

The document number is 00107691
Served 01/18/2012
Personal Service on Christopher Solberg, City Planner
Served by #465.

Image ID N12019DCKD59

01/19/2012 Return-Subpoena-Civil
The document number is 00107690

Served 01/17/2012
Personal Service on Brenda Gunn, City Administrator
Served by #465.
Image ID NI2019CT4D59

01/19/2012 Return-Subpoena-Civil
The document number is 00107689
Served 01/18/2012
Personal Service on Ann Birch, Community Development
Served by #465.
Image ID NI2019CCJD59

01/19/2012 Return-Subpoena-Civil
The document number is 00107688
Served 01/17/2012
Personal Service on Sheila Lindberg, Finance Director

Served by #465.
Image ID NI2019CT2D59

01/19/2012 Return-Subpoena-Civil
The document number is 00107687
Served 01/17/2012
Personal Service on Pamela A. Buethe, City Clerk
Served by #465.
Image ID NI2019CT3D59

01/19/2012 Return-Subpoena-Civil
The document number is 00107672
Served 01/18/2012
Personal Service on Ann Birch - Community Development
Served by #465.
Image ID NI2019DCCGD59

01/19/2012 Return-Subpoena-Civil
The document number is 00107671
Served 01/17/2012
Personal Service on Brenda Gunn - City Administrator
Served by #465.
Image ID NI2019CSYD59

01/19/2012 Return-Subpoena-Civil
The document number is 00107670
Served 01/17/2012
Personal Service on Pamela A. Buethe - City Clerk
Served by #465.
Image ID NI2019CSZD59

01/19/2012 Return-Subpoena-Civil
The document number is 00107669
Served 01/18/2012
Personal Service on Christopher Solberg - City Planner
Served by #465.
Image ID NI2019DCHD59

01/19/2012 Return-Subpoena-Civil
The document number is 00107668
Served 01/17/2012
Personal Service on Sheila Lindberg - Finance Director
Served by #465.
Image ID NI2019CT0D59

01/18/2012 Praecipe-Subpoena
This action initiated by party S I D 59
Issue Subpoena to Danny Pittman %Sarpy County Assessor by Sarpy County
Sheriff
Image ID 000277092D59

01/18/2012 Subpoena Issued on Karen Barrett
The document number is 00107721
Image ID D00107721D59

01/18/2012 Praecipe-Subpoena
This action initiated by party S I D 59
Issue subpoena upon Karen Barrett Nebraska State Office Building 301
Centennial Mall South, 2nd Floor Lincoln by Lancaster Cty Sheriff
Image ID 000277098D59

01/17/2012 Subpoena Issued on City Planner Christopher Solberg
The document number is 00107691
Image ID D00107691D59

01/17/2012 Praecipe-Subpoena
This action initiated by party United States Cold Storage Inc
Issue Subpoena to Christopher Solber, City Planner Lavista by Sarpy Co
Sheriff
Image ID 000276389D59

01/17/2012 Subpoena Issued on City Administrator Brenda Gunn
The document number is 00107690
Image ID D00107690D59

01/17/2012 Praecipe-Subpoena
This action initiated by party United States Cold Storage Inc
Issue Subpoena to Brenda Gunn, City Administrator Lavista by Sarpy County
Sheriff
Image ID 000276386D59

01/17/2012 Subpoena Issued on Community Development Ann Birch
The document number is 00107689
Image ID D00107689D59

01/17/2012 Praecipe-Subpoena
This action initiated by party United States Cold Storage Inc
Issue Subpoena to Ann Birch, Community Development Director Lavista City
Hall by Sarpy County Sheriff
Image ID 000276383D59

01/17/2012 Subpoena Issued on Finance Director Sheila Lindberg
The document number is 00107688
Image ID D00107688D59

01/17/2012 Praecipe-Subpoena

This action initiated by party United States Cold Storage Inc
Issue Subpoena to Sheila Lindberg, Finance Director by Sarpy Co Sheriff
Image ID 000276374D59

01/17/2012 Subpoena Issued on City Clerk Pamela A. Buethle
The document number is 00107687
Image ID D00107687D59

01/17/2012 Praecipe-Subpoena

This action initiated by party United States Cold Storage Inc
Issue Subpoena to Pamela Buethle Cit Clerk Lavista City Hall by Sarpy
County Sheriff
Image ID 000276371D59

01/13/2012 Subpoena Issued on Ann Birch - Community Development
The document number is 00107672

Image ID D00107672D59

01/13/2012 Subpoena Issued on Brenda Gunn - City Administrator
The document number is 00107671
Image ID D00107671D59

01/13/2012 Subpoena Issued on Pamela A. Buethle - City Clerk
The document number is 00107670
Image ID D00107670D59

01/13/2012 Subpoena Issued on Christopher Solberg - City Planner
The document number is 00107669
Image ID D00107669D59

01/13/2012 Subpoena Issued on Sheila Lindberg - Finance Director
The document number is 00107668

Image ID D00107668D59

01/13/2012 Praecipe-Subpoena
This action initiated by party S I D 59
Issue Subpoena: Sheila Lindberg Finance Director Lavista City Hall to
appear on 1/31/12 8:30 #8
Image ID 000276328D59

01/13/2012 Praecipe-Subpoena
This action initiated by party S I D 59
Issue Subpoena: Christopher Solberg City Planner 8116 Parkview Blvd to
appear on 1/31/12 8:30 #8
Image ID 000276316D59

01/13/2012 Praecipe-Subpoena
This action initiated by party S I D 59

Issue Subpoena: Pamela Buethle City Clerk 8116 Parkview Blvd to appear on
1/31/12 8:30 #8
Image ID 000276319D59

01/13/2012 Praecipe-Subpoena
This action initiated by party S I D 59
Issue Subpoena: Brenda Gunn 8116 Parkview Blvd Lavista City Hall to
appear on 1/31/12 @ 8:30 #8
Image ID 000276322D59

01/13/2012 Praecipe-Subpoena
This action initiated by party S I D 59
Issue Subpoena: Ann Birch Community Development Director Lavista City
Hall 8116 Parkview Blvd to appear on 1/31/12 #8 8:30
Image ID 000276325D59

01/13/2012 Order
This action initiated by Judge Max J Kelch
Order on ~~Plf's~~ Motion for Summary Judgment/Plf Motion-Summary Judgment is
denied
Image ID 000276089D59

01/13/2012 Order
This action initiated by Judge Max J Kelch
Order on Motion-Summary Judgment/DEF City of Lavista Motion-Summary
Judgment is denied
Image ID 000276092D59

01/10/2012 Hearing
Further hearing on Pltf's Motion for Partial Summary Judgment Attorneys
appeared and Court took the matter under advisement
Image ID 000274930D59

01/09/2012 Notice-Take Deposition
This action initiated by party United States Cold Storage Inc
Amended Notice of Deposition Duces Tecum of Sheila Lindberg on 01/11/2012
@ 10am at the offices of Fitzgerald Schorr Barmettler & Brennan
Image ID 000275281D59

01/06/2012 Amended Notice of Hearing
This action initiated by party United States Cold Storage Inc
Motion for Partial Summary Judgment Hearing 01/09/2012 @ 2:30pm #8
Image ID 000274755D59

01/06/2012 Order-Hearing
This action initiated by Judge Max J Kelch
Motion-Summary Judgment is set for hrg: 1/24/12 9am as backup case
Image ID 000273427D59

01/06/2012 Trial/Hearing Scheduled
Motion-Summary Judgment filed/Evidentiary hrg set: 1/24/12 9am as backup
case that date/Order signed

01/05/2012 Motion-Summary Judgment

This action initiated by party S I D 59
SID 59's Motion for Summary Judgment on Cross Claims ***Atty going to be
filing Amnd Notice of Hearing***
Image ID N1200510ID59

01/05/2012 Miscellaneous Document
This action initiated by party S I D 59
SID 59's Index of Evidence in Support of Its Motion for Summary Judgment
Image ID N120051P1D59

01/04/2012 Hearing
Motion for partial summary judgment was not given proper notice, Hrg
cancelled/ Pretrial motions due 1-5-12 by noon & trial 1-31-12
Image ID 000273455D59

01/03/2012 Motion-Summary Judgment
This action initiated by party United States Cold Storage Inc
Hearing 1/4/2012 @ 8:30am #8
Image ID 000274538D59

12/30/2011 Notice-Take Deposition
This action initiated by party United States Cold Storage Inc
Notice to Take Deposition Duccs tecum of Sheila Lindberg
Image ID 000274471D59

12/30/2011 Order
This action initiated by Judge Max J Kelch
Order to Temporary Injunction
Image ID 000273323D59

12/30/2011 Hearing
Evidence adduced on Motion for Partial Summary Judgment/Matter taken
under advisement/Order for Temp Injunction-signed

12/29/2011 Miscellaneous Document
This action initiated by party S I D 59
SID 59's Index of Evidence in Opposition to La Vista's Motion for Summary
Judgment
Image ID N11363XWSD59

12/27/2011 Order-Discovery
This action initiated by Judge Max J Kelch
SID 59's Motion-Compel discovery denied at to SID 59 request for admissio
n #4,5,6,7,8,9 & 11, etc... ***See Order***
Image ID 000273572D59

12/22/2011 Order-Hearing
This action initiated by Judge Max J Kelch
Motion for Summary Judgment hrg set: 12-30-11 8:30am
Image ID 000273297D59

12/19/2011 Hearing
Motion-Temp Injunction should be granted & Temp injunction should be issu
ed as to ordinance 1142/ Mr Jochim to submit/ Motion under advisement
Image ID 000273031D59

12/19/2011 Motion-Summary Judgment
This action initiated by party City of La Vista

Hearing 12/30/2011 # 8:30am #8
Image ID N11353RCRD59

12/19/2011 Notice-Take Deposition
This action initiated by party United States Cold Storage Inc
Second Amended Notice to Take Deposition Duces Tecum of Ann Birch
Image ID 000272540D59

12/19/2011 Notice-Take Deposition
This action initiated by party United States Cold Storage Inc
Second Amended Notice to Take Deposition Duces Tecum of Brenda Gunn
Image ID 000272537D59

12/13/2011 Motion-Compel
This action initiated by party United States Cold Storage Inc
Hearing 12/19/2011 @ 3pm #8
Image ID 000272084D59

12/12/2011 Application
This action initiated by party S I D 59
Renewed Application for Temporary Injunction or in the Alternative to
Stay La Vista's Implementation of Ordinance No. 1142 Hrng 12/19/11 3pm
Image ID N11346MAAD59

12/12/2011 Motion-Compel
This action initiated by party S I D 59
Hearing 12/19/2011 @ 3pm #8
Image ID N11346M1LD59

11/22/2011 Notice-Take Deposition
This action initiated by party United States Cold Storage Inc
Amended Notice to Take Deposition Duces Tecum of Brenda Gunn

Image ID 000269241D59

11/22/2011 Notice-Take Deposition
This action initiated by party United States Cold Storage Inc
Amended Notice to Take Deposition Duces Tecum of Ann
Image ID 000269244D59

11/22/2011 Notice Filed
This action initiated by party United States Cold Storage Inc
Donald P. Dworak withdraws at Atty of record for Plaintiff
Image ID 000269247D59

11/22/2011 Entry of Appearance
This action initiated by party United States Cold Storage Inc
Bryan S. Hatch enters his appearance obo Plaintiff
Image ID 000269250D59

11/21/2011 Notice Filed
This action initiated by party United States Cold Storage Inc
Daniel J Hill withdraws as Counsel for the Plaintiff
Image ID 000268990D59

11/07/2011 Notice-Take Deposition
This action initiated by party United States Cold Storage Inc
Notice to Take Deposition Duces Tecum of Brenda Gunn
Image ID 000266778D59

11/07/2011 Notice-Take Deposition
This action initiated by party United States Cold Storage Inc
Notice to Take Deposition Duces Tecum of Ann Birch
Image ID 000266784D59

10/24/2011 Notice-Serving Documents
This action initiated by party S I D 59
Notice of Serving Discovery to City of La Vista
Image ID N11297PRKD59

09/12/2011 Amended Order
This action initiated by Judge Max J Kelch
DEF Motion-Continue granted/DEF Motion-Partial Summary Judgment is reset
for Evidentiary hearing: 12/30/11 8:30am
Image ID 000257958D59

09/09/2011 Hearing
PLF Motn-Stay denied/DEF Motion-Continue granted/DEF Motion-Partial
Summary Judgment is reset for hearing: 12/30/11 8:30am/Order signed

09/01/2011 Motion-Continuance

This action initiated by party S I D 59
Hearing 09/09/2011 @ 10:30am #8
Image ID N11244STPD59

