City Council Communication

Department: Community Development Cases #SUB-23-006 & #MIS-23-003 Applicant/Property Owner: James R. Huff 3204 Avenue K Council Bluffs, IA 51501 Surveyor: Brian L. Yentes R.W. Engineering and Surveying 7525 N. 101st Street Omaha, NE 68122	Resolution No. _____ Resolution No. _____	Public Hearing Case #MIS-23-003: Resolution of Intent: 5/22/23 Resolution to Dispose: 6/12/23 Case #SUB-23-006: 6/12/23

Subject/Title

Request: Combined public hearings on the request of James R. Huff for final plat approval of a one-lot residential subdivision to be known as Huff-Sales Subdivision being legally described as part of the W ½ of the NW ¼ of the NW ¼ of Section 27-75-44, Lots 1 and 2, Block 5, Bensons First Addition, vacated North 32nd Street lying north of the north right-of-way of Avenue 'K', and portions of the east/west alley lying west of Lot 12, Block 4, Bensons First Addition, City of Council Bluffs, Pottawattamie County, Iowa; and to release of the west half of the permanent and perpetual utility easement over the vacated North 32nd Street right-of-way abutting Lot 1, Block 5, Bensons 1st Addition, except the north ten (10) feet and the south fifteen (15) feet, thereof.

Location: 3204 Avenue K

Background/Discussion

The Community Development Department has received applications from James R. Huff for property legally described above for the following requests:

A. **CASE #SUB-23-006**: Final plat approval of a one-lot subdivision to be known as Huff-Sales Subdivision, being a replat of properties legally described above; and
B. **CASE #MIS-23-003**: Release of a portion of the west half of the permanent and perpetual utility easement over the vacated North 32nd Street right-of-way, as legally described above.

The applicant owns property addressed as 3204 Avenue K, the east half of vacated North 32nd Street, and the triangular parcel located immediately north of 3204 Avenue K. The applicant is currently in the process of vacating the adjacent east/west alley (Case #SAV-16-001). The purpose of the subject requests is to combine all three properties and adjacent right-of-way into one lot of record to allow a future addition to the existing single-family dwelling at 3204 Avenue K. The requests listed above are summarized more particularly below:

CASE #SUB-23-006

The proposed subdivision is comprised of 2.05 acres, more or less, of land and is a replat of the applicant's existing landholdings and applicable portions of the adjacent east/west alley into a single lot of record. The property owner intends to construct an addition onto the east side of the existing single-family dwelling on the property addressed as 3204 Avenue K at a later date. The proposed Huff-Sales Final Plat is included with this report as Attachment 'A'.

Comments

All City Departments and local utility providers were notified of the final plat request. The following comments were received:

The Community Development Department provided the following comments:

A. The final plat shall be recorded within 90 days of City Council approval or the plat will become null and void unless an extension has been requested and granted by the Community Development Director.

B. The proposed subdivision is consistent with the purpose and intent of Title 14: Subdivisions of the Council Bluffs Municipal Code.

C. The subject property is zoned R-1/Single-Family Residential District. All construction activity that occurs within the proposed subdivision shall comply with R-1 District site development standards.

D. Proposed Lot 1 has access off Avenue K, an improved public street.

E. Proposed Lot 1 is currently developed and serviced with adequate utilities. Concurrent with the subject final plat request, the applicant is requesting to release a portion of the permanent and perpetual easement on the west half of vacated North 32nd Street (Case #MIS-23-003). Currently, MidAmerican Energy has utility poles within the west half of said easement area. The applicant is working with Mid-American Energy to relocate said utility poles to the east half of the vacated North 32nd Street. All costs to construct, extend, remove, and/or relocate any utilities within or to this subdivision shall be the sole responsibility of the developer, not the City of Council Bluffs.

