

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 332-15

Department Source: Community Development - Planning

To: City Council

From: City Manager & Staff

Council Meeting Date: 11/16/2015

Re: Fourth Street Vacation and Grant of Easement acceptances (Case 15-123A)

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: Maps, Diagrams (construction, route, etc.)

Executive Summary

Approval of this request will result in the vacation of Fourth Street between Turner and Conley Avenues in advance of issuing a permit to construct a new student housing complex to be known as "U Centre" by American Campus Communities (ACC). The requested vacation was authorized within the August 2014 development agreement approved as part of the PUD 52 rezoning and PUD development plan associated with the new housing complex.

Discussion

American Campus Communities (ACC), applicant, is seeking to vacate Fourth Street between Turner and Conley Avenues as part of its proposed 728-bed student housing development to be known as "U Centre." The proposed vacation of Fourth Street was shown on the approved PUD 52 development plan associated with the project and is accompanied by two Grant of Easement documents that meet specific stipulations within the project's associated Development Agreement. The Grant of Easement documents have been provided to permit the City a non-exclusive right of ingress/egress to public utilities and infrastructure that will remain in the former right of way following building construction as well as provide for emergency access through the project site.

The requested vacation of Fourth Street has been reviewed by both internal staff and external agencies and is supported. The proposed Grant of Easement documents have been reviewed by the City's Law Department and found to be in compliance with the terms and conditions of the Development Agreement authorizing the applicant to seek the requested street vacation.

A locator map and map identifying that portion of Fourth Street to be vacated are attached.

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Fiscal Impact

Short-Term Impact: None.

Long-Term Impact: None. Per the terms of the Grant of Easement, maintenance of the travel way retained in the former right of way will be borne by the applicant.

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Development, Transportation

Strategic Plan Impact: Infrastructure...Connecting the Community

Comprehensive Plan Impact: Land Use & Growth Management, Infrastructure

Suggested Council Action

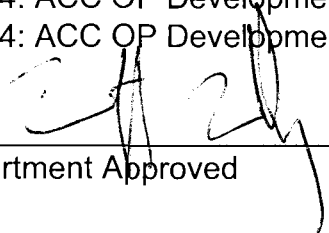
Approval of the requested vacation and acceptance of the Grant of Easement documents from ACC OP (Turner Avenue), LLC and Columbia Properties II, LLC.

Legislative History

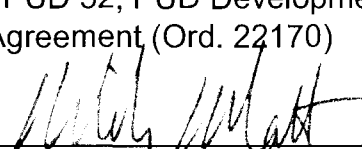
8/3/15: Vesser's Subdivision Plat 2 - Final Plat (Ord. 22533)

8/18/14: ACC OP Development, LLC - Rezone R-3 to PUD 52, PUD Development Plan (Ord. 22169)

8/18/14: ACC OP Development, LLC - Development Agreement (Ord. 22170)



Department Approved



City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 332-15

AN ORDINANCE

vacating a portion of Fourth Street between Turner Avenue and Conley Avenue; directing the City Clerk to have a copy of this ordinance recorded; accepting conveyances for access purposes; directing the City Clerk to have the conveyances recorded; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Council finds and determines that a portion of Fourth Street between Turner Avenue and Conley Avenue, more particularly described as follows:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF EXISTING FOURTH STREET AND CONLEY AVENUE RIGHT-OF-WAYS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF FOURTH STREET AND THE SOUTHEAST CORNER OF LOT 6 OF VESSERS SUBDIVISION, RECORDED IN PLAT BOOK 1, PAGE 35; THENCE WITH SAID WEST RIGHT-OF-WAY LINE, N 5°47'00"E, 364.23 FEET TO THE SOUTH LINE OF THE TRACT DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 2958, PAGE 45, AND THE NORTH RIGHT-OF-WAY LINE OF CONLEY AVENUE; THENCE LEAVING THE WEST RIGHT-OF-WAY LINE OF FOURTH STREET AND WITH THE NORTH RIGHT-OF-WAY LINE OF CONLEY AVENUE, S 81°51'50"E, 98.84 FEET; THENCE LEAVING THE NORTH RIGHT-OF-WAY LINE OF CONLEY AVENUE, S 1°17'15"W, 42.87 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF CONLEY AVENUE AS SHOWN BY BROADHEAD PLACE, PLAT NO. 2, RECORDED IN PLAT BOOK 48, PAGE 4; THENCE WITH SAID SOUTH RIGHT-OF-WAY LINE, N 81°18'05"W, 16.94 FEET; THENCE N 86°24'50"W, 30.60 FEET; THENCE 15.32 FEET ALONG A 10.00 FOOT-RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S 49°41'05"W, 13.87 FEET TO THE EAST RIGHT-OF-WAY LINE OF FOURTH STREET; THENCE LEAVING THE SOUTH RIGHT-OF-WAY LINE