09/01/2011 Motion Filed
This action initiated by party United States Cold Storage Inc
Motion to Stay or Deny Defendants' Motion for Partial Summary Judgment
Hearing 09/09/2011 @ 10:30am #8
Image ID 000256368D59

08/25/2011 Order-Hearing
This action initiated by Judge Max J Kelch
Evidentiary hearing on Motion-Partial Summary Judgment scheduled for
9/06/11-CANCELLED/Matter reset for hearing: 9/09/11 10:30am as backup
Image ID 000254584D59

08/25/2011 Motion-Continuance
This action initiated by party City of La Vista
Motion to continue hearing on Motion-Partial Summary Judgment scheduled
for 9/06/11
Image ID 000254581D59

08/25/2011 Trial/Hearing Scheduled
DEF Motn-Continue granted/Motn-Partial Summary Judgment scheduled for

9/09/11 is canceled/Matter reset for hearing: 9/09/11 10:30am

08/24/2011 Order

This action initiated by Judge Max J Kelch
Order for Evidentiary hearing on Motion-Partial Summary Judgment
Matter set for evidentiary hearing: 9/06/11 1pm as backup case
Image ID 000254534D59

08/24/2011 Motion-Summary Judgment

This action initiated by party City of Ia Vista
Motion for Partial Summary Judgment
Image ID 000255883D59

06/28/2011 Order-Trial

This action initiated by Judge Max J Kelch
Case set for bench trial: 1/31/12 @ 8:30am
Image ID 000246670D59

06/28/2011 Order

This action initiated by Judge Max J Kelch
Order on Motion to Reconsider/Motion to Reconsider is denied
Image ID 000246673D59

06/28/2011 Order

This action initiated by Judge Max J Kelch
Order on Motion to Dismiss Cross-claim/Motion to Dismiss is denied
Image ID 000246067D59

06/27/2011 Hearing

Hearing held on pending motions/Motions taken under advisement
Image ID 000246674D59

06/15/2011 Motion-Reconsider

This action initiated by party S I D 59
Hearing set 6/27/11 at 3pm #8
Image ID N11166HJTD59

06/08/2011 Order

This action initiated by Judge Max J Kelch
Motion for Temp Restraining Order & Temporary Injunction is denied
Image ID 000243000D59

05/31/2011 Motion-Dismiss

This action initiated by party City of Ia Vista
Defendants' Motion to Dismiss Cross-Claims HEARING set: June 27, 2011
3:00 #8
Image ID N111517S2D59

05/23/2011 Hearing

Evidence adduced/Matter submitted/Matter taken under advisement
Image ID 000241080D59

05/13/2011 Order

This action initiated by Judge Max J Kelch

Motion to Modify filed 1/19/10 & Motion for Temp Restraining Order are denied

Image ID 000238661D59

Denied

05/11/2011 Order

This action initiated by Judge Max J Kelch
DEF Application for Temp Restraining Order & Temp Injunction is set for hearing: 5/23/11 3pm

Image ID 000238580D59

05/11/2011 Trial/Hearing Scheduled

App-Temp Injunction & Temp Restraining Order is set for hrg: 5/23/11 3pm

05/03/2011 Application

This action initiated by party S I D 59
Application for Temporary Restraining Order and Temporary Injunction

Image ID 000237526D59

05/02/2011 Cross Petition/Counter Claim

This action initiated by party S I D 59
IMAGE IS ON AMENDED ANSWER

05/02/2011 Amended Answer
This action initiated by party S I D 59
Image ID 000237523D59
+ Counter claim - for injunctive pending determination by the court as to validity of answer

05/02/2011 Hearing

DEF SID 59 Mot-file Amended Answer/Cross-claim-granted/Evidence adduced on PUF Mot-Modify Temp Restraining Order/Matter taken under advisement
Image ID 000237077D59

04/27/2011 Motion-Leave To File Add'l Pleading

This action initiated by party S I D 59
Motion for Leave to File Amended Answer and Cross-Claims

Hearing 05/02/2011 3pm #8

Image ID N1111700RD59

04/26/2011 Motion-Modify

This action initiated by party United States Cold Storage Inc
Motion to Modify January 19, 2010 Order and for Temporary Restraining Order and Injunction Hearing 05/02/2011 @ 3pm #8
Image ID 000236517D59

04/21/2011 Order

This action initiated by Judge Max J Kelch
Order on Joint Motion for Restraining Order/DEF STD 59 request for Temp Restraining Order is denied/Joint Motion for Restraining Order-DENIED
Image ID 000234205D59

04/14/2011 Hearing

Evidence adduced on joint Motion to enter Temporary Restraining Order
Matter taken under advisement
Image ID 000232260D59

C

04/11/2011 Motion-Modify

This action initiated by party S I D 59
Joint Motion to Modify January 19, 2010 Order and For Temporary
Restraining Order and Injunction Hearing 04/14/2011 2pm #8
Image ID N1110100BD59



11/22/2010 Notice Filed

This action initiated by party City of Ia Vista
Notice of 30(b)(6) Deposition to City of Ia Vista
Image ID 000211589D59

05/18/2010 Notice-Serving Documents

This action initiated by party S I D 59
SID 59 served Answers to Interrogatories to parties on 05/17/10 by US Mail
Image ID 000183422D59

02/26/2010 Entry of Appearance

This action initiated by party United States Cold Storage Inc
Donald P. Dworak enters his appearance as counsel for the Plaintiff
Image ID 000170458D59

02/16/2010 Answer

This action initiated by party S I D 59
Image ID 000168616D59

02/11/2010 Answer

This action initiated by party City of Ia Vista
Defendants' Answer to Plaintiff's Complaint

Image ID 000168101D59

01/19/2010 Order

This action initiated by Judge Max J Kelch
Order on Motion for Temp. Restraining Order/PLF's Motion for Temporary
Restraining Order is denied
Image ID 000163210D59

01/19/2010 Order

This action initiated by Judge Max J Kelch
Order on Motion to Dismiss/DEF's Motion to Dismiss is denied
Image ID 000163213D59

12/28/2009 Hearing

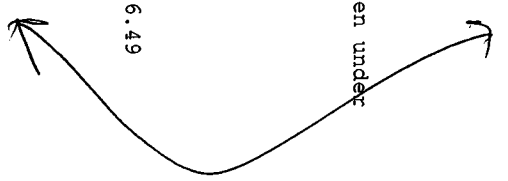
Evidence adduced on PLF Request-Temporary Injunction/Matter taken under
advisement/parties to submit further authorities by 1/08/10

12/24/2009 Return Summons/Alias Summons

The document number is 00088396
Served 12/17/2009, Certified Mail on Brenda Carlisle
Serve Bernda Carlisle 12-17-09 by Cert Mail signed: Tom K. Fee: 6.49
Image ID 000161835D59

12/23/2009 Motion-Dismiss

This action initiated by party City of Ia Vista



Hearing set: 12/28/09 3pm
Image ID 000161574D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088403
Served 12/18/2009, Certified Mail on Anthony Gowan
Served Anthony Gowan La Vista City Councilmember La Visat City Hall

8116 Park View Blvd La Vista Ne by Cert Mail signed by C Lupomeon(sp?)
on 12/18/2009 Fees: \$6.49
Image ID 000161286D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088402
Served 12/18/2009, Certified Mail on Kelly Sell
Served Kelly Sell La Vista City Councilmember La Vista City Hall
8116 Park View Blvd La Vista NE 68128 by Cert Mail signed by Sharon
Dennis on 12/18/2009 Fees: \$6.49
Image ID 000161260D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088401
Served 12/18/2009, Certified Mail on Terrilyn Quick
Served Terrilyn Quick La Vista City Councilmember La Vista City Hall

8116 Park View Blvd La Vista Ne 68128 by Cert Mail signed by Sharon
Davis on 12/18/2009 Fees: \$6.49
Image ID 000161263D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088400
Served 12/18/2009, Certified Mail on Mike Crawford
Served Mike Crawford La Vista City Council Member La Vista City Hall
8116 Park View Blvd La Vista Ne by Cert Mail signed by Sharon Davis on

12/15/2009 Fees:\$6.49
Image ID 000161266D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088399
Served 12/18/2009
Personal Service on Mark Ellerbeck

Served Mary Ellerbeck 12-18-09 by Cert mail signed: Lupomeon
Image ID 000161268D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088398
Served 12/18/2009, Certified Mail on Alan Roman
Served Alan Roman 12-18-09 by Cert Mail signed: Lupomeon
Image ID 000161271D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088397
Served 12/18/2009, Certified Mail on Ron Sheehan
Served Ron Sheehan 12-18-09 by cert Mail Signed: Lupomeon
Image ID 000161274D59

12/22/2009 Return Summons/Alias Summons

The document number is 00088394
Served 12/18/2009, Certified Mail on Doug Kindig
Served Doug Kindig 12-18-09 by Cert Mail signed: Shriv Dennis
Image ID 000161277D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088393
Served 12/18/2009, Certified Mail on S I D 59
Served Sanitary and Improvement District no. 59 Attn: Michael J Price
c/o Millard Manufacturing Company 10602 Olive Street La Vista Ne by
Cert Mail signed by Mark Bodzek on 12/18/09 Fees: \$6.49
Image ID 000161280D59

12/22/2009 Return Summons/Alias Summons
The document number is 00088392
Served 12/18/2009, Certified Mail on City of La Vista

Served City of La Vista c/o Pamela A Buethe, City Clerk 8116 Park View
Blvd La Vista NE by Cert Mail signed by Sharon Dennis on 12/18//2009
Fees: \$6.49
Image ID 000161283D59

12/18/2009 Notice-Hearing
This action initiated by party United States Cold Storage Inc
Hearing 12/28/2009 3pm #2
Image ID 000160908D59

12/17/2009 Motion-Temp Order
This action initiated by party United States Cold Storage Inc
Motion for Temporary Injunction ***Image on Motion Filed***

12/17/2009 Affidavit
This action initiated by party United States Cold Storage Inc
Affidavit of Jeffrey D Toberer
Image ID 000159508D59

12/17/2009 Affidavit
This action initiated by party United States Cold Storage Inc
Affidavit of Daniel Goodhard
Image ID 000159505D59

12/17/2009 Motion-Temp Order
This action initiated by party United States Cold Storage Inc
Motion for Temporary Restraining Order Hearing 12/28/2009 3pm #2
Image ID 000159869D59

12/17/2009 Motion Filed
This action initiated by party United States Cold Storage Inc
Motion for Hearing Date and Temporary Injunction Hearing 12/28/09 3pm #2
Image ID 000160479D59

12/17/2009 Summons Issued on Anthony Gowan
The document number is 00088403

12/17/2009 Summons Issued on Kelly Sell

The document number is 000883402

12/17/2009 Summons Issued on Terrilyn Quick
The document number is 000883401

12/17/2009 Summons Issued on Mike Crawford
The document number is 000883400

12/17/2009 Summons Issued on Mark Ellerbeck
The document number is 000883399

12/17/2009 Summons Issued on Alan Ronan
The document number is 000883398

12/17/2009 Summons Issued on Ron Sheehan
The document number is 000883397

12/17/2009 Summons Issued on Brenda Carlisle
The document number is 000883396

12/17/2009 Summons Issued on Doug Kindig
The document number is 000883394

12/17/2009 Summons Issued on S I D 59
The document number is 000883393

12/17/2009 Summons Issued on City of La Vista
The document number is 000883392

12/16/2009 Praecipe-Summons/Alias
This action initiated by party United States Cold Storage Inc
Issue summons upon City of LaVista, SID 59, D Kindig, B Carlisle, A Ronan
R Sheehan, M Ellerbeck, T Quick, A Gowan, M Crawford and K Sell
Image ID 000159502D59

12/16/2009 Complaint-Praecipe
This action initiated by party United States Cold Storage Inc
Image ID 000159493D59

IN THE DISTRICT COURT OF SARPY COUNTY

UNITED STATES COLD STORAGE, INC., a
New Jersey corporation, individually and on
behalf of all others similarly situated,

Plaintiff,

VS.

CITY OF LA VISTA, a Nebraska Municipal
Corporation, SANITARY AND
IMPROVEMENT DISTRICT NO. 59 OF
SARPY COUNTY, NEBRASKA, a Nebraska
corporation, DOUG KINDIG, BRENDA
CARLISLE, RON SHEEHAN, ALAN
RONAN, MARK ELLERBECK, MIKE
CRAWFORD, TERRILYN QUICK, KELLY
SELL, and ANTHONY GOWAN,

Defendants.

