City Council Communication (Updated)

Department: Community Development Case #SAV-21-006 Applicants: Scott Porter and Doug Reisz 22938 Meadowview Parkway Council Bluffs, IA 51503 Property Owner: E & J Properties LLC 3069 Weir Street Omaha, NE 68117	Reso. of Intent No. _____ Reso. to Dispose No. _____	Planning Commission: 12/13/21 Set Public Hearing: 1/10/22 Public Hearing: 1/24/22

Subject/Title

Request: Public hearing on the request of Scott Porter and Doug Reisz to vacate and dispose of 12th Avenue right-of-way located between South 34th and South 35th Streets and abutting property legally described as Lots 16 through 30, Block 19, Brown's Subdivision and Lots 1 through 15, Block 18, Brown's Subdivision, Council Bluffs, Pottawattamie County, Iowa.

Location: 12th Avenue right-of-way between S. 34th and S. 35th Streets

Background/Discussion

The Community Development Department has received an application from Scott Porter and Doug Reisz to vacate and dispose of 12th Avenue right-of-way between South 34th and South 35th Streets. The subject right-of-way is unimproved and contains approximately one acre of land. The applicant has 1.04 acres of land legally described as Lots 23-30, Brown's Subdivision, Council Bluffs, Pottawattamie County, Iowa under contract located directly north of the subject right-of-way. The purpose of this request is to allow the applicant to acquire the subject additional land area for a future multi-family residential development on the aforementioned 1.04 acres.

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:

1. *To provide due process and citizen participation in the application and review process for vacations*. There are four property owners with land that abuts the subject right-of-way. The owners of these properties are as follows:

   North:

   - Amy Vance Tax Service, which is owned by Amy Vance Properties LLC (1115 S. 35th Street)
   - Undeveloped land, which is under contract by the applicant, and currently owned by E & J Properties LLC

   South:

   - Tish's Restaurant, which is owned by Steven B. and Kathy J. Tisher (1207 S. 35th Street)

- Shadow Park Apartments, which is owned by Shadow Park Collective (3401 12th Avenue)

A letter signed by all adjacent property owners was submitted with the vacation application. The letter states that Amy Vance will purchase the north ½ of vacated right-of-way adjacent to 1115 S. 35th Street; Steven Tisher will purchase the south ½ of vacated right-of-way adjacent to 1207 S. 35th Street, except lots 6,7, and 8, which will be purchased by the applicant; Dennis Tierney will purchase the vacated ½ north of 3401 12th Street; and Scott Porter and Doug Reisz will purchase the vacated ½ south of their property under contract legally described as Lots 23-30, Block 19, Browns Subdivision, City of Council Bluffs, Pottawattamie County Iowa.

The applicants were mailed a petition asking if they are in favor of/oppose to the vacation request and if they were willing to/not willing to acquire the entire section of 12th Avenue adjacent to their property if vacated. Their response can be found in Comment #10 below.

2. *To ensure that no property owner is deprived of required and reasonable access.* All properties included in this request have access to an existing public road on either S. 34th or S. 35th Streets. If 12th Avenue is vacated, a replat shall be required to ensure that no properties become landlocked as a result of the requested vacation, as all subject properties contain existing lots of record that rely on 12th Avenue right-of-way for access.

3. *To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way*. This request will not create a dead-end right-of-way as the request is to vacate the entirety of 12th Avenue between S. 34th and S. 35th Avenues adjacent to the subject properties. The remaining section of 12th Avenue can be accessed by S. 34th Street.

4. *To reduce or eliminate hazardous and dangerous traffic conditions*.
The portion of 12th Avenue right-of-way proposed to be vacated is unimproved and is not used for vehicular and/or pedestrian traffic.

5. *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:

- Council Bluffs Fire Department stated that they have no comments in regards to the request.
- Council Bluffs Public Works Department stated that they are not opposed to the vacation; however, the Public Works Department has infrastructure at the end of the return of 12th Avenue at 34th Street and will need to maintain a 75-foot easement along the eastern portion of the vacated right-of-way to allow Public Works access to existing infrastructure.
- MidAmerican Energy stated that they have no conflict with the request and noted that the developer should contact MidAmerican Energy directly to discuss the project timeline and identify any costs and areas of responsibility for maintaining access or relocating existing electric facilities as well as extending new electric service as may be required.
- Black Hills Energy stated that they have no concerns with the request.
- Council Bluffs WaterWorks stated that they have no public water mains in the portion of 12th Avenue to be vacated.