F. The applicant is currently in the process of vacating the adjacent east/west alley (Case #SAV-16-001). The applicant initially brought forth the vacation request in 2016 but, for unknown reasons, the request did not complete the public hearing process through City Council at that time. The applicant owns property at 3204 Avenue 'K', the east half of the vacated North 32nd Street, and the vacant 1.53 acre parcel north of 3204 Avenue 'K'. The 1.53 acre parcel is separated from the applicant's other two properties by an existing unimproved east/west alley. The applicant's intent is to complete the vacation process started in 2016, of the adjacent east/west alley (Case #SAV-16-001) so that the applicant can combine all three of their properties into one lot of record (Case #SUB-23-006). The applicant intends to construct an addition to their existing residential dwelling on the property at a later date. The final plat will include all acquired portions of the adjacent alleyway.

G. The following technical corrections shall be made to the final plat:
    a. The date under the "Approval of the City of Council Bluffs" statement on Page C0.2 shall state 2023 instead of 2024.
    b. The Mayor's name under the "Approval of the City of Council Bluffs" statement on Page C0.2 shall state "Matthew J. Walsh" rather than Matt Walsh.
    c. The legal description on the final plat shall read, "part of the W ½ of the NW ¼ of the NW ¼ of Section 27-75-44, Lots 1 and 2, Block 5, Bensons First Addition, vacated North 32nd Street lying north of the north right-of-way of Avenue 'K', *and portions of the east/west alley lying west of Lot 12, Block 4, Bensons First Addition*, City of Council Bluffs, Pottawattamie County, Iowa.

d. The standard dedication of public easements language shall appear on the final plat as stated below:
A perpetual easement is reserved for storm drainage and the installation and maintenance of utilities 5 feet wide along each side of interior lot lines and 10 feet in width along all front and rear lot lines:

ERECTION OF STRUCTURES PROHIBITED: Grantor shall not erect any structure over or within the Easement Area without obtaining the prior written consent of the City Engineer, provided however grantor shall have the right to place and maintain a surfaced roadway over and within the Easement Area.

CHANGE OF GRADE PROHIBITED: Grantor shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the City Engineer.

RIGHT OF ACCESS: City shall have the right of access to the Easement Area and have all right of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area as herein described.

REMOVAL AND REPLACEMENT: The cost of removal and replacement of any unauthorized improvement or structures within the Easement Area, necessitated by the exercise of the rights under this easement, shall be borne by the Grantor or their successors or assigns.

SURFACE RESTORATION: City's liability to restore the surface within the Easement Area shall be limited only to grading and seeding, and replacement of grantors surfaced roadway.

DUTY TO REPAIR: City agrees that any drain tile, drive or access way, fence, or yard or other improvements outside of the Easement Area which may be damaged as a result of any entry made through an exercise of the City's right of access shall be repaired at no expense to Grantor.

EASEMENT RUNS WITH LAND: This easement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.

The Public Works Department stated the final plat shall include the standard lot line easements and notes.

The Council Bluffs Fire Department stated they have no comments in regards to the proposal.

The Iowa Department of Transportation stated they do not have any conflicts with the proposal.

CASE #MIS-23-003

The City of Council Bluffs City Council vacated and released their interest in North 32nd Street right-of-way lying north of the north right-of-way line of Avenue 'K' on April 11, 2016 via Resolution No. 16-83. At the time of the vacation, the City reserved a permanent and perpetual easement to allow utility providers access to their infrastructure within said right-of-way. The applicant is now requesting approval to release the west half of the permanent and perpetual utility easement over the vacated North 32nd Street

right-of-way abutting Lot 1, Block 5, Bensons 1st Addition, except the north ten (10) feet and the south fifteen (15) feet.