Doc. _____

*did not print
the order - have
copy from Deeds office*

CLASS ACTION
COMPLAINT

Mark Jensen
SARPY COUNTY DISTRICT COURT

09 DEC 16 PM 4:06

FILED
SARPY COUNTY
DISTRICT COURT

Plaintiff United States Cold Storage, Inc. ("U.S. Cold Storage"), individually and on behalf of all others similarly situated, submits its Complaint for injunctive relief and declaratory judgment. In support, the U.S. Cold Storage states and alleges as follows:

PARTIES AND JURISDICTION

1. United States Cold Storage is a New Jersey corporation authorized to transact business in the state of Nebraska and is the owner of real property located at 10711 Olive Street, Sarpy County, Nebraska, legally described as Lots 1, 2A, 2B and 8C4, Oakdale Park.
2. Defendant City of La Vista is a Nebraska Municipal Corporation of the first class—as defined in Neb. Rev. Stat. § 16-101—located in Sarpy County, Nebraska.
3. Defendant Sanitary and Improvement District No. 59 of Sarpy County, Nebraska

("SID #59") is a duly constituted Sanitary and Improvement District under Neb. Rev. Stat.

K



000159493D59

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§§ 31-727, et seq., is adverse to La Vista, and is made a defendant pursuant to Neb. Rev. Stat. § 25-318 because its consent to joinder as a plaintiff could not be obtained.

4. Defendant Doug Kindig is the Mayor of the City of La Vista.
5. Defendants Brenda Carlisle, Ron Sheehan, Alan Ronan, Mark Ellerbeck, Mike Crawford, Terrilyn Quick, Kelly Sell, And Anthony Gowan, are members of the La Vista City Council.
6. This Court has jurisdiction over this action pursuant to Neb. Rev. Stat. § 25-21,149.

GENERAL ALLEGATIONS

7. U.S. Cold Storage incorporates the previous allegations of this Complaint as though fully set forth herein.
8. On May 12, 1969, the Sarpy County Board designated a tract of land—the legal description of which is attached as Exhibit "A" and incorporated by reference—as an Industrial Area under the Industrial Areas Act, now codified as Neb. Rev. Stat. §§ 13-1111 to 1121. A copy of the Sarpy County Board Resolution is attached as Exhibit "B" and incorporated by reference.
9. On May 12, 1969, such Industrial Area was not within the zoning jurisdiction of the City of La Vista.
10. Such Industrial Area was subsequently incorporated into SID #59.
11. On or about December 1, 2009, the La Vista City Council adopted La Vista Ordinance No. 1107, which purported to annex SID #59 to the City of La Vista. A copy of La Vista Ordinance No. 1107 is attached as Exhibit "C" and incorporated by reference.

CLASS ALLEGATIONS

12. U.S. Cold Storage incorporates the previous allegations of this Complaint as though fully set forth herein.
13. U.S. Cold Storage brings this action individually and on behalf of all owners of property located in SID #59.
14. The class is composed of approximately 94 individuals and organizations.
15. The number of class members is so large that the joinder of all members is impracticable.
16. U.S. Cold Storage's claims are typical of the claims of the members of the class, and U.S. Cold Storage is an adequate representative of the members of the class.
17. U.S. Cold Storage is represented by adequate counsel, experienced in complex litigation, and intent to prosecute this action vigorously.
18. U.S. Cold Storage's interests are not antagonistic to, or in conflict with, the interests of the class.

CLAIM I – DECLARATORY JUDGMENT
(Failure to Provide Statutory Notice)

19. U.S. Cold Storage incorporates the previous allegations of this Complaint as though fully set forth herein.
20. Pursuant to Neb. Rev. Stat. § 19-5001(2), the City of La Vista was required to provide notice to all property owners and the clerk of SID #59 at least ten (10) business days before a Planning Commission public hearing regarding annexation of SID #59 could be held.
21. The La Vista Planning Commission held a public hearing regarding annexation of SID #59 on October 22, 2009.

22. Because of Columbus Day and intervening weekends, the City of La Vista was required to postmark its notice to the landowners and the clerk of of SID #59 on or before October 6, 2009.

23. However, the City of La Vista purportedly drafted a letter to the property owners of SID #59 on October 8, 2009, two days after the notice was statutorily required to be postmarked, informing them of the October 22, 2009 Planning Commission public hearing regarding annexation of SID #59.

24. Such purported notice did not comply with Neb. Rev. Stat. § 19-5001(2) because it was not postmarked at least ten (10) working days prior to the hearing.

25. Additionally, La Vista failed to provide any notice to the clerk of SID #59 via certified mail, as required pursuant to Neb. Rev. Stat. § 19-5001(2), and therefore any action taken at the October 22, 2009 Planning Commission hearing was in violation of Nebraska law and void.

26. The La Vista Planning Commission held a public hearing regarding annexation of SID #59 on October 22, 2009 in violation of Nebraska law because it failed to provide the statutory notice as required by Neb. Rev. Stat. § 19-5001(2) and any action taken by the La Vista Planning Commission is therefore void.

27. The La Vista City Council held a public hearing regarding annexation of SID #59 on November 17, 2009.

28. Because of Veterans Day and intervening weekends, the City of La Vista was required to postmark its notice to the landowners of SID #59 on or before November 2, 2009.

29. However, the City of La Vista purportedly drafted a letter to the property owners of SID #59 on November 3, 2009, one day after the notice was statutorily required to be

postmarked, informing them of the November 17, 2009 City Council public hearing regarding annexation of SID #59.

30. Such purported notice did not comply with Neb. Rev. Stat. § 19-5001(3) because it was not postmarked at least ten (10) working days prior to the hearing.

31. The La Vista City Council held a public hearing regarding annexation of SID #59 on November 17, 2009 in violation of Nebraska law because it failed to provide the statutory notice as required by Neb. Rev. Stat. § 19-5001(3) and any action taken by the La Vista City Council is therefore void.

32. As a result of the foregoing, the La Vista City Council was without authority to pass La Vista Ordinance No. 1107 and such ordinance is void.

CLAIM II – DECLARATORY JUDGMENT
(Illegal Annexation)

33. U.S. Cold Storage incorporates the previous allegations of this Complaint as though fully set forth herein.

34. Neb. Rev. Stat. § 13-1115 prohibits the City of La Vista from annexing SID #59 because it has a taxable value of more than two hundred eighty-six thousand dollars.

35. Furthermore, La Vista's annexation of SID #59 is prohibited under Nebraska law because it was conducted was for revenue purposes only.

36. As a result of the foregoing, La Vista Ordinance No. 1107 is invalid and violates Nebraska law because SID #59 cannot be subject to annexation.

CLAIM III – DECLARATORY JUDGMENT
(Improper Removal of Industrial-Area Designation)

37. U.S. Cold Storage incorporates the previous allegations of this Complaint as though fully set forth herein.

38. As of the date of this Complaint, the property in SID #59 continues to be used in compliance with the definition of "industry" set forth in Neb. Rev. Stat. § 13-1111.

39. La Vista has not obtained the consent of the owners of the real property located in SID #59.

40. Pursuant to Neb. Rev. Stat. § 13-1111, SID #59's designation as an Industrial Area cannot be removed against the wishes of its owners.

41. As a result of the foregoing, La Vista Ordinance No. 1107 is invalid because it violates Nebraska law.

DAMAGES

42. U.S. Cold Storage incorporates the previous allegations of this Complaint as though fully set forth herein.

43. La Vista's attempt to proceed with annexation of SID #59 violates the Plaintiffs' right to due process of law because La Vista is without statutory authority to annex SID #59.

44. If the City of La Vista is permitted to proceed with its unlawful annexation of SID #59, the Plaintiff and all class members will be irreparably damaged and without an adequate remedy at law because they will be subject to improper payment of taxes, utility fees, and other amounts although La Vista is without authority to assess such amounts against them.

WHEREFORE, the Plaintiffs request relief from the Court in the form of:

A. Temporary Restraining Order, Temporary Injunction, and Permanent Injunction prohibiting Defendants from taking further steps towards annexation or attempting to enforce the annexation of SID #59;

B. Declaratory Judgment that (1) La Vista Ordinance No. 1107 is void because it violates Plaintiffs' rights under the Industrial Areas Act and (2) Defendants are prohibited from

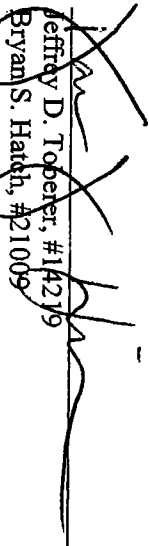
further attempts to annex Sanitary and Improvement District No. 59 or any property located therein.

C. Attorneys fees and costs, as provided under Nebraska law.

DATED this 16th day of December, 2009.

UNITED STATES COLD STORAGE, INC., a
New Jersey corporation, individually and on behalf
of all others similarly situated, Plaintiff

By:


Jeffrey D. Toberer, #14279

Bryan S. Hatch, #21009

Daniel J. Hill, #24012

STINSON MORRISON HECKER, LLP
1299 Farnam Street, Suite 1501

Omaha, NE 68102

Telephone: (402) 342-1700

jtoberer@stinson.com

bhatch@stinson.com

dhill@stinson.com

ATTORNEYS FOR PLAINTIFFS

EXHIBIT A
Legal Description

The West $\frac{1}{2}$ of N.W. $\frac{1}{4}$ of Section 16-14-12, ex Cemetery N.E. $\frac{1}{4}$, together with part of E $\frac{1}{2}$ of NW $\frac{1}{4}$ and part of NE $\frac{1}{4}$ of SW $\frac{1}{4}$, all in Section 17, Twp. 14 N, Range 12 E, Sarpy County, Nebraska, excepting the R-O-W's of the U.P.R.R., C.B.&Q.R.R. and Northerly $\frac{1}{2}$ of Papillion Drainage Ditch.

RESOLUTION

WHEREAS, the CAMPBELL SOUP COMPANY, a Corporation, has heretofore filed its petition with the County Clerk of Sarpy County, Nebraska, requesting that the Board of County Commissioners of Sarpy County, Nebraska, designate the real estate described as:

Section 1/2 of N.W. 1/4 of Section 16-14-12, except 1/4 of N.E. 1/4, together with part of E 1/2 of N.W. 1/4 and part of NE 1/4 of SW 1/4, all in Section 17, Twp 14 N, Range 12 E, Sarpy County, Nebraska, excepting the R-O-W's of the C.P. R.R., C.P. & Q. R.R. and Northern 1/2 of Papillion Drainage Ditch,"

to be an Industrial Area pursuant to the provisions of Section 19, Article 25, Revised Statutes of Nebraska, 1943 (1937 Cum. Supp) and,

WHEREAS, pursuant to said statutes notice by publication was given to all persons interested that a hearing on said petition would be had in the Commissioners' Room in the Sarpy County Court House at Papillion, Nebraska, on the 12th day of May, 1969, at 10:00 o'clock A.M., at which time and place all parties interested would have an opportunity to be heard.

NOW, THEREFORE, after such hearing, the Board of County Commissioners of Sarpy County, Nebraska, finds and determines from the evidence produced as follows:

1. The Board finds that the tract above described is suitable for use as an Industrial Area.
2. The Board finds that designation of such tract as an Industrial Area will be generally beneficial to the community.
3. The Board finds that the owners of all the lands embraced within the tract above described have consented to its designation as an Industrial Area.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SARPY COUNTY, NEBRASKA, that the real estate described as:

The West 1/2 of Section 16-14-12, except 1/4, together with part of E 1/2 of NE 1/4 and part of NE 1/4 of SW 1/4, all in Section 17, Twp. 14 N, Range 12 E, Sarpy County, Nebraska, excepting the R-O-W's of the C.P. R.R., C.P. & Q. R.R. and Northern 1/2 of Papillion Drainage Ditch,

be and the same is hereby designated as an Industrial Area, pursuant to Section 19, Article 25, Revised Statutes of Nebraska, 1943 (1967 Cum. Supp.)

BE IT FURTHER RESOLVED that a copy of this resolution be

tabbles

EXHIBIT

B

Filed by the County Clerk in the Office of the Register of
Deeds of Sedgy County, Nebraska.

Dated this 12th day of May, 1939.

Moved by Norman C. Magnuson, seconded by James W. Gile, that
the above Resolution be adopted. Carried.

