City Council Communication

Department: Community Development Department Case #MIS-22-004 Applicants: Scott Porter 22938 Meadowview Parkway Council Bluffs, IA 51503 Doug Reisz 2940 Whitetail Drive Logan, IA 51546 Amy Vance Properties LLC 1115 S. 35th Street Council Bluffs, IA 51501 Steven B. and Kathy J. Tisher 1207 S. 35th Street Council Bluffs, IA 51501 Shadow Park Cooperative 1325 N. 129th Circle Omaha, NE 68154	Resolution of Intent No. _____ Resolution to Dispose No._____	Reso. of Intent: 7/25/22 Reso. to Dispose: 8/8/22

Subject/Title

Request for release of the permanent and perpetual utility easement over the previously vacated 12th Avenue right-of-way lying between South 34th and South 35th Streets except for the portion abutting Lots 1 through 3 and the easterly 28 feet of Lot 4 along with Lots 9 through 15 all in Block 18, Brown's Subdivision and the westerly ten feet abutting Lot 16, Block 19, Brown's Subdivision, City of Council Bluffs, Pottawattamie County, Iowa.

Location: 12th Avenue between South 34th and South 35th Streets

Background/Discussion

On January 24, 2022, the Council Bluffs City Council approved Resolution No. 22-22 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, City of Council Bluffs, Pottawattamie County, Iowa. The purpose of the vacation request was to allow the applicant, Scott Porter, to acquire additional land area for a future multi-family residential development on property adjacent to the vacated right-of-way. Conveyance of the vacated 12th Avenue right-of-way was subject to the reservation of a permanent and perpetual utility easement for existing storm sewer infrastructure and other public utilities.

The applicant has since relocated the storm sewer infrastructure out of the vacated right-of-way. However, several utility providers have indicated that they have infrastructure located within portions of the vacated right-of-way. At this time, the applicant is requesting to release a portion of the permanent and perpetual easement, as legally described above, so that it does not hinder future development of proposed Lot 1, Black Squirrel Flats Subdivision, and so they can execute/record the Black Squirrel Flats final plat.

Comments

All pertinent City departments and local utility providers were notified of the request. All local utility providers were also sent petitions asking if they support releasing the subject permanent and perpetual utility easement. The following comments were received:

1. Council Bluffs Public Works Department stated that the storm sewer infrastructure within 12th Avenue was relocated out of the 12th Avenue right-of-way to the satisfaction of their department.
2. Council Bluffs Fire Department stated they have no comment on the request.
3. Council Bluffs Parks and Recreation Department stated they have no comment on the request.
4. Council Bluffs Water Works noted that they have utilities along the western portion of the vacated 12th Avenue right-of-way and has requested to maintain a permanent and perpetual easement over the westerly 10 feet of the vacated 12th Avenue right-of-way for the installation and maintenance of their utilities. The Council Bluffs Water Works Board approved Resolution #06-13-22, dated June 14, 2022, which released the applicable portion of their interest in the subject utility easement. A copy of their signed petition releasing their interest in the applicable portions of the subject utility easement is included with this report as Attachment 'B'.
5. Cox Communications noted that they have utilities along the southerly and westerly portion of the vacated 12th Avenue right-of-way and have requested to maintain a permanent and perpetual easement over the southerly 33 feet of the west 308 feet of the vacated 12th Avenue right-of-way for the installation and maintenance of their utilities. A copy of their signed petition releasing their interest in the applicable portions of the subject utility easement is included with this report as Attachment 'C'.
6. Black Hills Energy noted that they have utilities along the southerly and easterly portion of the vacated 12th Avenue right-of-way and have requested to maintain a permanent and perpetual easement over the southerly 33 feet of the east 160 feet of the vacated 12th Avenue right-of-way for the installation and maintenance of their utilities. A copy of their signed petition releasing their interest in the applicable portions of the subject utility easement is included with this report as Attachment 'D'.
7. MidAmerican Energy Company noted no concerns with the release of easement request. A copy of their signed petition releasing their interest in the applicable portions of the subject utility easement is included with this report as Attachment 'E'.
8. Century Link/Lumen stated noted that they have utilities in S. 35th Street and have requested to maintain a permanent and perpetual easement over the westerly 10 feet of the vacated 12th Avenue right-of-way for access and maintenance of these utilities. A copy of their signed petition releasing their interest in the applicable portions of the subject utility easement is included with this report as Attachment 'F'.

Recommendation

The Community Development Department recommends approval to release the permanent and perpetual utility easement over the previously vacated 12th Avenue right-of-way lying between South 34th and South 35th Streets except for the portion abutting Lots 1 through 3 and the easterly 28 feet of Lot 4 along with Lots 9 through 15 all in Block 18, Brown's Subdivision and the westerly ten feet abutting Lot 16, Block 19, Brown's Subdivision, City of Council Bluffs, Pottawattamie County, Iowa, subject to the following conditions:

1. A permanent and perpetual utility easement shall be retained over the westerly 10 feet of the vacated 12th Avenue right-of-way for the installation and maintenance of utilities.
2. A permanent and perpetual utility easement shall be retained over the southerly 33 feet of the west 308 feet of the vacated 12th Avenue right-of-way for the installation and maintenance of utilities.
3. A permanent and perpetual utility easement shall be retained over the southerly 33 feet of the east 160 feet of the vacated 12th Avenue right-of-way for the installation and maintenance of utilities.

Attachments

Attachment A: Proposed Black Squirrel Flats final plat
Attachment B: Signed easement release petition from Council Bluffs Water Works
Attachment C: Signed easement release petition from Cox Communications
Attachment D: Signed easement release petition from Black Hills Energy Company
Attachment E: Signed easement release petition from MidAmerican Energy Company
Attachment F: Signed easement release petition from Century Link/Lumen

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