000680 ✓ Attachment B

Pottawattamie County, IA
Recorder John Sciortino
Book-Page: 2007-011233
File Time: 07/13/2007 @ 08:29:09 AM

2007-011233

F4

R Fee 20.00

A Fee 15.00

T Tax ____

COMPARED

Return to: City Clerk, 209 Pearl Street, Co. Bluffs, IA 51503 - Phone: 328-4616
Prepared by: Community Development Dept., Co. Bluffs, IA 51503 - Phone: 328-4629

RESOLUTION NO. 07-245

A RESOLUTION TO VACATE AND TO DISPOSE OF CERTAIN RIGHTS-OF-WAY NORTH OF AVENUE G AND SOUTH OF AVENUE J BETWEEN NORTH 14TH AND NORTH 15TH STREETS, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

WHEREAS, following public hearing and having given careful study to the proposal, the City Council determines that certain city-owned right-of-way north of Avenue G and south of Avenue J between North 14th and North 15th Streets described as the east/west alley between Avenue I and Avenue J in Block 9, Potter and Cobb's Addition and Block C, Potter and Cobb's Second Addition; the east/west alley between vacated Avenue H and Avenue I in Block 10, Potter and Cobb's Addition and Block D, Potter and Cobb's Second Addition; all of Avenue I right-of-way from North 14th to North 15th Street; all of Avenue H right-of-way from North 14th to North 15th Street and all of North 15th Street right-of-way from the north line of the Avenue G North Service Road to the south line of Avenue J, City of Council Bluffs, Pottawattamie County, Iowa, is of no benefit to the public and should be vacated; and

WHEREAS, pursuant to Iowa Code Section 354.23, the City Council declares its intent to dispose of this City right-of-way by conveying and quitclaiming all of its right, title, and interest in it to Pottawattamie County Development Corporation. The westerly 15 feet of 15th Street right-of-way upon Council approval of the resolution after public hearing and the balance after acquisition of the three properties addressed as 719 North 15th Street, 1410 Avenue 'I' and 1401 Avenue 'J'.

WHEREAS, this conveyance is subject to the reservation of a permanent and perpetual utilities easement of way across all of the above mentioned right-of-way in favor of the City of Council Bluffs, for the maintenance of any and all utilities equipment presently in place, and for such reconstruction, re-emplacement and repair thereof which said City and its licensees and/or franchise grantees may in the future deem necessary and proper, and for the removal of any improvements emplaced thereon by the grantees, or their successors or assigns, necessitated by the reconstruction, re-emplacement, or repair of such utilities, such removal to be at the sole expense of grantees or their successors or assigns and without cost to the City, its licensees and/or franchise grantees, and without obligation to repair or replace such improvements, and subject to any and all other easements and right-of-way of record and those not of record.

1-657

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

Entered for Taxation JUL 13 2007
Marilyn J. Dicke, COUNTY AUDITOR

That the above described city right-of-way is hereby vacated and conveyed as follows, upon Council approval of the resolution after public hearing:

Pottawattamie County Development Corporation and all successors in interest: The vacated Westerly 15 feet of North 15th Street right-of-way from the north line of the Avenue G North Service Road to the south line of Avenue J.

That the above-described city right-of-way is hereby vacated and conveyed as follows, upon acquisition of 719 North 15th Street, 1410 Avenue I and 1401 Avenue J by the City of Council Bluffs:

Pottawattamie County Development Corporation and all successors in interest: The vacated east/west alley between Avenue I and Avenue J in Block 9, Potter and Cobb's Addition and Block C, Potter and Cobb's Second Addition; the vacated east/west alley between vacated Avenue H and Avenue I in Block 10, Potter and Cobb's Addition and Block D, Potter and Cobb's Second Addition; all of vacated Avenue I right-of-way from North 14th to North 15th Street; all of vacated Avenue H right-of-way from North 14th to North 15th Street and all of vacated North 15th Street right-of-way, except the Westerly 15 feet, from the north line of the Avenue G North Service Road to the south line of Avenue J.

BE IT FURTHER RESOLVED

That the Mayor and the City Clerk be and are hereby authorized, empowered and directed to execute this resolution conveying the City's interest in the above-described right-of-way; and

BE IT FURTHER RESOLVED

That the City Clerk is directed to deliver this resolution and any attached documents to the County Recorder according to Iowa Code 354.23.

