City Council Communication

Department: Community Development Case #SAV-22-005 Applicant: Donald Mathews 2642 9th Avenue Council Bluffs, IA 51501 Property Owner: DWM Properties, LLC 20841 Cardinal Lane Council Bluffs, IA 51503	Reso. of Intent No. _____ Reso. to Dispose No. _____	Planning Commission: 9/13/2022 Set Public Hearing: 9/26/2022 Public Hearing: 10/10/2022

Subject/Title

Request: Public hearing on the request of Donald Mathews to vacate and dispose of the east/west alley that is platted between Block 3, Ninth Avenue Addition, and Block 9, Webster's 1st Addition, located between S. 26th and S. 27th Streets and 8th and 9th Avenues, City of Council Bluffs, Pottawattamie County, Iowa.

Location: 2642 9th Avenue

Background/Discussion

The Community Development Department has received an application from Donald Mathews to vacate and dispose of the east/west alley that is platted between Block 3, Ninth Avenue Addition, and Block 9, Webster's 1st Addition, City of Council Bluffs, Pottawattamie County, Iowa, located between S. 26th and S. 27th Streets and 8th and 9th Avenues.. The subject right-of-way is unimproved and measures approximately 16 feet in width by 595 feet in length.

The applicant owns the property located at 2642 9th Avenue. The applicant and some of the neighboring property owners have allegedly had issues with theft from the rear sides of their properties. As such, the applicant is requesting to vacate and dispose of the alley to adjacent property owners in order to obtain the right to construct a fence or gate at points across the subject alley (exact locations TBD) for the purpose of deterring theft.

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:

South:

- Industrial property owned by DWM Properties, LLC (Donald Mathews) (2642 9th Avenue)
- Industrial property owned by A Vital Corporation (821 S 27th Street)
- Industrial property owned by Controlled Materials and Equipment Transportation Corporation (2632 9th Avenue)
- Industrial property owned by Rod Pressgrove (2626 9th Avenue

- Industrial property owned by Robinson Ventures, LLC (2604 9th Avenue)

North:

- Industrial property owned by Robinson Ventures, LLC (unaddressed)
- Residential property owned by Scott E. and Barbara A. Workman (2649 8th Avenue)
- Industrial property owned by William A. (Jr.) and Carrie L. Brown (2653 8th 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 eight parcels of land, which are comprised of multiple existing lots of record. All abutting parcels have frontage along either S. 26th Street, S. 27th Street, 8th Avenue, 9th Avenue, or a combination thereof, and most of the properties utilize these streets for vehicle access. However, the property at 2653 8th Avenue has an existing driveway off the subject alley that is used to access the only door on the principal structure on the property. If the subject alley is vacated, the property owner at 2653 8th Avenue would lose access to their existing driveway in front of their garage door. The properties located at 2604 and 2632 9th Avenue also have rear garage doors that benefit from public alley access. The rear garage doors on these two properties can be accessed by driving around from the front sides of each property, but the alley offers an additional access point.

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 entirely unimproved, but is drivable. However, the alley's alignment is not centered on the platted right-of-way and there are electric utilities poles and a private fence within the platted right-of-way which create potential obstructions.

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 Parks and Recreation Department stated they have no comments regarding the request.
   - The Council Bluffs Public Works Department stated that have sewer infrastructure within the alley right-of-way and that they are opposed to vacating the subject alley so that they can maintain access to their infrastructure.
   - MidAmerican Energy stated they are opposed to the request because the subject alley contains a significant three-phase, overhead, electric primary distribution feeder line running from their substation one block to the west. This feeder line is important to reliable distribution of electricity to a large area of the City. MidAmerican Energy also stated that their preference would be to not vacate the alley, but that they could support a vacation if a perpetual easement were to be established that prevents any private landowner from blocking off any portion of the subject alley.
   - Lumen stated that they have aerial and underground facilities in the alleyway and would need to maintain access to their facilities if the alley is vacated. Alternatively, the adjacent property owners could pay to have the Lumen facilities relocated out of the alley.
   - Black Hills Energy stated they have no concerns with the proposed vacation.