OF CONLEY AVENUE AND WITH THE EAST RIGHT-OF-WAY LINE OF FOURTH STREET, S 5°47'00"W, 120.90 FEET TO THE SOUTH LINE OF SAID BROADHEAD PLACE; THENCE N 81°28'55"W, 5.01 FEET; THENCE S 5°47'00"W, 189.28 FEET TO THE SOUTHWEST CORNER OF LOT 5 OF SAID VESSERS SUBDIVISION; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE, N 80°11'35"W, 40.10 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.41 ACRES.

is in excess and surplus to the needs of the City and is hereby vacated.

SECTION 2. The City Clerk is hereby authorized and directed to cause a copy of this ordinance to be recorded in the office of the Recorder of Deeds of Boone County, Missouri.

SECTION 3. The conveyances to the City of Columbia, Missouri, a municipal corporation, more particularly described as follows:

Grant of Easement from ACC OP (Turner Ave) LLC, dated November 3, 2015, more particularly described in Attachment "A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

Grant of Easement from Columbia Properties II, LLC, dated November 3, 2015, more particularly described in Attachment "B" attached hereto and made a part hereof as fully as if set forth herein verbatim.

are hereby accepted.

SECTION 4. The City Clerk is hereby authorized and directed to have the conveyances recorded in the office of the Boone County Recorder of Deeds.

SECTION 5. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

GRANT OF EASEMENT

THIS INDENTURE, made on the 3rd day of November, 2015, by and between ACC OP (Turner Ave) LLC, a Delaware limited liability company, whose mailing address is 12700 Hill Country Blvd., Suite T-200, Austin, Texas 78738, and its successors and assigns, (hereinafter referred to as "Grantor"), and the City of Columbia, Missouri, a municipal corporation, of the County of Boone and the State of Missouri, (hereinafter referred to as "Grantee" or "City"); Grantee's mailing address is: PO Box 6015, Columbia, MO 65205.

WITNESSETH:

THAT the Grantor, in consideration of the sum of Ten Dollars (\$10.00) to us in hand paid by the City, the receipt of which is hereby acknowledged, effective upon the City vacating the right-of-way to the portions of Fourth Street and Conley Avenue within the hereinafter defined Easement Area ("Effective Date"), does grant unto said City, its successors and assigns, a non-exclusive easement for the right, privilege, and authority to: (i) pedestrian ingress and egress; (ii) emergency service vehicular access, including designated fire lanes; (iii) construct, replace, repair, and maintain bollards for the purpose of prohibiting vehicular traffic and signage for the purpose of informing the public that no vehicular, through traffic is permitted; (iv) vehicular access for waste management services; (v) place compactor, recycling, or other waste services containers necessary to serve the adjacent property owned by Grantor; and, (vi) to construct, operate, replace, repair and maintain facilities for public utilities, including facilities for communications services, regardless of technology utilized, and all necessary appurtenances to make these utilities complete and usable, over, under, across, and upon the following described real estate (the "Easement Area"), which is the crosshatched area shown on the depiction attached hereto as Exhibit A, owned by Grantor, situated in the County of Boone, State of Missouri, to-wit:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE EXISTING FOURTH STREET AND CONLEY AVENUE RIGHT-OF-WAYS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF FOURTH STREET AND THE SOUTHEAST CORNER OF LOT 6 OF VESSERS SUBDIVISION, RECORDED IN PLAT BOOK 1, PAGE 35; THENCE WITH SAID WEST RIGHT-OF-WAY LINE, N 5°47'00"E, 364.23 FEET TO THE SOUTH LINE OF THE TRACT DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 2958, PAGE 45, AND THE NORTH RIGHT-OF-WAY LINE OF CONLEY AVENUE; THENCE LEAVING THE WEST RIGHT-OF-WAY LINE OF FOURTH STREET AND WITH THE NORTH RIGHT-OF-WAY LINE OF CONLEY AVENUE, S 81°51'50"E, 98.84