Yeas: Norman C. Magnuson James W. Gile B. H. Bell
Lein Rupp W. R. Marks

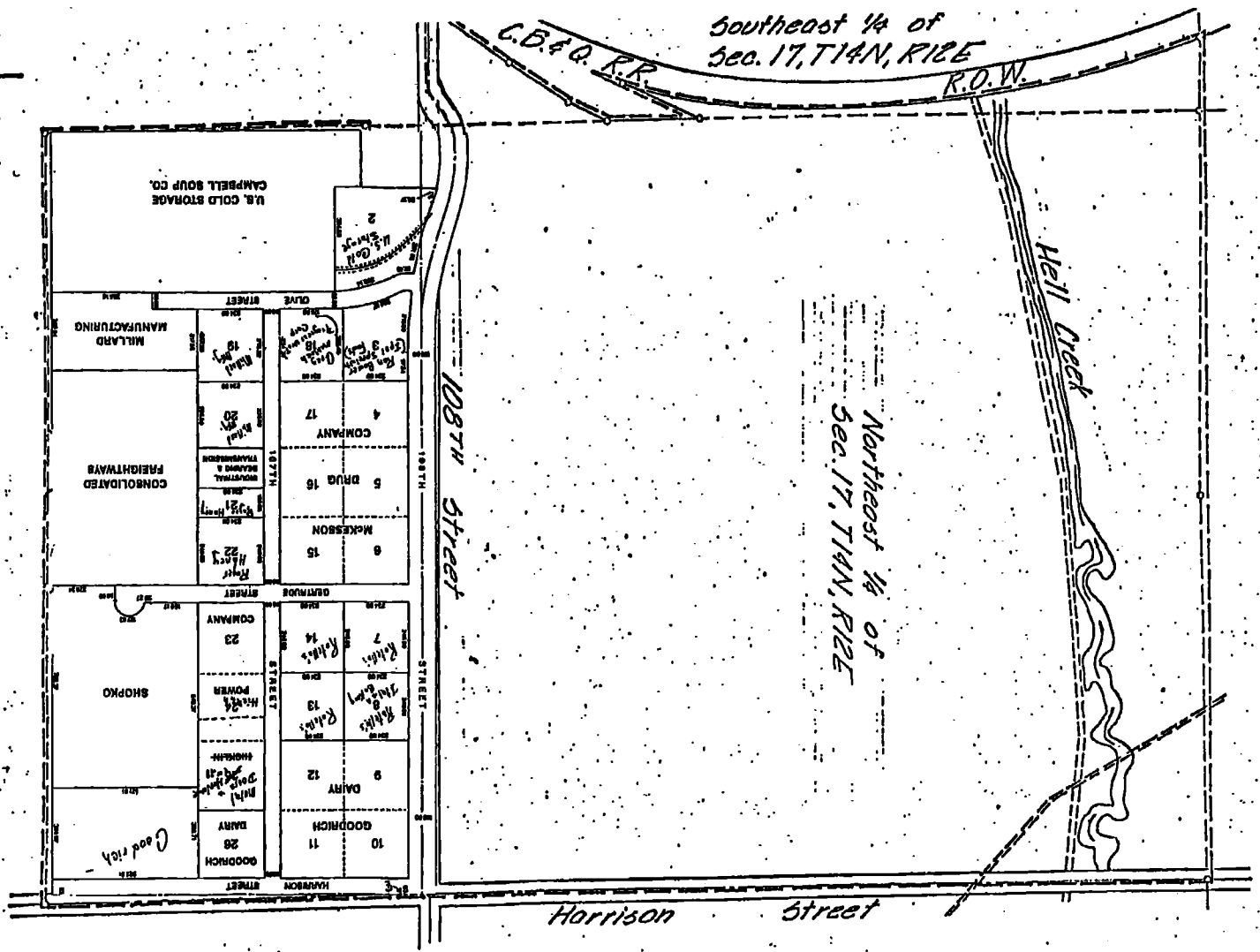
Nays: _____

Attest:

W. R. Marks
Chairman, Board of County
Commissioners

Ernest Rupp
County Clerk

Oakdale - 5117
 District Boundary



Southeast 1/4 of
 Sec. 17, T14N, R12E

R.O.W.

Hell Creek

Northeast 1/4 of
 Sec. 17, T14N, R12E

108TH Street

Harrison Street

U.S. COLD STORAGE CO.

MILLARD MANUFACTURING

CONSOLIDATED FREIGHTWAYS

DRUG COMPANY

MCKESSON

Rains

Rains

Rains

DAIRY

GOODRICH

SHOPKO

Goodrich

EXHIBIT "B"
 GOLLEHON, SCHEMME & ASSOCIATES, INC.
 ARCHITECTS - ENGINEERS - PLANNERS

Title: UNITED STATES COL D STORAGE, INC., A NEW JERSEY CORPORATION, INDIVIDUALLY AND ON V

JUDGES MINUTES

DATE

JAN A.D. 2014

12/19/14

Matter came on for Defendant SID No. 59's Application for
 Temporary Injunction or in the Alternative to Stay LaVista's
 Implementation of Ordinance No. 1142; Defendant SID No. 59's
 Motion to Compel and Plaintiff's Motion to Compel.
 No appearances by either party.
 Bryan Hetch appeared on behalf of Plaintiff.
 Gerald Friedrichsen appeared on behalf of City of LaVista.
 Scott Jochim appeared on behalf of SID No. 59.
 Matter first proceeded to Defendant SID No. 59's Application
 for Temporary Injunction or in the Alternative to Stay LaVista's
 Implementation of Ordinance No. 1142.
 Evidence adduced. Matter submitted. The Court finds
 that the Motion for Temporary Injunction should be granted
 and the Temporary Injunction should be issued as to
 Ordinance 1142. Scott Jochim to submit Order.
 Matter then proceeded on Defendant SID 59's motion to
 comply answers.
 Motion argued and taken under advisement.
 Plaintiff withdrew their motion to compel.

Mr. Judge



000273031D59

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

CASE NO. CI 09-2325

UNITED STATES COLD STORAGE, INC., a
New Jersey corporation, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

CITY OF LA VISTA, a Nebraska Municipal
Corporation, SANITARY AND
IMPROVEMENT DISTRICT NO. 59 OF
SARPY COUNTY, NEBRASKA, a Nebraska
corporation, DOUG KINDIG, BRENDA
CARLISLE, RON SHEEHAN, ALAN
RONAN, MARK ELLERBECK, MIKE
CRAWFORD, TERILYN QUTICK, KELLY
SELL, and ANTHONY GOWAN,

Defendants.

ORDER FOR
TEMPORARY INJUNCTION

FILED
SARPY COUNTY
DISTRICT COURT
11 DEC 30 AM 11:33
[Signature]
CLERK DISTRICT COURT

SANITARY AND IMPROVEMENT
DISTRICT NO. 59 OF SARPY COUNTY,
NEBRASKA, a Nebraska Municipal
Corporation,

Cross-Claim Plaintiff,

Vs.

CITY OF LA VISTA, a Nebraska Municipal
Corporation,

Cross-Claim Defendant.

THIS MATTER came before the Court on December 20, 2011 on December 19, 2011 on
Cross-Claim Plaintiff Sanitary and Improvement District No. 59 of Sarpy County, Nebraska's
("SID 59") Renewed Application for Temporary Injunction Re: La Vista's Implementation of
Ordinance No. 1142. Robert J. Huck and Scott D. Joehim appeared on behalf of SID 59. Gerald
L. Friedrichsen appeared on behalf of Cross-Claim Defendant City of La Vista ("La Vista").
Bryan J. Hatch appeared on behalf of Plaintiff United States Cold Storage.



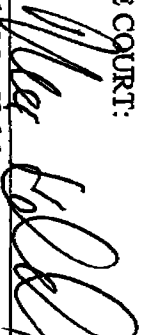
000273323D59

Evidence was adduced, and counsel presented arguments to the Court. Upon consideration of the evidence and arguments of counsel, the Court, being fully advised in the premises, finds that SID 59's Renewed Application for Temporary Injunction should be granted, and La Vista should be restrained and enjoined from taking any action in furtherance of implementing, effectuating or enforcing Ordinance No. 1142 dated April 19, 2011 until further Order from this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that La Vista is restrained and enjoined from taking any action in furtherance of implementing, effectuating or enforcing Ordinance No. 1142 until further Order from this Court. SID 59 shall give a cash bond to the Sarpy County District Court Clerk in the amount of \$1.00 pursuant to Neb. Rev. Stat. §25-1067.

DATED this 30th day of December, 2011.

BY THE COURT:



Honorable Max Kelch
Sarpy County District Court

Prepared and Submitted by:

Gerald L. Friedrichsen (#15898)
Fitzgerald, Schorr, Barmettler & Brennan, PC, LLO
10050 Regency Circle, Suite 200
Omaha, Nebraska 68114-3794
(402) 342-01000 / (402) 342-1025 fax
gfrfriedrichsen@fitzlaw.com

Attorneys for Defendants City of La Vista,
Doug Kindig, Brenda Carlisle, Ron Sheehan,
Alan Ronan, Mark Ellerbeck, Mike Crawford,
Terrilyn Quick, Kelly Sell and Anthony Gowran

Title: UNITED STATES COLD STORAGE, INC. v. SID NO. 59, ET AL

DATE

JUDGE'S MINUTES

JAN A. D. 2011

12/30/11

Matter came on for Motion for Partial Summary Judgment filed by City of LaVista and all other Defendants except for Defendant SID No. 59.

No parties appeared

Gerald Friedrichsen appeared on behalf of all Defendants except for Defendant SID No. 59.

Scott Jochim and Robert Huck appeared on behalf of Defendant SID No. 59.

Bryan Hatch appeared on behalf of Plaintiff.

Evidence adduced. The Court took the matter under advisement.

The Court gave United Cold Storage until 5:00 p.m. on January 10, 2012 to submit any legal authority.

Order for Temporary Junction signed.

, Judge

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

UNITED STATES COLD STORAGE, INC.,)
a New Jersey corporation, individually and on)
behalf of all others similarly situated,)

Case No. CI 09-2325

Plaintiff,

STIPULATION

vs.

CITY OF LA VISTA, a Nebraska Municipal)
Corporation, SANITARY AND)
IMPROVEMENT DISTRICT NO. 59 OF)
SARPY COUNTY, NEBRASKA, a Nebraska)
corporation, DOUG KINDIG, BRENDA)
CARLISLE, RON SHEEHAN, ALAN)
RONAN, MARK ELLERBECK, MIKE)
CRAWFORD, TERRILYN QUICK, KELLY)
SELL, and ANTHONY GOWAN,)

Defendants.)

FILED
SARPY COUNTY
DISTRICT COURT
2012 FEB -8 PM 2:53
Casey Johnson
CLERK DISTRICT COURT

SANITARY AND IMPROVEMENT)
DISTRICT NO. 59 OF SARPY COUNTY,)
NEBRASKA, a Nebraska Municipal)
Corporation,)

Cross-Claim Plaintiff,

vs.

CITY OF LA VISTA, a Nebraska Municipal)
Corporation,)

Cross-Claim Defendant.)

COME NOW Cross-Claim Plaintiff Sanitary and Improvement District No. 59 of Sarpy County, Nebraska ("SID 59") and Cross-Claim Defendants City of La Vista ("La Vista"), by and through their respective counsel of record, and hereby stipulate that the following language shall be included in the Court's final Order in this matter as it pertains to SID 59's Cross-Claims against La Vista herein:

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"IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Stipulation between Cross-Claim Plaintiff Sanitary and Improvement District No. 59 of Sarpy County, Nebraska ("SID 59") and Cross-Claim Defendants City of La Vista ("La Vista") dated January 30, 2012 is granted.

