City Council Communication

Department: Community Development CASE #SAV-23-005 Applicant/Property Owner: Douglas McGinnis 108 South 17th Street Council Bluffs, IA 51501	Reso. of Intent No. _____ Reso. to Dispose No. _____	City Council: Resolution of Intent: 8/28/2023 Resolution to Dispose: 9/11/2023 Planning Commission: 8/8/2023

Subject/Title

Request: Public hearing on the requests of Douglas McGinnis, owner of property legally described as the South 32 feet of Lots 1 and 2, Block 26, Beers Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, to vacate and dispose of the remnant east/west alley platted in said Block 26, Beers Subdivision.

Location: Lying south of 108 South 17th Street

Background

The Community Development Department has received a request from Douglas McGinnis, owner of property addressed at 108 South 17th Street and legally described as the South 32 feet of Lots 1 and 2, Block 26, Beers Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, to vacate and dispose of the remnant east/west alley platted in said Block 26, Beers Subdivision.

The subject alley is unimproved and measures approximately 16 feet in width by 88 feet in length. The applicant owns property lying directly north of the subject alley, addressed at 108 South 17th Street. On June 20, 2023, the Community Development Department sent a letter to the applicant in regards to a fence encroaching into the subject alley. The fence was installed in violation of Section 15.23.040(A)(2) of the Council Bluffs Municipal Code (Zoning Ordinance), which states that no fence is allowed to project over the property line or be placed in the public right-of-way. During the site inspection to investigate the fence violation, Staff found several vehicles parked on the alley, which is also in violation of the City's Municipal Code. The purpose of this request is to address the open zoning violations at 108 South 17th Street. The applicant wishes to acquire the portion of the subject alley abutting his property to continue to use it for off-street parking purposes.

On August 25, 2003, the City Council amended the adopted *Policy and Procedures for Alley, Street and Right-of-way Vacations.* The objectives of the amended Policy are as follows:

A. To provide due process and citizen participation in the application and review process for vacations.
Property owners with land that abuts the subject alley are as follows:

North – Residential property owned by Douglas McGinnis (108 South 17th Street)
South – Residential property owned by Ronald and Angela Leslie Sampson (1700 2nd Avenue)

All abutting property owners were mailed petitions asking if they are in favor of/opposed to the vacation request and if they were willing to/not willing to acquire the portion of the alley adjacent to their property, if vacated. The following responses were received:

1. Douglas A. McGinnis stated he is in favor of the request and is willing to acquire the portion of the east/west alley adjacent to their property.

2. Leslie Sampson stated she is in opposition of the request but is willing to acquire the portion of the east/west alley adjacent to their property. Mrs. Sampson explained she would want the alley to remain open so that her property does not directly abut 108 South 17th Street.

B. To ensure that no property owner is deprived of required and reasonable access.
The proposed vacation will not deprive any property of required and reasonable access. However, the subject alley is the only point of entry to access off-street parking on both abutting properties. As such, a cross-access easement will have to be retained over the subject alley that guarantees vehicle access to both abutting property owners.

Lot 2, Block 26, Beers Subdivision, which lies north of the subject alley, does not have direct access to a public street (vehicles access onto 1st Avenue is restricted due to the FIRST AVE trail). The northerly 98 feet of said Lot 2 are part of Parcel #754435130001 (106 South 17th Street). The remaining portion of said Lot 2 is part of Parcel #754435204001 (108 South 17th Street). The Community Development Department finds that the requested vacation would not deprive Lot 2 from reasonable access since it shares a parcel number with other lots of record with direct access onto either South 17th Street or 2nd Avenue. Any request from current or future property owners to un-combine the parcels that include either portion of Lot 2 would not be supported by the City of Council Bluffs unless it goes through the replatting process.

C. To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way.
This request will eliminate a dead-end alleyway, as the request is to vacate the remnant east/west alley platted in Block 26, Beers Subdivision, which currently dead ends at 106 South 17th Street.

D. To reduce or eliminate hazardous and dangerous traffic conditions.
The subject alley is unimproved and is not used for vehicular and/or pedestrian traffic circulation along Block 26, Beers Subdivision, except to access off-street parking on both abutting properties.

E. To protect all existing and proposed public utilities located in the right-of-way and to maintain necessary utility easements.
All City Departments and utilities were notified of the request. The following responses were received:

1. The Council Bluffs Public Works Department stated they have no comment on the request.

2. The Council Bluffs Parks and Recreation Department stated that they have no comment on the request.

3. The Council Bluffs Fire Department stated that they have no comment on the request.

4. Council Bluffs Water Works stated that they have no comment on the request.

5. MidAmerican Energy stated they have overhead electric distribution facilities within the subject alley. They stated they would be opposed to the proposed vacation unless a permanent utility easement is retained over the subject alley that guarantees full unobstructed access to service and maintain said facilities.

F. To maintain appropriate right-of-way width to ensure that an adequate pedestrian and vehicular circulation system is retained.
Not applicable.

G. To discourage the vacation of a portion of an existing alley, street or other right-of-way.
The request is to vacate the entirety of the remnant east/west alley platted in Block 26, Beers Subdivision.

H. To assist in the implementation of the goals and objectives of the Comprehensive Plan.

The request is consistent with the local access and circulation objectives stated in Chapter 6, Transportation of the Bluffs Tomorrow: 2030 Plan (comprehensive plan).

I. To reduce the City's maintenance liability on previously vacated right-of-way parcels from public improvement projects and various lots acquired through delinquent taxes or assessments.
Not applicable.

J. To establish an equitable price for surplus public property.
The City's interest in the subject alley will be conveyed to the applicant at no cost beyond the vacation application fee already paid.

Recommendation

The Community Development Department recommends approval of the request to vacate and dispose of the remnant east/west alley platted in Block 26, Beers Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, subject to the comments stated above and the following conditions:

A. An easement shall be retained over the subject alley for utility access and maintenance purposes.

B. A cross-access easement shall be retained over the subject alley for vehicle access and off-street parking purposes.

Public Hearing

Staff speaker for the request:
1. Moises Monrroy, Planner, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers in favor:
1. Douglas McGinnis, 108 S. 17th Street, Council Bluffs, IA 51503

Speakers against: None

The City Planning Commission recommended approval of the request by Douglas McGinnis to vacate and dispose of the remnant east/west alley platted in Block 26, Beers Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, subject to the comments stated above and the following conditions:

A. An easement shall be retained over the subject alley for utility access and maintenance purposes.

B. A cross-access easement shall be retained over the subject alley for vehicle access and off-street parking purposes.

VOTE: AYE – Bass, Bailey, Hutcheson, Opperman, Rater, Rew, Stroebele, and Van Houten. NAY – None. ABSTAIN – None. ABSENT – None. VACANT - Two Motion: Carried.

Attachments

Attachment A: Location/Zoning Map

Prepared by: Moises Monrroy, Planner, Community Development Department