ADOPTED
AND
APPROVED: June 11, 2007

Thomas P. Hanafan, Mayor

ATTEST: Judith H. Ridgeley, City Clerk

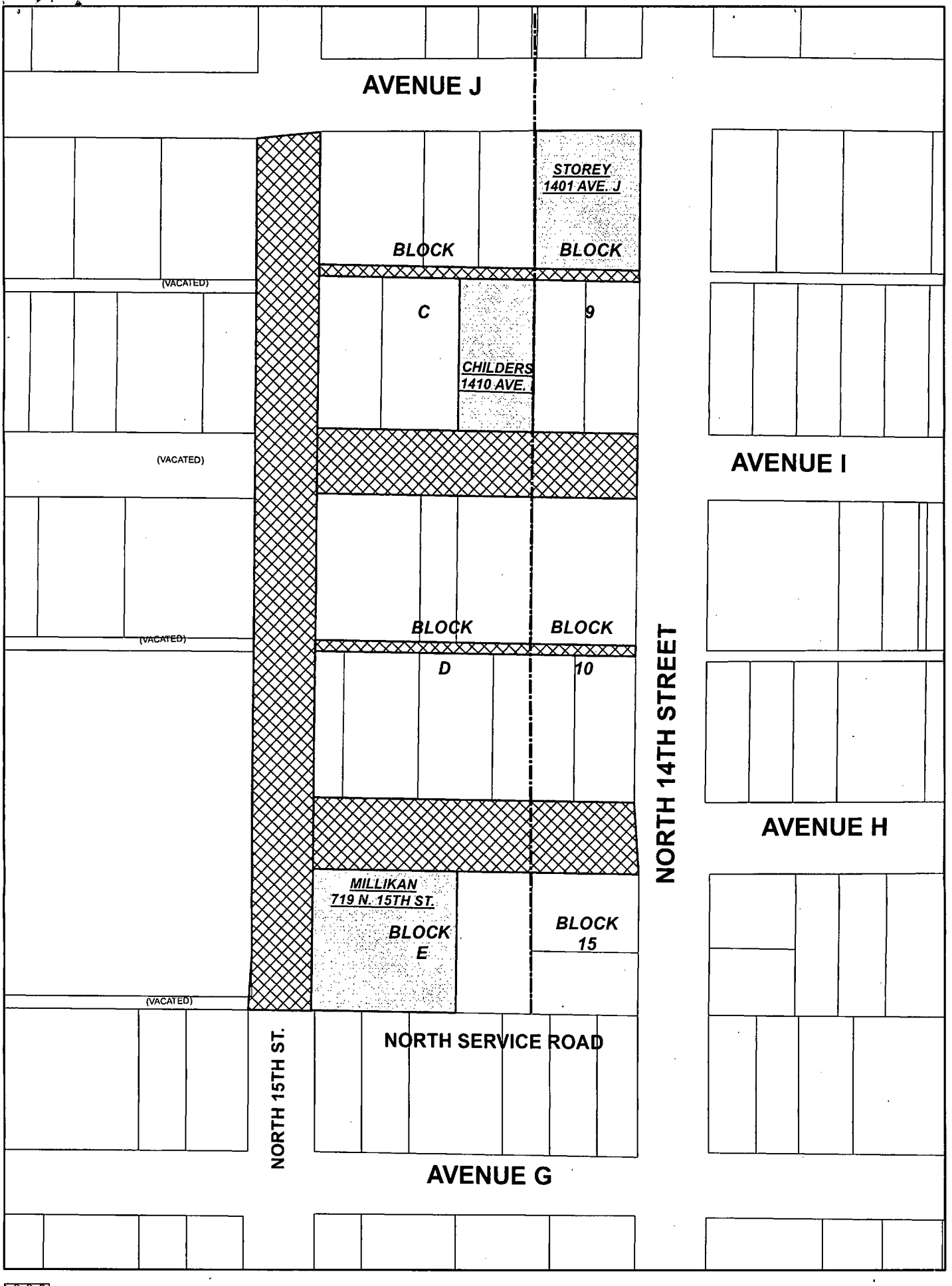
STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this 11th day of June, 2007, before me the undersigned, a Notary Public in and for said County and said State, personally appeared Thomas P. Hanafan and Judith H. Ridgeley, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Judith H. Ridgeley, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Joan A. Gilman
Notary Public in and for said State