IT IS FURTHER ORDERED that the following exhibits are received into evidence on SID 59's Cross-Claims without objection:

Court Exhibit 1	Affidavit of Jeffrey D. Toberer dated December 29, 2009
Court Exhibit 2	Affidavit of Daniel Goodhard dated December 17, 2009
Court Exhibit 3	Affidavit of J. Michael Price dated December 23, 2009
Court Exhibit 4	Resolution dated May 12, 1969
Court Exhibit 5	Ordinance Record dated December 1, 2009
Court Exhibit 6	Revised Statutes of Nebraska 1943—1969 Cumulative Supplement
Court Exhibit 7	Minutes of Committee on Government dated January 28, 1957
Court Exhibit 8	Committee on Urban Affairs dated January 22, 1991—LB 76
Court Exhibit 9	Sanitary and Improvement District #59—"Oakdale Park, Brook Valley Business Parks and Various Tax Lots"
Court Exhibit 10	City of La Vista Mayor and City Council Report—October 6, 2009 Agenda
Court Exhibit 11	Ordinance No. 13 dated December 7, 1971
Court Exhibit 12	Affidavit of Scott D. Jochim dated April 13, 2011
Court Exhibit 13	Certification of Pamela A. Buethe, City Clerk, dated April 12, 2011—attaching annexation report dated January 13, 2011
Court Exhibit 14	Certification of Pamela A. Buethe, City Clerk, dated April 12, 2011—attaching annexation report dated March 10, 2011
Court Exhibit 15	La Vista City Council Meeting Agenda dated April 5, 2011
Court Exhibit 16	City of La Vista Mayor and City Council Report—April 5, 2011 Agenda
Court Exhibit 17	Brief in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiff's Motion for Temporary Injunction dated January 8, 2010 (limited only to admission re: "statutory stay of the status quo" on page 7)
Court Exhibit 18	Affidavit of Ann Birch dated April 14, 2011

Court Exhibit 19	Answer of Defendant Sanitary and Improvement District No. 59 of Sarpy County, Nebraska dated February 16, 2010
Court Exhibit 20	Ordinance Record for Ordinance No. 1142 dated April 19, 2011
Court Exhibit 21	Class Action Complaint dated December 16, 2009
Court Exhibit 22	Opinion and Order on Motion for Temporary Restraining Order dated January 19, 2010
Court Exhibit 25	Transcript of Proceedings dated June 27, 2011
Court Exhibit 26	Affidavit of Dan Pittman dated December 14, 2011
Court Exhibit 27	Affidavit of Christopher Nelsen dated December 14, 2011
Court Exhibit 28	E-mail from Bob Lausten, Chief of Police for the City of La Vista, to Ann Birch and Brenda Gunn sent on August 24, 2011, at approximately 9:48 a.m., and e-mail from Pam Buehne to Brenda Gunn sent on August 24, 2011, at approximately 9:40 a.m.
Court Exhibit 29	Affidavit of Dale Gilbertsen dated December 9, 2011
Court Exhibit 32	Affidavit of Ann Birch dated December 20, 2011
Court Exhibit 33	Deposition of Dan Goodhard (with exhibits) taken on September 22, 2011
Court Exhibit 34	November 5, 1971 Closing Documents for purchase of real estate from Campbell Soup Company by United States Cold Storage and issuance of revenue bonds by Sarpy County
Court Exhibit 35	Certified records from Sarpy County Assessor's Office
Court Exhibit 36	May 12, 1969 Minutes of Sarpy County Board of Commissioners regarding Industrial Area Designation
Court Exhibit 37	May 5, 1971 Minutes of Sarpy County Board of Commissioners regarding Industrial Park
Court Exhibit 38	May 10, 1971 Sarpy County Board of Commissioners Resolution regarding Industrial Park
Court Exhibit 39	November 8, 1971 Closing Statement from Kennedy Holland to First National Bank of Omaha, Trustee, regarding United States Cold Storage Corporation Purchase of Lot No. 1 – Oakdale Park
Court Exhibit 40	November 8, 1971 Building Permit issued by Sarpy County Building Inspector to U.S. Cold Storage Corp.

- Court Exhibit 41 November 18, 1986 Warranty Deed from Sarpy County to United States Cold Storage
- Court Exhibit 42 December 15, 1986 Real Estate Transfer Statement from Sarpy County to United States Cold Storage
- Court Exhibit 43 August 20, 1990 letter from Robert R. Siffing to Mr. Dave Weizel, City Administrator for Grand Island, Nebraska, regarding annexation of industrial areas; August 20, 1990 letter from Robert R. Siffing to Mr. Gary Yank in Crete, Nebraska regarding annexation of industrial areas; August 20, 1990 letter from Robert R. Siffing to Mr. Milke Nolan, City Administrator for Norfolk, Nebraska, regarding annexation of industrial areas
- Court Exhibit 44 April 10, 1991 letter from Donald B. Eikmeier, City Administrator with City of La Vista, to Bill Wiedemeyer with United AG regarding annexation of SID 59
- Court Exhibit 45 Deposition of Christopher Solberg conducted on October 13, 2011
- Court Exhibit 46 Deposition of J. Michael Price conducted on October 19, 2011
- Court Exhibit 47 Statutory history of Nebraska's industrial area statutes § 19-2501 et seq. currently codified at § 13-1115 et seq.
- Court Exhibit 48 Deposition of Brenda Gunn taken on December 28, 2011 with deposition exhibit 73
- Court Exhibit 49 Deposition of Ann Birch taken on December 28, 2011 with deposition exhibit 84
- Court Exhibit 50 Affidavit of Sheila Lindberg
- Court Exhibit 51 Deposition of Christopher Solberg (with all exhibits) taken on October 13, 2011
- Court Exhibit 52 Deposition of Ann Birch (with all exhibits) taken on December 28, 2011
- Court Exhibit 53 Deposition of Brenda Gunn (with all exhibits) taken on December 28, 2011
- Court Exhibit 54 Deposition of Sheila Lindberg (with all exhibits) taken on January 11, 2012
- Court Exhibit 55 Deposition of Pam Buette (with all exhibits) taken on January 11, 2012

Court Exhibit 56 La Vista's Responses to Requests for Admissions No.'s 1-3, 10, 15, 16, 18, 19, 21, 22-25, 43-46, 48, and 50 dated November 28, 2011

Court Exhibit 57 La Vista's Supplemental Responses to Requests for Admissions No.'s 12 and 49

Court Exhibit 58 La Vista's Answers to SID 59's Interrogatories No.'s 12, 13, 14, 15, and 16 dated November 28, 2011

Court Exhibit 59 Judicial Notice of Court file in La Vista's action to Implement Ordinance No. 1142: Certified copies of La Vista's Application Re: Ordinance No. 1142; SID 59's Motion to Dismiss; and Judge Zastera's Order of Dismissal

Court Exhibit 60 E-mail communications between Pam Buethe and Karen Barrett.

IT IS FURTHER ORDERED that La Vista is restrained and enjoined from taking any action in furtherance of implementing, effectuating or enforcing Ordinance No.'s 1107 or 1142, or taking any additional action to annex any part of SID 59, until 30 days after the final determination of the validity of Ordinance No.'s 1107 and 1142. SID 59's cash bond of \$1,000 will remain with the Sarpy County District Court Clerk pursuant to Neb. Rev. Stat. §25-1067."

This Stipulation does not address SID 59's Second Cause of Action on its Cross-Claims, which prays for a declaratory judgment determining Ordinance No. 1142 null and void as being passed in violation of Neb. Rev. Stat. § 31-765, which issue remains subject to this Court's determination. This Stipulation is not to be construed as an admission by La Vista of the merits of SID 59's Second Cause of Action, and is only an agreement regarding the receipt of evidence into the record on SID 59's Cross-Claims at trial, and confirming that La Vista will not attempt to annex any part of SID 59 or attempt to implement, effectuate, or enforce any annexation ordinance pertaining to SID 59 until thirty days after the validity of Ordinance No.'s 1107 and 1142 is finally determined.

IT IS SO STIPULATED.

SANTARY AND IMPROVEMENT DISTRICT
NO. 59 OF SARPY COUNTY, NEBRASKA, a
Nebraska Municipal Corporation, Cross-Claim
Plaintiff,

By



Robert J. Huck, #11953

Scott D. Jochim, #21956

CROKER, HUCK, KASHER, DeWITT,
ANDERSON & GONDERINGER, L.L.C.

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CITY OF LA VISTA, a Nebraska Municipal
Corporation, Cross-Claim Defendants

By

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gfriedrichsen@fitzlaw.com

Attorney for Cross-Claim Defendants

00467595.DOC

IT IS SO STIPULATED.

SANITARY AND IMPROVEMENT DISTRICT
NO. 59 OF SARPY COUNTY, NEBRASKA, a
Nebraska Municipal Corporation, Cross-Claim
Plaintiff,

By



Robert J. Hisek, #11953

Scott D. Jochim, #21956

CROKER, HUICK, KASHER, DEWITT,
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Attorneys for Cross-Claim Plaintiff

CITY OF LA VISTA, a Nebraska Municipal
Corporation, Cross-Claim Defendants

By



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Attorney for Cross-Claim Defendants

00467595.DOC

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

UNITED STATES COLD STORAGE, INC.,) Doc. CI 09 Page 2325

a New Jersey corporation, individually)
and on behalf of all others)
similarly situated,)
Plaintiff,)

ORDER

v.)

CITY OF LA VISTA, a Nebraska Municipal)
Corporation, SANITARY and)
IMPROVEMENT DISTRICT NO. 59)
OF SARPY COUNTY, NEBRASKA,)
a Nebraska corporation,)
DOUG KINDIG, BRENDA CARLISLE,)
RON SHEEHAN, ALAN ROMAN,)
MARK ELLERBECK,)
MIKE CRAWFORD,)
TERRILYN QUICK, KELLY SELL,)
and ANTHONY GOWAN,)
Defendants.)

FILED
SARPY COUNTY
2012 MAR -6 AM 11:12
DISTRICT COURT

This matter came on for trial on January 31, 2012, upon the Cross-Claim filed by Sanitary and Improvement District No. 59, as Cross-Claim Plaintiff. Cross-Claim Plaintiff, Sanitary and Improvement District No. 59, hereinafter referred to as SID 59, appeared by its attorneys, Robert Huck and Scott Jochim. Defendants City of La Vista, a Nebraska Municipal Corporation, Doug Kindig, Brenda Carlisle, Ron Sheehan, Alan Roman, Mark Ellerbeck, Mike Crawford, Terrilyn Quick, Kelly Sell, and Anthony Gowan, hereinafter referred to as La Vista, appeared by attorney, Gerald Friedrichsen. Evidence was adduced, and the matter was submitted to the Court and taken under advisement.

SID 59 challenges the validity of adopted ordinance number 1142 by La Vista which would annex a portion of SID 59's property into La Vista. In addressing the burden a party has when challenging the validity of an adopted ordinance, the Supreme Court in Smith v. City of Papillion, 270 Neb. 607, 625 (2005), stated:

Courts will generally presume that legislative or rulemaking bodies, in enacting ordinances or rules, acted within their authority and that the burden rests on those who challenge their validity. KN Energy v. Cities of Alliance & Oshkosh, 266 Neb. 882 (2003). The validity of a zoning ordinance must be determined by an examination of the facts presented in the particular case. Buchholz v. City of Omaha, 174 Neb. 862 (1963). This court gives great deference to a city's determination of which laws should be enacted for the welfare of the people.



Later, the Supreme Court in Sarpy v. City of Papillion, 277 Neb. 829, 836 (2009), further stated:

The burden is on one who attacks an annexation ordinance, valid on its face and enacted under lawful authority, to prove facts to establish its invalidity.

As a result, in the case at hand, SID 59 has the burden to prove that Ordinance Number 1142, as adopted by La Vista, is not valid.

First and Second Causes of Action

The First Cause of Action of SID 59's Cross-Complaint requests that a temporary and permanent injunction be issued as to the enforcement of Ordinance Number 1142. The Second Cause of Action of SID 59's Cross-Complaint requests that Ordinance Number 1142 be declared null and void. Both causes of action are based upon the theory that since the proposed annexed property set forth within Ordinance Number 1142 is part of the overall property subject to the pending litigation as to Ordinance Number 1107, then, La Vista was restrained by NEB.REV.STAT. §31-765, from either approving Ordinance Number 1142 or enforcing Ordinance Number 1142. NEB.REV.STAT. §31-765, reads as follows:

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the district; *Provided*, if the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

This Court first notes that the placement of NEB.REV.STAT. §31-765 within the Nebraska Statutes is important because it follows NEB.REV.STAT. §31-763, which is the statute that addresses annexation of "all of the territory within the boundaries of any sanitary and improvement district." The pending lawsuit, that generated the Cross-Claim by SID 59, involves Ordinance Number 1107 which does annex *all* of the territory of SID 59. Therefore, NEB.REV.STAT. §31-765 clearly applies to Ordinance Number 1107. However, Ordinance Number 1142 only annexes a portion of SID 59. As a result, NEB.REV.STAT. §31-766 is the controlling statute, not NEB.REV.STAT. §31-765, because NEB.REV.STAT. §31-766 sets forth the procedure to annex only a portion of a sanitary and improvement district.

Second, NEB.REV.STAT. §31-765 sets forth that, "the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance." NEB.REV.STAT. §31-765 does not vacate or void any ordinance. The purpose of NEB.REV.STAT. §31-765 is to stay any proposed merger until a court can determine the validity of the ordinance; in this case, Ordinance Number 1107.

Lastly, SID 59 has not raised any issues regarding the validity of Ordinance Number 1142 other than its contention that NEB.REV.STAT. §31-765 prohibits La Vista from approving or enforcing Ordinance Number 1142. As discussed above, this Court has already determined that NEB.REV.STAT. §31-765 is not applicable to Ordinance Number 1142. Therefore, SID 59 has not met its burden as to either cause of action as set forth in its Cross-Claim.