Comments

All City Departments and local utility providers were notified of the subject release of easements request. Furthermore, all utility providers were mailed petitions notifying them of the request and asking if they support releasing the subject permanent and perpetual utility easement. The following comments were received:

The Community Development Department provided the following comments:

A. The City of Council Bluffs City Council vacated and released their interest in the North 32nd Street right-of-way lying north of the north right-of-way line of Avenue 'K' on April 11, 2016 via Resolution No. 16-83, subject to the following easements:
    a. A permanent and perpetual utility easement; and
    b. A 15-foot wide ingress/egress easement abutting the north right-of-way line of Avenue 'K' for the maintenance of utility equipment within Avenue 'K' right-of-way.
B. The subject release of easements request is to release only the west half of the permanent and perpetual utility easement, excluding the southerly fifteen (15) feet, in order to maintain access to the utility equipment within Avenue K right-of-way, and the northerly ten (10) feet, in order to for MidAmerican Energy to maintain access to their utility poles.
C. MidAmerican Energy has existing utility poles within the west half of the subject vacated North 32nd Street right-of-way. The applicant is working with MidAmerican Energy to relocate said utility poles to the east half of the vacated North 32nd Street right-of-way. Mid-American Energy has requested that the north ten (10) feet of the vacated North 32nd Street be reserved for access and maintenance purposes. Said easement is required until such time the utility poles are relocated. The applicant may release this easement once all relocated work has been completed. It is possible that the pole relocation could be approved in between the time the proposed final plat is approved and recorded. In such case, the easement would not need to be recorded on the final plat. The subject easements shall not be released until such time the applicant has relocated MidAmerican's utility poles and provides documentation from MidAmerican Energy that the work has been completed to their satisfaction.

The Public Works Department stated that the remaining portion of the easement over the vacated North 32nd Street right-of-way suffices for their access and maintenance needs.

The Council Bluffs Fire Department stated they have no comments in regards to the proposal.

MidAmerican Energy noted they have provided the owner with a cost estimate and proposal to relocate/shift the existing electric facilities to the east to accommodate the applicant's proposed construction. Said relocation is contingent on the property owner providing MidAmerican Energy a new easement for the relocated facilities. MidAmerican also noted they are reluctant to approve the release of easement until such time the relocation proposal is approved and a new easement is in place from the property owner.

Council Bluffs Water Works approved the release of easements request at their May 16, 2023 Board meeting and provided the signed petition.

Cox Communications has provided the signed petition and supports the release of easements as requested.

Black Hills Energy has provided the signed petition and supports the release of easements as requested.

The Iowa Department of Transportation stated they do not have any conflicts with the proposal.

Recommendation

The Community Development Department recommends:

A. Final plat approval of a one-lot residential subdivision to be known as Huff-Sales Subdivision being legally described as being part of the W ½ of the NW ¼ of the NW ¼ of Section 27-75-44, Lots 1 and 2, Block 5, Bensons First Addition, vacated North 32nd Street lying north of the north right-of-way of Avenue 'K', and portions of the east/west alley lying west of Lot 12, Block 4, Bensons First Addition, City of Council Bluffs, Pottawattamie County, Iowa, subject to the comments stated above and the following conditions:
    1. The final plat shall be recorded within 90 days of City Council approval or the plat will become null and void unless an extension has been requested and granted by the Community Development Department Director;
    2. The final plat shall conform to all City standards and specifications, the zoning and subdivision ordinances and the Department of Public Works Standards for Public Improvements; and
    3. All technical corrections discussed in the staff report shall be incorporated in the final plat prior to being executed by the City.
B. Approval to release the west half of the permanent and perpetual utility easement over the vacated North 32nd Street right-of-way abutting Lot 1, Block 5, Bensons 1st Addition, except the north ten (10) feet and the south fifteen (15) feet, subject to the comments stated above and the following condition:
    1. The subject easements shall not be released until such time the applicant has relocated MidAmerican's utility poles and provides documentation from MidAmerican Energy that the work has been completed to their satisfaction.

Attachment

Attachment A: Huff-Sales Final Plat
Attachment B: Release of Easements Exhibit
Attachment C: Location/zoning map

Surveyor: Brian L. Yentes, R.W. Engineering and Surveying

Prepared by: Haley Weber, Planner