JOAN A GILMAN
Commission Number 719164
MY COMMISSION EXPIRES
OCTOBER 22, 2008

Planning Case #SAV-07-009
(Revised: 06/11/07)



REQUESTED VACATION

CASE #SAV-07-009

PROOF OF PUBLICATION

STATE OF IOWA
POTTAWATTAMIE COUNTY

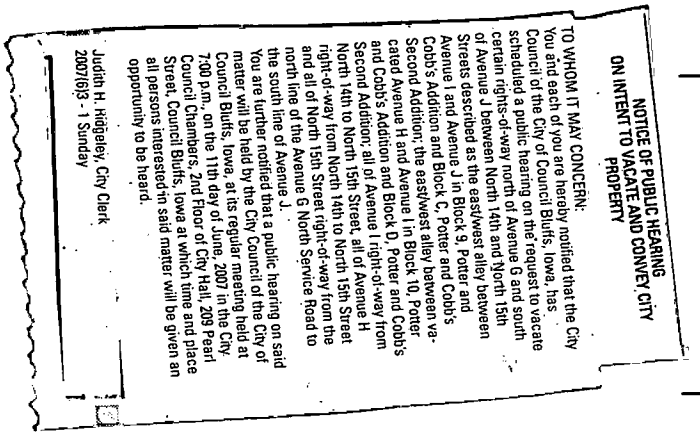
I, Amy McKay, on my oath do solemnly swear that I am the Controller of the COUNCIL BLUFFS DAILY NONPAREIL, a newspaper issued DAILY and printed in said county, COUNCIL BLUFFS, IOWA.

The attached notice was published in said newspaper for 1 consecutive time(s) as follows:

The first publication thereof

began on the 3rd day of June, 2007

Signed in my presence by the said Amy McKay and by her sworn to before me this 8th day of June, A.D. 2007.



NOTICE OF PUBLIC HEARING
ON INTENT TO VACATE AND CONVEY CITY PROPERTY

TO WHOM IT MAY CONCERN:
You and each of you are hereby notified that the City Council of the City of Council Bluffs, Iowa, has scheduled a public hearing on the request to vacate certain rights-of-way north of Avenue G and south of Avenue J between North 14th and North 15th Streets described as the east/west alley between Avenue I and Avenue J in Block 9, Potter and Cobb's Addition and Block C, Potter and Cobb's Second Addition; the east/west alley between vacated Avenue H and Avenue I in Block 10, Potter and Cobb's Addition and Block D, Potter and Cobb's Second Addition; all of Avenue I right-of-way from North 14th to North 15th Street, all of Avenue H right-of-way from North 14th to North 15th Street and all of North 15th Street right-of-way from the north line of the Avenue G North Service Road to the south line of Avenue J.
You are further notified that a public hearing on said matter will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting held at 7:00 p.m. on the 11th day of June, 2007 in the City Council Chambers, 2nd Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

Judith H. Hidgeley, City Clerk
2007693 - 1 Sunday

Amy McKay
Daily Nonpareil Controller

Tiffany N. Schmitt
Notary Public

TIFFANY N. SCHMITT
Commission Number 736088
MY COMMISSION EXPIRES
AUGUST 15, 2008

Filed this 8th day of June, A.D. 2007.
Publication Cost: $ 15.12

4B

Customer Number: 35700
Order Number: 20149548

JOHN SCIORTINO, RECORDER
POTTAWATTAMIE COUNTY
227 South 6th Street
Council Bluffs, IA 51501
712-328-5612
FAX # 712-328-4738

07/13/2007 10:49AM 0001
222222#6387

REAL ESTATE	$35.00
E COMM	$1.00
RMA'S	$1.00
CHARGE	$37.00

Please return to:
City Clerk
209 Pearl Street
Council Bluffs, Iowa 51503

SKINNER LAW OFFICE

ATTORNEYS AT LAW A Professional Corporation

Ed Skinner
R. Bradley Skinner
Geri D. Huser

204 8th Street S.E.
P.O. Box 367
Altoona, Iowa 50009

Telephone (515) 967-4264
Facsimile (515) 967-6486

May 4, 2007

Donald Gross
Director Community Development Department
209 Pearl Street
Council Bluffs, IA 51503-4270

RE: Response to Notice of Intent to Vacate Certain Rights-of-Way North of Avenue G and South of Avenue J, from North 14th Street to North 15th Street, All Within the City of Council Bluffs, Iowa.