ORDER

IT IS THEREFORE ORDERED that Sanitary and Improvement District No. 59 has not met its burden of proof as to the first and second causes of action of its Cross-Claim, and the first and second causes of action of the Cross-Claim are hereby dismissed with prejudice.

IT IS FURTHER ORDERED by stipulation of the parties that La Vista is restrained and enjoined from taking any action in furtherance of implementing, effectuating or enforcing Ordinance Number 1142, or taking any additional action to annex any part of SID 59, until 30 days after the final determination of the validity of Ordinance Number 1142. SID 59's cash bond of \$1.00 will remain with the Sarpy County District Court Clerk pursuant to NEB.REV.STAT. §25-1067.

Dated this 6th day of March, 2012.

BY THE COURT:


District Judge

Title: UNITED STATES COLD STORAGE, INC. v. SID NO. 59, ET AL
DATE JUDGE'S MINUTES

DATE	JUDGE'S MINUTES	
JAN A.D. 2012		
3/6/12	2 Orders signed. Bailiff to mail copy of both Orders to counsel of record.	
	, Judge	

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

UNITED STATES COLD STORAGE, INC.,) Doc. CI 09 Page 2325

a New Jersey corporation, individually)
and on behalf of all others)
similarly situated,)
Plaintiff,)

ORDER

v.)

CITY OF LA VISTA, a Nebraska Municipal)
Corporation, SANITARY and)
IMPROVEMENT DISTRICT NO. 59)
OF SARPY COUNTY, NEBRASKA,)
a Nebraska corporation,)
DOUG KINDIG, BRENDA CARLISLE,)
RON SHEEHAN, ALAN RONAN,)
MARK ELLERBECK,)
MIKE CRAWFORD,)
TERRILYN QUICK, KELLY SELL,)
and ANTHONY GOWAN,)
Defendants.)

FILED
SARPY COUNTY
DISTRICT COURT
MARCH-6 AM 11:12
DISTRICT COURT

This matter came on for trial on January 31, 2012, upon Plaintiff's Complaint. Plaintiff appeared by its attorney, Bryan Hatch. Defendants City of La Vista, a Nebraska Municipal Corporation, Doug Kindig, Brenda Carlisle, Ron Sheehan, Alan Ronan, Mark Ellerbeck, Mike Crawford, Terrilyn Quick, Kelly Sell, and Anthony Gowan, hereinafter referred to as La Vista, appeared by attorney, Gerald Friedrichsen. Defendant Sanitary and Improvement District No. 59, hereinafter referred to as SID 59, appeared by its attorneys, Robert Huck and Scott Jochim. Evidence was adduced, and the matter was submitted to the Court and taken under advisement.

Plaintiff challenges the validity of adopted ordinance number 1107 by La Vista which would annex Plaintiff's property into La Vista. In addressing the burden a party has when challenging the validity of an adopted ordinance, the Supreme Court in Smith v. City of Papillion, 270 Neb. 607, 625 (2005), stated:

Courts will generally presume that legislative or rulemaking bodies, in enacting ordinances or rules, acted within their authority and that the burden rests on those who challenge their validity. KN Energy v. Cities of Alliance & Oshkosh, 266 Neb. 882 (2003). The validity of a zoning ordinance must be determined by an examination of the facts presented in the particular case. Buchholz v. City of Omaha, 174 Neb. 862 (1963). This court gives great deference to a city's determination of which laws should be enacted for the welfare of the people.



Later, the Supreme Court in Sarpy v. City of Papillion, 277 Neb. 829, 836 (2009), further stated:

The burden is on one who attacks an annexation ordinance, valid on its face and enacted under lawful authority, to prove facts to establish its invalidity.

As a result, in the case at hand, Plaintiff has the burden to prove that Ordinance Number 1107, as adopted by La Vista, is not valid.

First Cause of Action
CLAIM I-DECLARATORY JUDGMENT
(Failure to Provide Statutory Notice)

The First Cause of Action of Plaintiff's Complaint, states in part, as follows:

20. Pursuant to Neb. Rev. Stat. § 19-5001(2), the City of La Vista was required to provide notice to all property owners and the clerk of SID #59 at least ten (10) business days before a Planning Commission public hearing regarding annexation of SID #59 could be held.
21. The La Vista Planning Commission held a public hearing regarding annexation of SID #59 on October 22, 2009.
22. Because of Columbus Day and intervening weekends, the City of La Vista was required to postmark its notice to the landowners and the clerk of SID #59 on or before October 6, 2009.
23. However, the City of La Vista purportedly drafted a letter to the property owners of SID #59 on October 8, 2009, two days after the notice was statutorily required to be postmarked, informing them of the October 22, 2009 Planning Commission public hearing regarding annexation of SID #59.
24. Such purported notice did not comply with Neb. Rev. Stat. § 19-5001(2) because it was not postmarked at least ten (10) working days prior to the hearing.
25. Additionally, La Vista failed to provide any notice to the clerk of SID #59 via certified mail, as required pursuant to Neb. Rev. Stat. § 19-5001(2), and therefore any action taken at the October 22, 2009 Planning Commission hearing was in violation of Nebraska law and void.
26. The La Vista Planning Commission held a public hearing regarding annexation of SID #59 on October 22, 2009 in violation of Nebraska law because it failed to provide the statutory notice as required by Neb. Rev. Stat. § 19-5001(2) and any action taken by the La Vista Planning Commission is therefore void.
27. The La Vista City Council held a public hearing regarding annexation of SID #59 on November 17, 2009.

28. Because of Veterans Day and intervening weekends, the City of La Vista was required to postmark its notice to the landowners of SID #59 on or before November 2, 2009.

29. However, the City of La Vista purportedly drafted a letter to the property owners of SID #59 on November 3, 2009, one day after the notice was statutorily required to be postmarked, informing them of the November 17, 2009 City Council public hearing regarding annexation of SID #59.

30. Such purported notice did not comply with Neb. Rev. Stat. § 19-5001(3) because it was not postmarked at least ten (10) working days prior to the hearing.

31. The La Vista City Council held a public hearing regarding annexation of SID #59 on November 17, 2009 in violation of Nebraska law because it failed to provide the statutory notice as required by Neb. Rev. Stat. § 19-5001(3) and any action taken by the La Vista City Council is therefore void.

32. As a result of the foregoing, the La Vista City Council was without authority to pass La Vista Ordinance No. 1107 and such ordinance is void.

Plaintiff contends in its First Cause of Action, with regard to Ordinance Number 1107, that La Vista failed to comply with NEB.REV.STAT. §19-5001(2) and (3), in that, the notices of public hearings were not timely mailed. In regard to the mailing of notices to annex property, NEB.REV.STAT. §19-5001(2) provides in part, that:

Initial notice of the proposed annexation shall be sent to the owners of property.....
postmarked at least ten working days prior to the planning commission's public hearing on the proposed change with a certified letter to the clerk of any sanitary and improvement district if the annexation includes property located within the boundaries of such district.

Further, NEB.REV.STAT. §19-5001(3) provides in part, that:

A second notice of the proposed annexation shall be sent to the same owners of property who were provided with notice under subsection (2) of this section.
.... postmarked at least ten working days prior to the public hearing of the city council or village board on the annexation.

La Vista counters that it made *reasonable* efforts to mail the notices, an exception allowed by

NEB. REV. STAT. §19-5001(5), which states in part:

Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city of the first or second class or village to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a *reasonable* attempt to comply with this section was made.

At trial, the evidence reflected the following:

On October 6, 2009, La Vista adopted Resolution No. 09-100 to annex SID 59. See Exhibit 32. The Resolution directed a public hearing on the proposed annexation of SID No. 59 to be held beginning at 7:00 pm. on November 17, 2009, at which the La Vista City Council would hear testimony from interested persons. See Exhibit 32. La Vista obtained the names and addresses for each of the owners of property located within SID 59 from a combined website of Sarpy County, Nebraska. See Exhibit 32. The written notices of the public hearing to be held by the La Vista Planning Commission on October 22, 2009, were postmarked and sent by regular U.S. mail, postage prepaid, October 8, 2009, to the address of each owner of property in SID 59. See Exhibit 32. On October 8, 2009, La Vista sent a written notice of the public hearing to be held by the Planning Commission on October 22, 2009, by certified mail to the Clerk of SID 59 addressed to J. Michael Price at 4660 Greene Ave, Omaha, Nebraska 68157. See Exhibit 32.

The La Vista Planning Commission held a public hearing regarding the annexation of SID No. 59 on October 22, 2009. Cliff Herd, Chairman of SID 59, and Mike Price, Clerk of SID 59, attended and addressed the La Vista Planning Commission. The La Vista Planning Commission unanimously approved and recommended the proposed annexation of SID 59.

Next, La Vista sent and postmarked on November 3, 2009, a letter to the owners of property located within SID No. 59 informing them of a public hearing to be held on November 17, 2009, by the La Vista City Council regarding the annexation of SID No. 59. See Exhibit 32. At its regular meeting on November 17, 2009, the La Vista City Council held a public hearing on the second reading of Ordinance No. 1107. By unanimous vote, the La Vista City Council approved Ordinance No. 1107. At its regular meeting on December 1, 2009, the La Vista City Council by unanimous vote approved Ordinance No. 1107 on its third reading.

La Vista acknowledged that it did not have the notices postmarked at least ten working days prior to either public hearing on the proposed annexation. According to Ann Birch, the electronic calendar that she used to determine the ten days required to mail notice for the La Vista Planning Commission meeting on October 22, 2009, did not list October 12 as Columbus Day, i.e. a holiday. Further, according to Ann Birch, she used the same electronic calendar to determine the date on which to send the notices of the public hearing before the La Vista City Council and, again, that electronic calendar did not identify November 11, 2009, as Veterans Day, i.e. a holiday. However, that Veterans Day was a work day, not a holiday, for the La Vista employees.

This Court must now apply these facts to NEB.REV.STAT. §19-5001(5), which provides, in part, “Except for a *willful or deliberate failure* to cause notice to be given...” Therefore, the first question that must be answered is whether the actions of La Vista constituted a *willful or deliberate failure*. Black’s Law Dictionary (9th ed. 2009), defines *willful* as:

Voluntary and intentional, but not necessarily malicious. “The word ‘willful’ or ‘willfully’ when used in the definition of a crime, it has been said time and again, means only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent.”

Deliberate is defined in N.J.I.2d, 4.0 Definitions as, “not suddenly or rashly but after first considering the probable consequences.” In the case at hand, the evidence is insufficient to find that La Vista *willfully or deliberately* failed to mail the notices so as to provide a full ten working days of notice. As a result, the actions of La Vista were neither *willful* nor *deliberate*.

After finding that the actions of La Vista were neither *willful* nor *deliberate*, then,

NEB.REV.STAT. §19-5001(5), provides in part:

(5)..., no annexation decision made by a city of the first or second class or village to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a *reasonable* attempt to comply with this section was made.

The second question that must be answered, therefore, is whether the actions of La Vista in mailing the notices were *reasonable*. Black's Law Dictionary (9th ed. 2009), defines reasonable as, "1. Fair, proper, or moderate under the circumstances." Merriam-Webster's Collegiate Dictionary, Eleventh Edition, defines *reasonable* as:

- 1 a: being in accordance with reason b: not extreme or excessive
- c: moderate, fair d: inexpensive
- 2 a: having the faculty of reason b: possessing sound judgment

In the case at hand, the evidence supports a finding that the use of an electronic calendar, which did not indicate either Columbus Day or Veterans Day as a holiday, was not unreasonable. Further, the notices were all sent, allowing for nine work days of notice prior to the hearing. This is not a situation where the notices were sent one calendar day before the hearing or not sent at all. The purpose of the statute is to allow property owners reasonable notice of the proposed annexation. In this case, a representative of SID No. 59 appeared and addressed the La Vista Planning Commission on the issue of annexation. Overall, the evidence counters the arguments of Plaintiff as to lack of notice. As a result, the actions of La Vista were reasonable and complied with NEB. REV. STAT. §19-5001(5) which, in return, sets forth that the annexation shall not be voided, invalidated, or affected in any way. Therefore, the Plaintiff has not met its burden as to its First Cause of Action.

Second Cause of Action.
DECLARATORY JUDGMENT
(Illegal Annexation)

The Second Cause of Action of Plaintiff's Complaint, states in part, as follows:

35. Furthermore, La Vista's annexation of SID #59 is prohibited under Nebraska law because it was conducted for revenue purposes only.