- Council Bluffs Water Works indicated they do not oppose the proposed vacation.

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.* Chapter 6, Transportation of the Bluffs Tomorrow: 2030 Plan (comprehensive plan) states the following:
   The City should support effective access management on key corridors through the following techniques:
   - *The consolidation of redundant curb cuts, especially along primary streets;*
   - ***The increased reliance on side streets and alleys as primary means of access to a site****; and*
   - *Cross-access easements between adjacent owners that would enhance on-site circulation and reduce the need to enter a public street for trips to nearby destinations.*

   Ninth Avenue is a key east-west corridor in the City's west end, particularly for industrial and freight traffic. Ninth Avenue also serves as an alternative route to 5th Avenue. It would be preferable for properties along 9th Avenue to be accessed from the alley, when feasible, to reduce potential traffic conflicts. Vacating the subject alley, and thereby eliminating alley access from three properties that currently benefit from it, runs counter to the intent of the City's 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:

    - DWM Properties, LLC, stated they are in favor of the request and are willing to acquire the portion of right-of-way adjacent to their property at 2642 9th Avenue at no cost.
    - A Vital Corporation stated they are in favor of the request and are willing to acquire the portion of right-of-way adjacent to their property at 821 South 27th Street.
    - William A. and Carrie L. Brown stated they are in favor of the request and are willing to acquire the portion of right-of-way adjacent to their property at 2653 8th Avenue at no cost.
    - Controlled Materials and Equipment Transportation Corporation stated they are in favor of the request and are willing to acquire the portion of right-of-way adjacent to their property at 2632 9th Avenue at no cost.
    - Rod Pressgrove stated he is in favor of the request and is willing to acquire the portion of right-of-way adjacent to his property at 2626 9th Avenue at no cost.
    - Robinson Ventures, LLC, stated they are in favor of the request and are willing to acquire the portion of right-of-way adjacent to their property at 2604 9th Avenue and unaddressed property on the north side of the alley (Lots 1-11 and the east ½ of Lot 12, Block 9, Webster's 1st Addition) at no cost.
    - Scott E. and Barbara A. Workman stated they are in favor of the request and are willing to acquire the portion of the right-of-way adjacent to their property at 2649 8th Avenue at no cost.

Recommendation

The Community Development Department recommends denial of the request to vacate and dispose of the east/west alley that is platted between Block 3, Ninth Avenue Addition, and Block 9, Webster's 1st Addition, located between S. 26th and S. 27th Streets and 8th and 9th Avenues, City of Council Bluffs, Pottawattamie County, Iowa, for the following reasons:

- The alley contains significant above-ground and buried utilities (electric primary distribution feeder line, fiber, and sewer) which would be difficult to access for maintenance purposes, and
- Vacating the subject alley would contradict the stated goals in Chapter 6, Transportation, of the Bluffs Tomorrow: 2030 Plan (comprehensive plan).

Public Hearing

Staff speakers for the request:

1. Brandon Siracuse, Planner, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503
2. Christopher Gibbons, Planning and Code Compliance Manager, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers in favor:

1. Donald Mathews, 2642 9th Avenue, Council Bluffs, IA 51501
2. Jeff Griffis, 104 Cambridge Circle, Council Bluffs, IA 51503
3. Rod Pressgrove, 24218 Highway 92, Council Bluffs, IA 51503
4. Bill Brown, 308 E Ferndale Drive, Council Bluffs, IA 51503

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommended approval to vacate and dispose of the east/west alley platted between Block 3, Ninth Avenue Addition, and Block 9, Webster's 1st Addition, City of Council Bluffs, Pottawattamie County, Iowa, subject to the reservation of a permanent and perpetual easement for utilities.

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

Attachments

Attachment A: Location and Zoning Map

Prepared by: Brandon Siracuse, Planner, Community Development Department