FEET; THENCE LEAVING THE NORTH RIGHT-OF-WAY LINE OF CONLEY AVENUE, S 1°17'15"W, 18.84 FEET TO THE CENTER LINE OF CONLEY AVENUE; THENCE WITH SAID CENTER LINE, N 86°24'50"W, 80.29 FEET TO THE CENTER LINE OF FOURTH STREET; THENCE LEAVING THE CENTER LINE OF CONLEY AVENUE AND WITH THE CENTERLINE OF FOURTH STREET, S 5°47'00"W, 150.89 FEET; THENCE LEAVING THE CENTER LINE OF FOURTH STREET, S 81°28'55"E, 20.02 FEET TO THE EAST RIGHT-OF-WAY LINE OF FOURTH STREET; THENCE WITH SAID EAST RIGHT-OF-WAY LINE, S 5°47'00"W, 189.28 FEET TO THE SOUTHWEST CORNER OF LOT 5 OF SAID VESSERS SUBDIVISION; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE, N 80°11'35"W, 40.10 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.29 ACRES.

This grant includes the right of the City, its officers, agents, and employees, to enter upon the Easement Area at any time for the purpose of exercising any of the rights herein granted; also the right to trim, clear or remove, at any time from the Easement Area any tree, brush, structure or obstruction of any kind or character whatsoever installed, constructed or grown upon the Easement Area after the Effective Date without the consent of Grantee which, in the sole reasonable judgment of the City, endangers the safety of or interferes with the operation and maintenance of City's facilities and the use of the Easement Area as permitted by this Grant of Easement. Grantee's ingress and egress to and from the Easement Area for the purpose of exercising any of the rights herein granted shall be from the adjacent public street right of way.

The Grantor covenants, subject to liens and encumbrances of record as of the Effective Date, that it is the owner of the above-described land and has the right and authority to make and execute this Grant of Easement on behalf of said limited liability company.

Grantor expressly reserves for itself and its successors and assigns the right to use and grant to others the right to use the Easement Area or any portions thereof for any and all lawful purposes only to the extent that the same do not interfere with and are not inconsistent with the easement rights granted hereunder. Installation of improvements required by law or ordinance, including any statement of intent, development agreement, or development plan governing the Easement Area, shall not be deemed to interfere with the easement rights, provided Grantor shall be responsible for returning the Easement Area to as nearly as reasonably possible pre-existing conditions not inconsistent with the requirements of such law or ordinance, including any statement of intent, development agreement, or development plan governing the Easement Area. The City shall use commercially reasonable efforts to minimize impact on Grantor's facilities in the Easement Area when performing any work under this Grant of Easement, however, it shall be the responsibility of Grantor to promptly restore as nearly as reasonably possible to pre-existing conditions, surfaces that Grantee has disturbed, including, but not limited to, seeding, mulching, and the replacement or repair of driveways, pathways and sidewalks.

IN WITNESS WHEREOF, ACC OP (Turner Ave) LLC has caused these presents to be signed by its authorized member the day and year first above written.

ACC OP (Turner Ave) LLC

By: _____

Name: JONATHAN SKAF

Title: VICE PRESIDENT

STATE OF Texas)

COUNTY OF Travis)

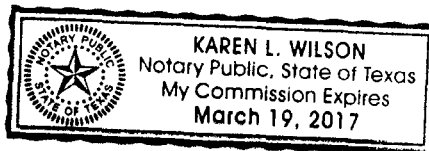
)ss.

On this 3rd day of November in the year 20 15, before me, a Notary Public in and for said state, personally appeared Jonathan Skaf who being by me duly sworn, acknowledged that he is a/an vice president of ACC OP (Turner Ave) LLC, a Delaware limited liability company, and that he executed the foregoing instrument on behalf of said company and further acknowledged that he executed the same as a free act and deed for the purposes therein stated and that he has been granted the authority by said limited liability company to execute the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above.