36. As a result of the foregoing, La Vista Ordinance No. 1107 is invalid and violates Nebraska law because SID #59 cannot be subject to annexation.

Plaintiff contends that La Vista's annexation of SID 59 was conducted only for revenue purposes. If correct, then, Ordinance No. 1107 is not valid because a municipality cannot annex property only for revenue purposes. See Sanitary and Imp. Dist. No. 95 of Douglas County v. City of Omaha, 221 Neb. 272 (1985). La Vista counters that there were several reasons for the annexation of Plaintiff's property citing La Vista's annexation plan and the specific study of the proposed annexation of SID 59. See Exhibit 32. The burden is on Plaintiff to prove that the annexation was only for revenue purposes and is not upon La Vista to prove that it *did not* annex SID 59 for the purpose of increasing tax revenues. Swedlund v. City of Hastings, 243 Neb. 607, 614 (1993).

Certainly, the evidence indicates that revenue was an issue that was considered by La Vista prior to the annexation. Plaintiff points out that La Vista shall receive, after the annexation, total annual income from all funds which exceed total annual expenses by \$307,622.00, and will benefit from the transfer of SID 59's three million dollar cash reserve. See Exhibit 32. However, it is doubtful that any city would annex property that created a financial drain on the taxpayers without the existence of unique circumstances. In Sanitary and Imp. Dist. No. 57 of Douglas County v. City of Elkhorn, 248 Neb. 486, 489 (1995), *disapproved on other grounds*, the Supreme Court stated:

Prudent annexation planning compels the City to consider any revenue to be engendered by an annexation, in light of the liabilities to be incurred. To suggest that the City acted unlawfully by considering the revenues that would result from an annexation is to fail to recognize that the City would incur substantial obligations to Chapel Hill and Skyline Ranches as a result of an annexation.

In the case at hand, in addition to the cash and revenue issues, La Vista will be obligated on the debt of SID 59 along with providing other services to SID 59, i.e. fire, police, and street maintenance. In fact, Exhibit 32 reflects that La Vista's obligation for SID 59's debt will be greater than the annual property tax revenue from SID 59. In addition, La Vista already annexed, in 1999, a portion of SID 59 and has previously annexed property on the south and west sides of SID 59. See Exhibits 32 and 80.

This type of argument, i.e. revenue, by Plaintiff was addressed by the Court in Sanitary and

Imp. Dist. No. 95 of Douglas County v. City of Omaha, 221 Neb. 272, 278 (1985), which stated:

That brings us, then, to S.I.D. No. 95's next claim, that the annexation was undertaken simply because the city desired to obtain revenue. While it is true that a municipality cannot annex property for revenue purposes only, see, Witham v. City of Lincoln, 125 Neb. 366 (1933), and United States v. City of Bellevue, Nebraska, 334 F. Supp. 881 (D.Neb. 1971), *aff'd* 474 F.2d 473 (8th Cir. 1973), it is likewise true that the evidence in this case does not support that claim. By annexing the S.I.D., the City of Omaha assumed the obligation for all of the S.I.D.'s liabilities. See NEB. REV. STAT. §14-118 (Reissue 1983). Therefore, to suggest that the city will acquire all of the funds of the S.I.D. without recognizing that it will also incur substantial obligations is to ignore the reality of the matter. Certainly, a city has a right to defer annexing an adjacent area until it determines that it can reasonably assume the obligations which will be imposed upon the city by reason of the annexation.

Therefore, the issue is whether La Vista considered factors other than revenue in its decision to proceed with the annexation of Plaintiff's property. In that regard, attached to Exhibit 32, is the SID 59 annexation report which was generated by La Vista prior to the annexation. The SID 59 annexation report reflects that La Vista reviewed the financial aspects of the proposed annexation, the cost of improvements and maintenance thereto, city services to be provided by La Vista, and the contractual obligations of SID 59 to which La Vista would assume. In addition, according to the annexation plan previously developed by La Vista, the annexation of SID 59 was needed in order to continue with the expansion policy that La Vista had adopted. The evidence indicates that several factors other than revenue were considered and used by La Vista when it decided to proceed forward with the annexation of SID 59. In the case at hand, Plaintiff has failed to meet its burden of proving that La Vista's annexation of SID 59 was conducted *only* for revenue purposes.

Third Cause of Action.
DECLARATORY JUDGMENT
(Improper Removal of Industrial-Area Designation)

Plaintiff's Third Cause of Action states in part, as follows:

38. As of the date of this Complaint, the property in SID 59 continues to be used in compliance with the definition of "industry" set forth in NEB.REV.STAT. §13-1111.
39. La Vista has not obtained the consent of the owners of the real property located in SID 59.
40. Pursuant to NEB.REV.STAT. §13-1111, SID 59's designation as an Industrial Area cannot be removed against the wishes of its owners.
41. As a result of the foregoing, La Vista Ordinance No. 1078 is invalid because it violates Nebraska law.

Although Plaintiff contends that NEB.REV.STAT. §13-1111 is the controlling statute, La Vista argues that the applicable statute is NEB.REV.STAT. §13-1115. A review of NEB.REV.STAT. §13-1111 reflects that it does not address the process by which a designated industrial area remains intact or is transitioned to a nonindustrial area. In regard to annexation, NEB.REV.STAT. §13-1115 provides:

Upon designation of such tract as an industrial area by the county board of the county in which the petition is filed, such designated area shall thereupon be used or reserved for the location of industry. Such land may be used for agricultural purposes until the use is converted for the location of industry as set forth in sections 13-1111 to 13-1120. If such tract has a taxable valuation of more than two hundred eighty-six thousand dollars, it shall not be subject to inclusion within the boundaries of any incorporated city of the first or second class or village, except that such tract regardless of taxable valuation may be annexed if (1) it is located in a county with a population in excess of one hundred thousand persons and the city or village did not approve the original designation of such tract as an industrial area pursuant to section 13-1112, (2) the annexation is stipulated in the terms and conditions agreed upon between the county and the city or village in any agreement entered into pursuant to section 13-1112, or (3) the owners of a majority in value of the property in such tract as shown upon the last preceding county assessment roll consent to such inclusion in writing or petition the city council or village board to annex such area.

The exception set forth in NEB.REV.STAT. §13-1115(1), if proven, applies to the situation at hand. Plaintiff argues that even if NEB.REV.STAT. §13-1115(1) applies, that it cannot be applied retroactively to take away a vested property right. The Nebraska Statutes reflect that the specific exception set forth at NEB.REV.STAT. §13-1115(1), formerly NEB.REV.STAT. §19-2504, did not exist in 1971 when Plaintiff purchased the real property. Therefore, the question is whether NEB.REV.STAT. §13-1111 et seq., formerly NEB.REV.STAT. §19-2501 et seq., creates a vested property right, and if so, can that right be changed by the State legislature.

The 1971 version of NEB.REV.STAT. §19-2504 provided for two exceptions or methods by which a tract of property, designated as an industrial area, could be annexed by a municipality. Those exceptions are (1) an agreement between the county and the municipality or (2) consent by a majority of the land owners to the annexation. Then, in 1991, the Nebraska legislature, added a third exception at NEB.REV.STAT. §13-1115(1), which reads:

(1) it is located in a county with a population in excess of one hundred thousand persons and the city or village did not approve the original designation of such tract as an industrial area pursuant to section 13-1112.

The evidence reflects that in 1990, Sarpy County had a population in excess of one hundred thousand persons, Exhibit 62, and La Vista did not approve the original designation of such tract as an industrial area pursuant to section 13-1112. See Exhibit 61 and Plaintiff's Complaint. Therefore, without considering Plaintiff's arguments, this Court finds that the specific exception set forth at NEB.REV.STAT. §13-1115(1) applies to La Vista and La Vista could proceed with the annexation.

Now, in addressing the first part of Plaintiff's argument that NEB.REV.STAT. §13-1111 et. seq., formerly NEB.REV.STAT. §19-2501 et seq., created a vested property right, this Court has reviewed case law and the language of NEB.REV.STAT. §19-2501 et seq.

This Court was unable to locate any Nebraska appellate case where the court dealt with the issue of determining whether a designation as an industrial tract created a vested property right. Certainly, the zoning of property cannot be changed to deprive the owner of his previously vested property right. See City of Omaha v. Glissman, 151 Neb. 895 (1949). However, in the instant case, annexation by La Vista would not be change the zoning status of Plaintiff's property. In fact, NEB.REV.STAT. §13-1111 et. seq., does not indicate that the designation as an industrial tract would be changed by the annexation. From the annexed property owner's perspective, it is the possibility that the annexation would result in increased taxes, that is of concern.

In addressing changes to the taxation status of property, the Supreme Court in State ex rel. Spelts v. Rowe, 108 Neb. 232 (1922), stated:

Taxes are positive acts of government, through its various agents, binding upon the inhabitants, and to the making and enforcing of which their personal consent individually is not required. Taxes are not founded on contract, but owe their existence to the action of the Legislature, and do not depend for validity upon individual assent, but operate in invitum. A tax law is a legislative enactment which defines the measure of every man's duty in support of the public burdens, and provides the means of enforcing it. A tax is not founded on contract, and does not establish the relation of debtor and creditor between the taxpayer and the state. It

is not an obligation or debt based upon or arising out of an implied contract. 1
Desty, Taxation, p. 9.

The Constitution only limits a legislative body in the matter of taxation of property, and where a part of the property within the state is not being taxed, in whole or in part, there is no pledge or agreement, expressed or implied, that the laws shall not be repealed or amended by a subsequent Legislature to meet the condition which exempted the property from taxation and the placing of it on the tax list.

A tax upon a new subject, or an increased tax upon an old one, does not impair the obligation of the contract.

The Legislature, by the act of 1911, said, so long as the law stands, the system of taxation therein provided for shall govern and by no judicial construction could it be held to be a contract on the part of the Legislature that the law should remain for all time as enacted. It was within the power of the Legislature to increase or decrease the tax upon real estate within the state, and an increase was not in violation of the constitutional provisions prohibiting the impairing of the obligation of a contract. The act of 1911 was general in its effect, and was subject to repeal or amendment at legislative will. Its continuation was a matter of public policy only. No court has ever held that the state, through its Legislature, has not the right to change its entire system of taxation, so long as the changes made do not violate constitutional provisions. Taxes not being founded on contract, and, the relation or debtor and creditor not existing between the taxpayer and the state it follows that a change of the system of taxation would not be the impairment of a contract, nor would it deprive the taxpayer of a vested right.

Although the above case was decided in 1922, prior to the adoption of industrial tracts, this case is still valid case law in Nebraska. The Supreme Court in State ex rel. Spelts v. Rowe, supra, found that unless there is specific language contained within the statute that mandates a contractual commitment by the State, the State has the power to alter laws so that previously untaxed property is now taxed. This is a similar position taken by the Supreme Court of Missouri in La-Z-Boy Chair Co. v. Director of Economic Development, 983 S.W.2d 523 (Mo., 1999). Although State ex rel. Spelts v. Rowe, supra, does not address industrial tracts, it deals with changing tax laws, which is the relevant issue herein since it is the increased taxation caused by the annexation that was brought forward by Plaintiff.

In the case at hand, NEB.REV.STAT. §19-2508 (1969 Cum.Supp.) which was the effective law in 1971, sets forth that if the property is not used as an industrial area for five years, then, the property is no longer an industrial area. This language alone should have put Plaintiff, as owner, on alert that the designation as an industrial area may not last in perpetuity. In addition, there is no language contained within NEB.REV.STAT. §19-2501 et. seq., whereby the legislature makes a commitment that the designation as an industrial area will not be altered in the future. For example, there is no language that states that the designation as an industrial area shall last ten years or one hundred years. As a result, this Court finds that NEB.REV.STAT. §19-2501 et. seq. did not create a vested property right as it relates to annexation by La Vista and any subsequent increase in taxes that may result therefrom.

The last issue is whether the legislature intended NEB.REV.STAT. §13-1115(1) to be retroactively applied. In addressing whether a recently adopted statute should be retroactively applied, the Supreme Court in Battle Creek State Bank v. Haake, 255 Neb. 666, 681 (1998), stated:

In Nebraska, in noncriminal cases, statutes are generally not given retroactive effect unless the Legislature has clearly expressed an intention that the new statute is to be applied retroactively. Larsen v. Jensen, 228 Neb. 799 (1988). See, also, Proctor v. Minnesota Mut. Fire & Cas., 248 Neb. 289 (1995). This is particularly so in the case of an amendment or change to substantive matters, as opposed to changes in procedural matters which may, in some cases, impact a pending action. Denver Wood Products Co. v. Fye, 202 Neb. 286 (1979); Lindgren v. School Dist. Of Bridgeport, 170 Neb. 279 (1960).

