**City Council Communication**

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| Department:<br>Community Development<br><br>Case #SAV-22-002<br><br>Applicant/Property Owner:<br>Brian P. and Jamie L. Merksick<br>2201 South 12th Street<br>Council Bluffs, IA 51501 | Resolution of Intent No. _____<br><br>Resolution to Dispose No. _____ | Resolution of Intent: 04/25/22<br><br>Resolution to Dispose: 05/9/22<br><br>Planning Commission: 04/12/22 |

## Subject/Title

Request: Public hearing on the request of Brian P. and Jamie L. Merksick to vacate and dispose of the westerly north/south alley that is platted in Block 1, Railroad Addition and Block 5, Burns Addition located between S. 11th and S. 12th Streets and 22nd and 23rd Avenues, City of Council Bluffs, Pottawattamie County, Iowa.

Location: 2201 South 12th Street

## Background

The Community Development Department has received an application from Brian P. and Jamie L. Merksick to vacate and dispose of the westerly north/south alley that is platted in Block 1, Railroad Addition and Block 5, Burns Addition located between South 11th and South 12th Streets and 22nd and 23rd Avenues, City of Council Bluffs, Pottawattamie County, Iowa. The subject right-of-way is unimproved and measures approximately 12 feet in width by 349 feet in length.

The applicant owns the property located at 2201 South 12th Street and intends to construct an addition connecting the existing single-family dwelling (principal structure) to the existing detached garage (accessory structure) on the subject property. The subject property is zoned R-2/Two-Family Residential District, which requires a 20-foot rear yard setback for principal structures and a three-foot rear yard setback for accessory structures. The existing structures meet the minimum required setbacks for the R-2 District. However, the proposed addition would combine the two structures into one principal structure, which would be required to meet the minimum 20-foot rear yard setback. The purpose of this request is to allow the applicant to acquire additional land area and consolidate it with their existing property at 2201 South 12th Street to achieve the minimum required rear yard setback for the proposed addition.

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 seven property owners with land that abuts the subject right-of-way. The owners of these properties are as follows:

West:

- Residential property owned by Brian P. and Jamie L. Merksick (2201 S. 12th Street)
- Residential property owned by Richard Lee and Carole K. Tallman (2215 S. 12th Street)
- Residential property owned by Trey A. Carstens (2217 S. 12th Street)
- Residential property owned by Sarah J. Lighthart Johnson (2221 S. 12th Street)
- Residential property owned by Robert and Katheryn Lafferty (2225 S. 12th Street)

East:

- Residential property owned by Daley Construction (1113 22nd Avenue)
- Residential property owned by Robert L. and Betty L. Cade (1112 23rd Avenue)

All abutting property owners were mailed petitions asking if they are in favor of/opposed to the vacation request and if they are willing to/not willing to acquire the portion of the subject alley adjacent to their property, if vacated. Responses to these petitions are summarized in Comment #10 below.

2. *To ensure that no property owner is deprived of required and reasonable access*. The subject alley abuts seven parcels of land, which are comprised of multiple existing lots of record. All parcels have access to either 22nd Avenue, S. 12th Street, 23rd Avenue or a combination thereof. However, the property at 1112 23rd Avenue has an existing driveway off the subject alley that is used to access an existing garage on the property. If the subject alley is vacated, the property owner at 1123 23rd Avenue would lose access to their existing driveway to the garage on their property. The Community Development Department recommends that the property owners at 2225 S. 12th Street and 1112 23rd Avenue enter into a shared access easement so that the property owners at 1112 23rd Avenue continue to have legal access to this existing drive.

3. *To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way*. The proposal is to vacate the entirety of the subject alleyway.

4. *To reduce or eliminate hazardous and dangerous traffic conditions*. The subject right-of-way is primarily unimproved except for the approximately southerly 52 feet, which is paved and used as a driveway to access an existing garage at 1123 23rd Avenue. Vacating the subject alley would eliminate hazardous driving conditions for vehicles traveling down the unimproved alley.

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:

   - The Council Bluffs Permits and Inspections Division stated they have no concerns regarding the request.
   - The Council Bluffs Fire Department stated they have no comments regarding the request.
   - The Council Bluffs Parks and Recreation Department stated they have no comments regarding the request.
   - The Council Bluffs Public Works Department stated that they are not opposed to the request.
   - MidAmerican Energy stated that they have no concerns with the request and stated that an easement shall be maintained over the subject right-of-way for access and maintenance purposes.
   - Cox Communications stated they have no infrastructure in the subject alley and have no concerns regarding the request.
   - Council Bluffs Water Works stated they have no infrastructure in the subject alley and have no concerns regarding the request

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 proposal is to vacate the entirety of the subject alleyway.

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.* There are seven property owners with land that abuts the subject right-of-way. All abutting property owners were notified of the vacation request. Each abutting property owner is eligible to receive their portion of the alley in consideration of the vacation application fee, which has already been paid. The following responses were received:
    The applicants were notified about this vacation request. Their response is included below:

    - Brian P. and Jamie L. Merksick stated they are in favor of the request and are willing to acquire the portion of right-of-way adjacent to their property at 2201 S. 12th Street at no cost.
    - Carole K. Tallman stated that she is in favor of the request and is willing to acquire the portion of right-of-way adjacent to her property at 2215 S. 12th Street at no cost.
    - Robert and Katheryn Lafferty stated they are in favor of the request and are willing to acquire the portion of right-of-way adjacent to their property at 2225 S. 12th Street at no cost.
    - Betty L. Cade stated that she is in favor of the request and is willing to acquire the portion of right-of-way adjacent to her property at 1112 23rd Avenue at no cost.
    - No response was received from the following property owners as of the date of this report:
        - Daley Construction
        - Keith E. and Elaine E. Johnson
        - Trey A. Carstens

## Recommendation

The Community Development Department recommends approval of the request to vacate and dispose of the westerly north/south alley that is platted in Block 1, Railroad Addition and Block 5, Burns Addition, located between S. 11th and S. 12th Streets and 22nd and 23rd Avenues, City of Council Bluffs, Pottawattamie County, Iowa, subject to the following conditions:

1. An easement shall be retained over the subject right-of-way for utility access and maintenance purposes;
2. An access easement shall be retained over the southerly approximately 52-feet of vacated right-of-way adjacent to 2225 S. 12th Street and 1112 23rd Avenue; and
3. All portions of the subject right-of-way shall be disposed of to an abutting property owner(s).

## Public Hearing

Staff speakers for the request:

1. Haley Weber, Planner, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers in favor: None
Speakers against: None

## Planning Commission Recommendation

The Planning Commission recommended approval to vacate and dispose of the westerly north/south alley that is platted in Block 1, Railroad Addition and Block 5, Burns Addition, located between S. 11th and S. 12th Streets and 22nd and 23rd Avenues, City of Council Bluffs, Pottawattamie County, Iowa, subject to the following conditions:

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

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

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| **Attachment A:** Location and Zoning Map |
| **Prepared By:** Haley Weber, Planner, Community Development Department |