Notary Public

Karen L. Wilson



PREPARED BY:
CROCKETT
ENGINEERING CONSULTANTS
3300 North Stadium Boulevard
Tulsa, Oklahoma 74114
(918) 467-0075

GRANT OF EASEMENT

THIS INDENTURE, made on the 3rd day of November, 2015, by and between COLUMBIA PROPERTIES II, LLC, a Delaware limited liability company, whose mailing address is 7711 Bonhomme Avenue, Suite 350, St. Louis, Missouri 63105, Attention: Timothy M. VanMatre, and its successors and assigns, (hereinafter referred to as "Grantor"), and the City of Columbia, Missouri, a municipal corporation, of the County of Boone and the State of Missouri, (hereinafter referred to as "Grantee" or "City"); Grantee's mailing address is: PO Box 6015, Columbia, MO 65205.

WITNESSETH:

THAT the Grantor, in consideration of the sum of Ten Dollars (\$10.00) to us in hand paid by the City, the receipt of which is hereby acknowledged, effective upon the City vacating the right-of-way to the portions of Fourth Street and Conley Avenue within the hereinafter defined Easement Area ("Effective Date"), does grant unto said City, its successors and assigns, a non-exclusive easement for the right, privilege, and authority to: (i) pedestrian ingress and egress; (ii) emergency service vehicular access, including designated fire lanes; (iii) construct, replace, repair, and maintain bollards for the purpose of prohibiting vehicular traffic and signage for the purpose of informing the public that no vehicular through traffic is permitted; (iv) vehicular access for waste management services; and, (v) to construct, operate, replace, repair and maintain facilities for public utilities, including facilities for communications services, regardless of technology utilized, and all necessary appurtenances to make these utilities complete and usable, over, under, across, and upon the following described real estate (the "Easement Area"), which is the crosshatched area shown on the depiction attached hereto as Exhibit A, owned by Grantor, situated in the County of Boone, State of Missouri, to-wit:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE EXISTING FOURTH STREET AND CONLEY AVENUE RIGHT-OF-WAYS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF FOURTH STREET AND THE SOUTHWEST CORNER OF LOT 1 OF BROADHEAD PLACE, PLAT NO. 2, RECORDED IN PLAT BOOK 48, PAGE 4; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE, N 81°28'55"W, 25.03 FEET TO THE CENTER LINE OF FOURTH STREET; THENCE WITH SAID CENTER LINE, N 5°47'00"E, 150.89 FEET TO THE CENTER LINE OF CONLEY AVENUE; THENCE LEAVING THE CENTER LINE OF FOURTH STREET AND WITH THE CENTER LINE OF CONLEY AVENUE, S 86°24'50"E, 80.29 FEET; THENCE LEAVING THE CENTER LINE OF CONLEY AVENUE, S 1°17'15"W, 24.03 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF CONLEY AVENUE AS SHOWN BY

BROADHEAD PLACE, PLAT NO. 2, RECORDED IN PLAT BOOK 48, PAGE 4; THENCE WITH SAID SOUTH RIGHT-OF-WAY LINE, N 81°18'05"W, 16.94 FEET; THENCE N 86°24'50"W, 30.60 FEET; THENCE 15.32 FEET ALONG A 10.00 FOOT-RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S 49°41'05"W, 13.87 FEET TO THE EAST RIGHT-OF-WAY LINE OF FOURTH STREET; THENCE LEAVING THE SOUTH RIGHT-OF-WAY LINE OF CONLEY AVENUE AND WITH THE EAST RIGHT-OF-WAY LINE OF FOURTH STREET, S 5°47'00"W, 120.90 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.12 ACRES.

This grant includes the right of the City, its officers, agents, and employees, to enter upon the Easement Area at any time for the purpose of exercising any of the rights herein granted; also the right to trim, clear or remove, at any time from the Easement Area any tree, brush, structure or obstruction of any kind or character whatsoever installed, constructed or grown upon the Easement Area after the Effective Date without the consent of Grantee which, in the sole reasonable judgment of the City, endangers the safety of or interferes with the operation and maintenance of City's facilities and the use of the Easement Area as permitted by this Grant of Easement. Grantee's ingress and egress to and from the Easement Area for the purpose of exercising any of the rights herein granted shall be from the adjacent public street right of way.

The Grantor covenants, subject to liens and encumbrances of record as of the Effective Date, that it is the owner of the above-described land and has the right and authority to make and execute this Grant of Easement on behalf of said limited liability company.