In the case at hand, although an argument could be made that adding another exception was only a procedural change, this Court finds that the adoption of NEB.REV.STAT. §13-1115(1), by the legislature, was a substantive change to the statute.

In review of NEB.REV.STAT. §13-1115, the statute does not specifically state that NEB.REV.STAT. §13-1115(1) should be applied retroactively. However, the Supreme Court in Battle Creek State Bank v. Haake, *supra*, further stated that the trial court can review the legislative history to determine whether the legislature intended NEB.REV.STAT. §13-1115(1) to be applied retroactively. More specifically, the Court in Battle Creek State Bank v. Haake, 255 Neb. 666, 681 (1998), provided:

In determining whether statutory amendments should be applied retroactively, we may look to the legislative history of the statute in general and in particular to the legislative intent, if any, regarding retroactivity. Nickel v. Salline Cty. Sch. Dist. No. 163, 251 Neb. 762 (1997).

A similar position was adopted by the Court of Appeals in Springer v. Kuhns, 6 Neb.App. 115, 125-126 (1997), where the Court stated:

Because there has been an obvious change of the applicable law after the parties made their agreement, we address the *retroactivity* issue first. The question is whether the Nebraska Legislature manifested an intent to validate previous agreements to transfer ground water off overlying land with the passage of L.B. 251 or whether this very substantial change in the law of Nebraska intended to operate only prospectively. *To ascertain the intent of the Legislature, a court may examine the legislative history of the act in question.* Goolsby v. Anderson, 250 Neb. 306 (1996). [Emphasis added]

The general rule is that a legislative enactment operates only prospectively, unless legislative intent and purpose that it should operate retrospectively are clearly disclosed. Proctor v. Minnesota Mut. Fire & Cas., 248 Neb. 289 (1995). We are to look to the purpose of a statute and give the statute a construction which best achieves its purpose. Solar Motors v. First Nat. Bank of Chadron, 249 Neb. 758 (1996). *The fact that the Legislature did not declare that §46-691 would be retroactive is not determinative.* See Nickel v. Saline Cty. Sch. Dist. No. 163, 251 Neb. 762 (1997). [Emphasis added]

Therefore, this Court shall proceed forward as provided by Battle Creek State Bank v. Haake, *supra*, Nickel v. Saline County School Dist. No. 163, *supra*, Springer v. Kuhns, *supra*, and review the legislative history to determine whether the legislature intended NEB.REV.STAT. §13-1115(1) to be applied retroactively.

At trial, Plaintiff offered Exhibit 8, which is a transcription of the Committee of Urban Affairs debate of L.B. 76, which later became NEB.REV.STAT. §13-1115(1). A review of Exhibit 8 reflects the intent of NEB.REV.STAT. §13-1115(1) was to allow La Vista to annex the industrial tract which is the subject of these proceedings. In fact, the introducing senator specifically refers to La Vista and the particular industrial tract involved in this case. Both parties, at trial, agreed that this Court could take judicial notice of any legislative floor debate, if such existed, as to L.B. 76, codified as NEB.REV.STAT. §13-1115(1). See also TracFone Wireless, Inc. v. Nebraska Public Service Com'n, 279 Neb. 426 (2010). This Court did locate floor debate of L.B. 76, and that floor debate is attached hereto and incorporated herein. Again, during the floor debate of L.B. 76, State Senator Withem specifically

states to the body of the legislature that L.B. 76 is designed to allow the City of La Vista to annex an industrial area and to tax that industrial area. Clearly, the legislature intended that L.B. 76, codified as NEB.REV.STAT. §13-1115(1), apply retroactively. As a result, the exception set forth at NEB.REV.STAT. §13-1115(1), does apply to the annexation of Plaintiff's property by La Vista and La Vista could proceed with the annexation. Therefore, the Plaintiff has not met its burden as to Plaintiff's Third Cause of Action.

ORDER

IT IS THEREFORE ORDERED that the Plaintiff has not met its burden as to its First Cause of Action and Plaintiff's First Cause of Action is hereby dismissed with prejudice.

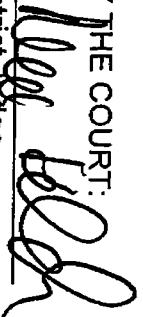
IT IS FURTHER ORDERED that the Plaintiff has not met its burden as to its Second Cause of Action and Plaintiff's Second Cause of Action is hereby dismissed with prejudice.

IT IS FURTHER ORDERED that the Plaintiff has not met its burden as to its Third Cause of Action and Plaintiff's Third Cause of Action is hereby dismissed with prejudice.

IT IS FURTHER ORDERED that all costs are assessed to Plaintiff.

Dated this 6th day of March, 2012.

BY THE COURT:


District Judge

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

UNITED STATES COLD STORAGE, INC.,
a New Jersey corporation, individually and on
behalf of all others similarly situated,

Case No. CI 09-2325

Plaintiff,

vs.

NOTICE OF APPEAL

CITY OF LA VISTA, a Nebraska Municipal
Corporation, SANITARY AND
IMPROVEMENT DISTRICT NO. 59 OF
SARPY COUNTY, NEBRASKA, a Nebraska
corporation, DOUG KINDIG, BRENDA
CARLISLE, RON SHEEHAN, ALAN
RONAN, MARK ELLERBECK, MIKE
CRAWFORD, TERRIL YN QUTCK, KELLY
SELL, and ANTHONY GOWAN,

Defendants.

FILED
SARPY COUNTY
DISTRICT COURT
2012 APR -2 PM 2:33
Robert Johnson
CLERK DISTRICT COURT

SANITARY AND IMPROVEMENT
DISTRICT NO. 59 OF SARPY COUNTY,
NEBRASKA, a Nebraska Municipal
Corporation,

Appellant,

vs.

CITY OF LA VISTA, a Nebraska Municipal
Corporation,

Appellee.

COMES NOW Appellant Sanitary and Improvement District No. 59 of Sarpy County,
Nebraska ("SID 59"), by and through its counsel of record, and gives notice of its intention to
prosecute an appeal to the Nebraska Court of Appeals and/or Supreme Court from the final
Orders entered on March 6, 2012 on SID 59's Cross-Claims in the above-captioned lawsuits.

This appeal is made and directed to the Court of Appeals and/or the Supreme Court of the
State of Nebraska pursuant to Neb. Rev. Stat. § 25-1911, *et seq.* SID 59 has simultaneously
deposited the docket fee required by law this 2nd day of April, 2012.



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12

Dated: April 2, 2012.

SANITARY AND IMPROVEMENT DISTRICT
NO. 59 OF SARPY COUNTY, NEBRASKA,
Appellant

By: _____



Robert J. Huck, #11953

Scott D. Jochim, #21956

CROKER, HUCK, KASHER, DeWITT,
ANDERSON & GONDERINGER, L.L.C.

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(402) 391-6777

rhuck@crokerlaw.com

sjochim@crokerlaw.com

Attorneys for SID 59

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was served via United States mail, postage prepaid on this 2nd day of April, 2012, to:

Gerald L. Friedrichsen
Andrew T. Schlosser
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Jon Bruning
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Lincoln, NE 68509-8920



Scott D. Jochim, #21956

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IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

UNITED STATES COLD STORAGE, INC., a
New Jersey corporation,

Case No. CI09-2325

Plaintiff,

vs.

CITY OF LA VISTA, et. al,

Defendants.

SANITARY AND IMPROVEMENT
DISTRICT NO. 59 OF SARPY COUNTY,
NEBRASKA, a Nebraska Municipal
Corporation,

Cross-Claim Plaintiff,

vs.

CITY OF LA VISTA, a Nebraska Municipal
Corporation,

Cross-Claim Defendant.

FILED
SARPY COUNTY
DISTRICT COURT
2012 APR -2 PM 4: 12
[Signature]
CLERK DISTRICT COURT

UNITED STATES COLD STORAGE, INC.'S NOTICE OF APPEAL

Plaintiff United States Cold Storage, Inc. by and through its attorney of record, files a Notice of Appeal to the Court of Appeals of the State of Nebraska from the March 6, 2012 final Orders in favor of Defendants pursuant to Neb. Rev. Stat. § 25-1912 et seq. Plaintiff has simultaneously deposited the \$100.00 docket fee as required by Nebraska Rules of Appellate Procedure § 2-101.

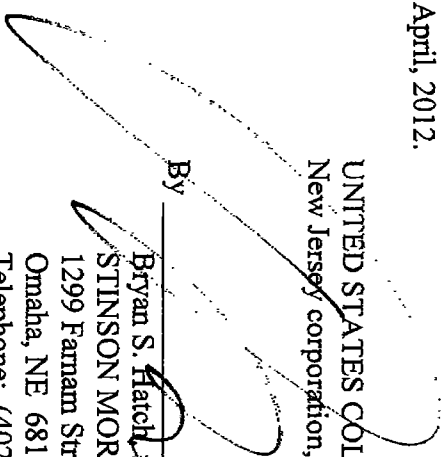


000278767D59

DATED this 2nd day of April, 2012.

UNITED STATES COLD STORAGE, INC., a
New Jersey corporation, Plaintiff

By


Bryan S. Hatch, #21009
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1299 Farnam Street, Suite 1500
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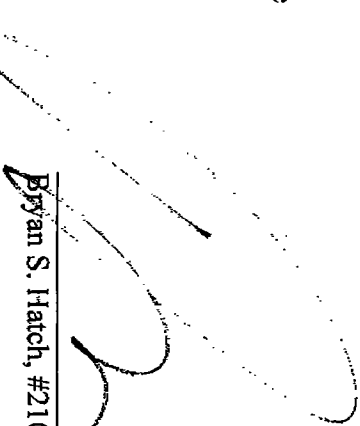
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was duly served upon the parties by sending a true and correct copy thereof through regular United States mail, postage prepaid, this 2nd day of April, 2012, addressed as follows:

Gerald L. Friedrichsen
Andrew T. Schlosser
FITZGERALD SCHORR BARMETTLER &
BRENNAN, P.C., L.L.O.
10050 Regency Circle, Suite 200
Omaha, NE 68114

Robert J. Huck
Scott D. Jochim
CROCKER, HUCK, KASHER, DEWITT,
ANDERSON & GONDERINGER, L.L.C.
2120 S. 72nd Street, Suite 1200
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Nebraska Attorney General's Office
2115 State Capitol
PO Box 98920
Lincoln, NE 68509-8920


Bryan S. Hatch, #21009



**CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS**

**2413 State Capitol Building, P.O. Box 98910
Lincoln, Nebraska 68509-8910
(402) 471-3731
FAX (402) 471-3480**

April 3, 2012

Sarpy County District Court
1210 Golden Gate Dr., #3131
Papillion, NE 68046

Case Caption: United States Cold S v. City of La Vista
Court of Appeals No: A-12-267
Trial Court No: CI09-2325

Dear Clerk:

We have received and filed the certified copy of notice of appeal in the above-captioned case. Please record the Court of Appeals number and use it on all future correspondence and filings.

If we can be of further assistance, please feel free to contact our office.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lanet S. Asmussen".

Lanet S. Asmussen
Clerk

Lanet S. Asmussen

Clerk

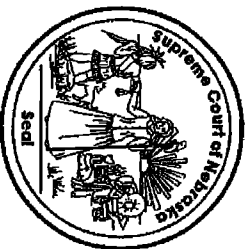
Janice J. Cutver
Deputy Clerk

Pamela J. Kraus
Jill R. Machacek
Appellate Clerks

Lori D. Oliveros
Shelley Holmberg
Balliffs

FILED BY

Clerk of the Sarpy District Court
04/03/2012



CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS

2413 State Capitol Building, P.O. Box 98910
Lincoln, Nebraska 68509-8910
(402) 471-3731
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Lanet S. Asmussen
Clerk

Janice J. Cutver
Deputy Clerk

Pamela J. Kraus
Jill R. Machacek
Appellate Clerks

Lori D. Oliveros
Shelley Holmberg
Baiffes

April 4, 2012

Sarpy County District Court
1210 Golden Gate Dr., #3131
Papillion, NE 68046

Case Caption: United States Cold s v. City of La Vista
Court of Appeals No: A-12-271
Trial Court No: CI09-2325

Dear Clerk:

We have received and filed the certified copy of notice of appeal in the above-captioned case. Please record the Court of Appeals number and use it on all future correspondance and filings.

If we can be of further assistance, please feel free to contact our office.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lanet S. Asmussen".

Lanet S. Asmussen
Clerk

FILED BY

Clerk of the Sarpy District Court
04/04/2012