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

7. *To discourage the vacation of a portion of an existing alley, street or other right-of-way.*

The subject request is to vacate the entirety of 12th Avenue between S. 34th and S. 35th Avenues and abutting properties legally described as Lots 16 through 30, Block 19, Brown's Subdivision and Lots 1 through 15, Block 18, Brown's Subdivision, Council Bluffs, Pottawattamie County, Iowa.

8. *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).

9. *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.

10. *To establish an equitable price for surplus public property.* A letter signed by all adjacent property owners was submitted with the vacation application. The letter states that Amy Vance will purchase the north ½ of vacated right-of-way adjacent to 1115 S. 35th Street; Steven Tisher will purchase the south ½ of vacated right-of-way adjacent to 1207 S. 35th Street, except lots 6,7, and 8, which will be purchased by the applicant; Dennis Tierney will purchase the vacated ½ north of 3401 12th Street; and Scott Porter and Doug Reisz will purchase the vacated ½ south of their property under contract legally described as Lots 23-30, Block 19, Browns Subdivision, City of Council Bluffs, Pottawattamie County Iowa.

    In addition to the letter submitted with the application, the applicant and all adjacent property owners were notified by staff about this vacation request. The following responses were received:

    - Scott Porter and Doug Reisz stated they are in favor of the request and are willing to acquire the portion of right-of-way adjacent to their property under contract for the sum of $4,088.00
    - Amy Vance stated that she is in favor of the request and is willing to acquire her portion of right-of-way adjacent to her property for the sum of $3,362.00.

    The following property owners were notified of the acquisition costs of the property, however, staff has not received their signed petitions prior to the date of this report:

    - Steven B. and Kathy J. Tisher were notified of the request and the $5,540.00 acquisition cost to acquire the portion of right-of-way, which adjoins their property. Community Development received the signed petition from Steven B. and Kathy J. Tisher stating they are in favor of the vacation and willing to acquire their portion for the cost specified above.
    - Shadow Park Cooperative was notified of the request and the $1,910.00 acquisition cost to acquire the portion of right-of-way, which adjoins their property. Community Development received the signed petition from Shadow Park Cooperative stating they are in favor of the vacation and willing to acquire their portion for the cost specified above.
    - ~~E & J Properties LLC were notified of the request and the $4,088.00 acquisition cost to acquire the portion of right-of-way, which adjoins their property.~~ This is the former owner of the lots purchased by Scott and Doug Reisz and they are no longer applicable to this vacation request.

Recommendation

The Community Development Department recommends approval of the request to vacate and dispose of 12th Avenue right-of-way between South 34th and South 35th Streets and abutting property legally described as Lots 16 through 30, Block 19, Brown's Subdivision and Lots 1 through 15, Block 18, Brown's Subdivision, Council Bluffs, Pottawattamie County, Iowa, subject to the following conditions:

1. All portions of the subject right-of-way shall be disposed of to an abutting property owner(s).

2. A final plat shall be executed to create new platted lots of record with direct access to a publically dedicated right-of-way.
3. A 75-foot easement shall be retained along the eastern portion of the vacated right-of-way to allow Public Works access to existing infrastructure within the 12th Avenue return.

Public Hearing

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

Speakers in favor:
1. Doug Reisz, 2940 Whitetail Drive, Logan, IA 51546
2. Amy Vance, 1115 S. 35th Street, Council Bluffs, IA 51501

Speakers against: None

Planning Commission Recommendation

The City Planning Commission recommended approval of the request to vacate and dispose of 12th Avenue right-of-way between South 34th and South 35th Streets and abutting property legally described as Lots 16 through 30, Block 19, Brown's Subdivision and Lots 1 through 15, Block 18, Brown's Subdivision, Council Bluffs, Pottawattamie County, Iowa, subject to the following conditions:
1. All portions of the subject right-of-way shall be disposed of to an abutting property owner(s).
2. A final plat shall be executed to create new platted lots of record with direct access to a publically dedicated right-of-way.
3. A 75-foot easement shall be retained along the eastern portion of the vacated right-of-way to allow Public Works access to existing infrastructure within the 12th Avenue return.

VOTE: AYE - Bass, Danielsen, Opperman, Rater, Rew, Scott, Stroebele, and VanHouten. NAY - None ABSTAIN - None ABSENT – Halm, Haner, and Hutcheson. VACANT - None Motion: Carried.

Attachment

Attachment A: Location and Zoning Map

Prepared by: Haley Weber, Planner, Community Development Department