Grantor expressly reserves for itself and its successors and assigns the right to use and grant to others the right to use the Easement Area or any portions thereof for any and all lawful purposes only to the extent that the same do not obstruct or inhibit and are not inconsistent with the easement rights granted hereunder. Installation of improvements required by law or ordinance, including any statement of intent, development agreement or development plan governing the Easement Area, shall not be deemed to interfere with the easement rights, provided Grantor shall be responsible for returning the Easement Area to as nearly as reasonably possible pre-existing conditions not inconsistent with the requirements of such law or ordinance, including any statement of intent, development agreement, or development plan governing the Easement Area. The City shall use commercially reasonable efforts to minimize impact on Grantor's facilities in the Easement Area when performing any work under this Grant of Easement, however, it shall be the responsibility of Grantor to promptly restore as nearly as reasonably possible to pre-existing conditions, surfaces that Grantee has disturbed, including but not limited to, seeding, mulching, and the replacement or repair of driveways, pathways and sidewalks.

IN WITNESS WHEREOF, COLUMBIA PROPERTIES II, LLC, has caused these presents to be signed by its authorized agent the day and year first above written.

COLUMBIA PROPERTIES II, LLC,
a Delaware limited liability company

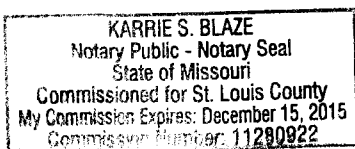
By: CHP Investments #1 LLC,
a Missouri limited liability company,
its Manager

By: [Signature]
Charles E. Gillum, Manager

STATE OF Missouri)
COUNTY OF St. Louis)ss.

On this 15 day of October in the year 2015, before me, a Notary Public in and for said state, personally appeared Charles E. Gillum who being by me duly sworn, acknowledged that he is the manager of CHP Investments #1 LLC, a Missouri limited liability company, which is the manager of Columbia Properties II, LLC and that he executed the foregoing instrument on behalf of Columbia Properties II, LLC and further acknowledged that he executed the same as a free act and deed for the purposes therein stated and that he has been granted the authority by said limited liability company to execute the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above.



[Signature]
Notary Public Karrie S. Blaze

JOINDER OF MORTGAGEE

Boone Harris Bank N.A., the beneficial holder under a Deed of Trust (the "the Deed of Trust") upon that real estate hereinabove described and the improvements located thereon which such Deed of Trust is recorded as follows:

<u>Book</u>	<u>Page</u>
<u>4236</u>	<u>36</u>

in the Records of Boone County, Missouri (the undersigned being hereinafter referred to as "Mortgagee"),

does hereby join in the making of the foregoing Grant of Easement, and said Mortgagee agrees that the lien of the Deed of Trust, as to the real estate hereinabove described, shall be subject to, and shall be subordinated to the foregoing Grant of Easement, as if the said Grant of Easement and the attachments had been recorded prior to the recording of the Deed of Trust hereinabove described.

IN WITNESS WHEREOF, the undersigned officers of the said Mortgagee have executed this document in the name of and on behalf of said Mortgagee.

Dated this 3 day of November, 2015.

BMO Harris Bank NA
By: [Signature]
Its: Vice President Andrew W. Van Zante

STATE OF Kansas)
COUNTY OF Johnson) ss.

On this 3rd day of November, 2015, at my office in said County and State, before me, the undersigned, a Notary Public, personally appeared Andrew W. VanZante to me personally known to me to be the person who executed the above and foregoing instrument on behalf of BMO Harris Bank NA, who being by me first duly sworn, did state and acknowledge that he/she was an authorized agent of BMO Harris Bank NA, and that as such he/she had executed the foregoing instrument in the name of and on behalf of BMO Harris Bank NA by authority granted to him/her by BMO Harris Bank NA, and he/she did duly acknowledge the execution of the foregoing instrument to be the free act and deed of said company.