Dear Mr. Gross:

Please be advised that the undersigned along with Darnel L. Manning with the Connolly Law Firm represent Daniel Storey.

Our client has shared with us a copy of the memo you forwarded to him concerning the City's intention to hold a public hearing on Tuesday, May 8, 2007, concerning the possibility of vacating certain streets and alleys as depicted in the diagram enclosed with this letter.

As you know, Mr. Storey's property is located at the corner of Avenue J and North 14th Street. Based upon the information which you have provided, you intend to vacate a portion of North 15th Street and a portion of the alley which Mr. Storey and his tenants rely upon for ingress and egress.

In accordance with Section 364.15 of the Code of Iowa, we contend that the City's vacation of the street and alley will significantly damage Mr. Storey's property. For that reason, we ask that no action be taken concerning the vacation of the street and alley at this time.

Further, I also acknowledge a letter dated March 28, 2007 from the Burns Law Firm recognizing that the City has initiated the preliminary steps toward the acquisition (either through negotiation or through eminent domain) of Mr. Storey's property. We have not yet had an opportunity to fully analyze the basis upon which the City intends to rely upon its powers of eminent domain.

For the purpose of your meeting on Tuesday, May 8, 2007, we request that you acknowledge the vacation of the alley and street as now proposed by the City will severely impact the Storey property should the City ultimately fail to acquire the Storey property. Further, we ask that you not proceed with the vacation of any streets or alleys until after the final determination is made as to the City's authority to acquire Mr. Storey's property through its power of eminent domain.

Council Communication

Department: Community Development Case/Project No. SAV-07-009	Resolution of Intent No. _____ Resolution to Dispose No. _____	Planning Commission: 05/08/07 Set Public Hearing: Public Hearing:

Subject/Title

Request of Pottawattamie County Development Corporation (PCDC) to vacate certain rights-of-way north of Avenue G and south of Avenue J, from North 14th Street to North 15th Street as follows:

1. The east/west alley between Avenue I and Avenue J in Block 9, Potter and Cobb's Addition and Block C, Potter and Cobb's Second Addition.
2. The east/west alley between vacated Avenue H and Avenue I in Block 10, Potter and Cobb's Addition and Block D, Potter and Cobb's Second Addition.
3. All of Avenue I right-of-way from North 14th to North 15th Street.
4. All of Avenue H right-of-way from North 14th to North 15th Street.
5. All of North 15th Street right-of-way from the north line of the Avenue G North Service Road to the south line of Avenue J.

Background/Discussion

Legacy Family Campus, a non-profit development, is proposed for the area between Avenue G and Avenue J, from North 14th to North 16th Street. All street and alley rights-of-way within this area need to be vacated. The vacation of the rights-of-way within Phase I have already taken place. Pottawattamie County Development Corporation is now requesting the vacation of the rights-of-way listed above in order to continue with Phase II of the project.

There are various utilities within all of the subject rights-of-way. Easements will need to be retained until the facilities are relocated or removed.

All properties, with the exception of 719 North 15th Street, 1410 Avenue I and 1401 Avenue J, have been acquired for the project. These remaining properties are in the process of condemnation and the owners have been notified of this public hearing.

Recommendation

The Community Development Department recommends vacating all of the rights-of-way listed above, subject to utility easements, to become effective upon acquisition of the three properties listed above.

Public Hearing

The following appeared before the Planning Commission in favor of the request:

Sheryl Garst, PCDC, 7 North 6th Street
Pete Tulipana, Heartland Family Service
Jack Ruesch, 25 Main Place, representing applicants.

The following appeared before the Planning Commission in opposition to the request:

Dan Storey, owner of 1401 Avenue J
Geri Huser, 204 8th Street SE, Altoona, Iowa, representing Dan Storey
Kathryn Black, 1319 Avenue H
Robert and Vickie Ludwick, 1324 Avenue H

Planning Commission Recommendation

The Planning Commission recommends vacating all of the rights-of-way listed in the caption, subject to retention of utility easements, to become effective upon acquisition of the three properties addressed as 719 North 15th Street, 1410 Avenue 'I' and 1401 Avenue 'J'.

VOTE: AYE 6 NAY 1 ABSTAIN 0 ABSENT 3 VACANT 1 Motion carried.

Attachments: Map, letter/Skinner Law Office, 2 Resolutions and Public Notice.

Department Head Signature
DDG/GMM/rls/cac

Mayor Signature