



Kristopher K. Madsen*
Partner

October 31, 2018

Rick D. Crowl*
Partner

Robert M. Livingston*
Partner

City of Council Bluffs
Community Development and Planning Department
City Planning Commission
Attn: Chris Gibbons
209 Pearl Street
Council Bluffs, IA 51503

Jennifer A. Carlson*
Partner

Michael G. Reilly
Partner

Zachary M. Winter*
Associate

Re: VACATION OF MURPHY RIGHT-OF-WAY

William R. Hughes, Jr.*
Of Counsel

A. W. "Tony" Tauke
Of Counsel

* Admitted in Iowa & Nebraska

As a follow up of our previous discussions with staff of Community Development and City Attorney and on behalf of the Council Bluffs Board of Directors, it is our opinion that Murphy "street" is a right-of-way easement for a public road obtained by Pottawattamie County before annexation by the City. The County, contrary to a city, has a right-of-way easement over the land for a road rather than a dedicated fee title given to a city for a city street.

Robert M. Stuart
1914-1986

Annexation by a city gives the city only those rights held by the County. The interest in the road right-of-way does not become a "dedicated street" with fee title to the city after annexation but rather remains as it was titled and held by the County. In this case and similar cases, a county has a right-of-way easement with the underlying property owned by the adjoining landowners.

Jack W. Peters
1931-1993

Emmet Tinley
1916-2002

Consequently, when the right-of-way easement is vacated the land underlying the easement reverts to the adjoining landowners as fee titled property free of the easement. The City has no ownership interest in the land and therefore it has no right of payment from the landowners for the vacated land.

James E. Thorn
1935-2009

Gary R. Faust
1944-2014

The Council Bluffs Industrial Foundation has purchased and owns the land underlying the Murphy right-of-way. It is also to be noted that Murphy right-of-way was not platted or shown on the title when it was purchased by the Foundation. The land underlying the right-of-way was included by the assessor as part of the total acreage which was the basis for the purchase price.

For these reasons, the Foundation is unwilling to pay the City for the vacated right-of-way and is requesting your approval for vacating the right-of-way without any payment to the City.

October 31, 2018

We appreciate your consideration and approval of this request. If you require any additional information or if you have any questions, please contact me.

Yours very truly,

STUART TINLEY LAW FIRM LLP

By

A handwritten signature in cursive script, appearing to read "A. W. Tauke".

A. W. Tauke

Direct email: awtauke@stuarttinley.com

Cc: Dan Koenig, Matt O'Reilly, Paula Hazelwood by email