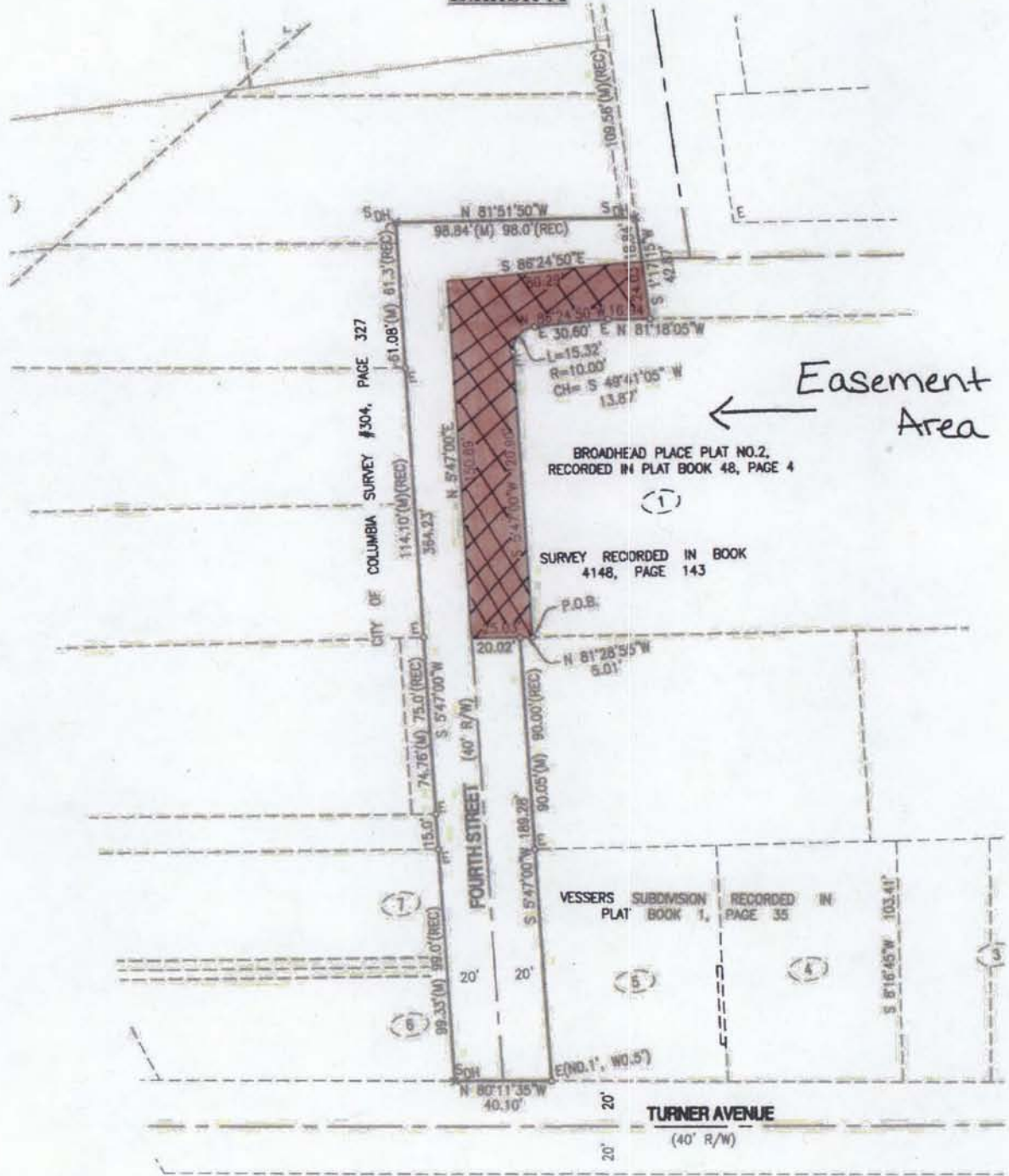
IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal on the day and year last above written.

[Signature]
Kristen Lindenman, Notary Public
Johnson County, State of Kansas

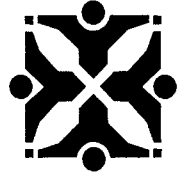
My commission expires: 4-1-19



Exhibit A

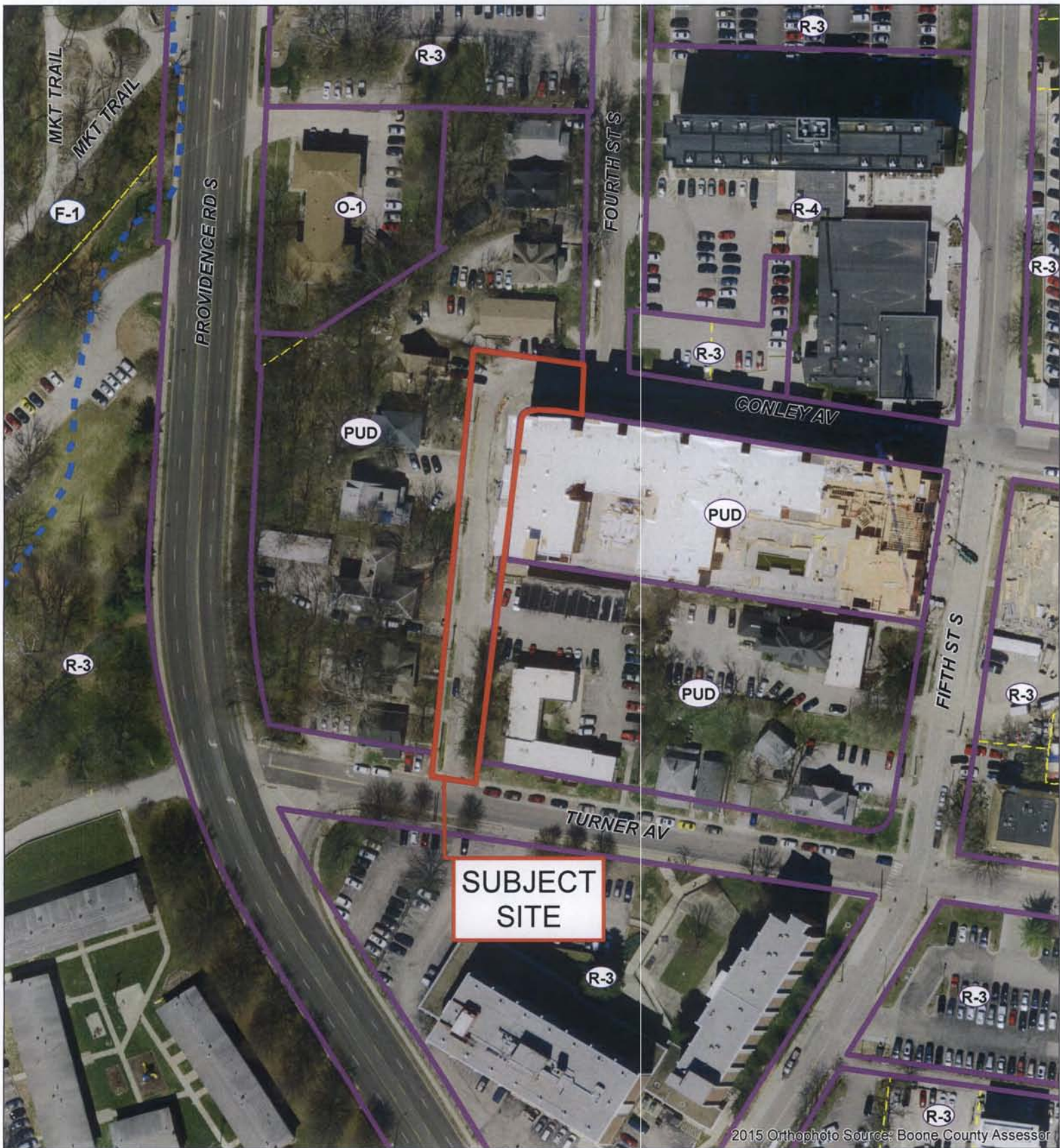


PREPARED BY:
CROCKETT
ENGINEERING CONSULTANTS
2000 North Stadium Boulevard
Columbia, Missouri 65202
Phone: 620-0572



SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

Maps, Diagrams (construction, route, etc.)



2015 Orthophoto Source: Boone County Assessor

15-123A: Fourth Street Vacation



- City of Columbia Zoning
- Parcels
- 100-Year Flood Plain



STREET VACATION EXHIBIT
APRIL 23, 2015

Fourth Street

Conley Avenue

BROADHEAD PLACE PLAT NO.2,
RECORDED IN PLAT BOOK 48, PAGE 4

SURVEY RECORDED IN BOOK
4148, PAGE 143

VESSERS SUBDIVISION
PLAT BOOK 1, RECORDED IN
PAGE 35

TURNER AVENUE
(40' R/W)



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