Council Communication

Department: Community Development CASE #SAV-18-014 Applicant/Owner: Council Bluffs Industrial Foundation 149 West Broadway Council Bluffs, Iowa 51503 Representatives: Matthew G. O'Reilly, President Council Bluffs Industrial Foundation 312 East Ferndale Drive Council Bluffs, IA 51503 A.W. Tauke 310 West Kanesville Blvd, 2nd Floor Council Bluffs, IA 51503	Resolution No. _____	City Council: 12/17/18 City Council: 11/26/18 Public Hearing: 11/13/18 Planning Commission: 11/1/318

Subject/Title

Request: Vacate and dispose of Murphy Road right-of-way, lying west of Indian Creek and East of South 19th Street right-of-way, and abutting properties legally described as being part of the SE1/4 NW1/4 of Section 14.74-44, lying West of Indian Creek and north of Murphy Road right-of-way, along with Government Lot 2 in the NE1/4 SW1/4 of Section 14-74-44, lying east of Gifford Road and West of Indian Creek, City of Council Bluffs, Pottawattamie County, Iowa.

Location: Lying West of Indian Creek and East of South 19th Street/Gifford Road.

Background/Discussion

On September 24, 2018, the Council Bluffs City Council adopted Resolution No. 18-272, which granted final plat approval for a five lot industrial subdivision known as South Pointe Subdivision, Phase 2. Included in this subdivision is a former County right-of-way known as 'Murphy Road', which bisects Lot 5, South Pointe Subdivision, Phase 2 (see Attachments A and B). The subject Murphy Road is an unimproved street that contains 42,876 square feet (0.984 acres) of land and was established on the subject property prior to it being annexed into the City (see Attachment C). The right-of-way extends from Indian Creek to South 19th Street/Gifford Road and is not needed for required vehicular access to said Lot 5, South Pointe Subdivision, Phase 2.

Based on the existing condition and function of Murphy Road right-of-way, the Community Development Department and Public Works Department recommended the right-of-way be vacated and disposed of to the applicant so that it can be platted as part of said Lot 5. The resolution to approve the South Pointe Subdivision, Phase 2 preliminary subdivision plan and final plat included a requirement that the applicant must vacate and acquire Murphy Road right-of-way prior to their final plat being executed by the City. The applicant requests approval to vacate said right-of-way so that they can combine the right-of-way area with said Lot 5 in order to execute their South Pointe Subdivision, Phase 2 final plat.

The following attachments are included with this report for reference purposes:
Attachment A: Location and zoning Map
Attachment B: South Pointe Subdivision, Phase 2 final plat
Attachment C: Murphy Road right-of-way exhibit
Attachment D: Letter from A.W. "Tony" Tauke regarding the purchasing of Murphy Road right-of-way.

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*.
   The applicant owns all of the land that abuts the subject Murphy Road right-of-way. The Community Development mailed the applicant and their representative a petition asking if they are in favor of/opposed to and if they are willing to/not willing to acquire the right-of-way, if vacated. The response to this petition is summarized in Comment #10 below.

2. *To ensure that no property owner is deprived of required and reasonable access*.
   The subject right-of-way bisects Lot 5, South Pointe Subdivision, Phase 2, which has road frontage along South 19th Street, and Gifford Road. The request to vacate and dispose of the subject right-of-way will not deprive the property owner of required and/or reasonable access to said Lot 5.

3. *To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way*. This request will eliminate a dead-end street as Murphy Road extends from Indian Creek to the South 19th Street.

4. *To reduce or eliminate hazardous and dangerous traffic conditions*. The subject right-of-way is unimproved and is not used for vehicular and/or pedestrian traffic.

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:

   - Council Bluffs Parks, Recreation, and Public Properties Department stated they have no comment on the request.
   - Council Bluffs Public Works Department stated they have a storm sewer within the subject right-of-way and that an easement must be retained, if vacated.
   - Council Bluffs Fire Department stated they no comments for the request.
   - Council Bluffs Permits and Inspections stated they have no comments for the request.
   - Council Bluffs Water Works stated they have no utilities in the subject right-of-way.
   - MidAmerican Energy Company stated they have no utilities in the right-of-way and have no objection to the request.
   - Black Hills Energy stated they have no concerns with the vacation request.
   - Cox Communication stated they have no issues with the vacation request.
   - CenturyLink stated they have an active copper line that is located within the subject right-of-way and that an easement must be retained, if vacated. CenturyLink also stated that any cost to move or relocate this line will be at the expense of the applicant.

   Based on the information stated above an easement must be retained over the subject right-of-way, if vacated.

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.* This request is to vacate all of Murphy Road right-of-way from Indian Creek to South 19th Street/Gifford Road.

8. *To assist in the implementation of the goals and objectives of the Comprehensive Plan.* The request is consistent with the local access and circulation objectives stated in Chapter 6, Transportation of the Bluffs Tomorrow: 2030 Plan (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.*
The Community Development Department mailed the applicant and their representative, A.W. 'Tony' Tauke, a petition to sign stating if they are in favor of/opposed to vacation request and if they are willing to/not willing to acquire the right-of-way for a total cost $19,613.00. The applicant signed the petition stating that they are in favor of the vacation request but are not willing to acquire it for the cost of $19,613.00. The applicant's representative provided the City with a letter outlining their opinion of why the applicant is not legally obligated to purchase the right-of-way (see Attachment 'D'). The Community Development Department and the Legal Department reviewed this letter and concurred with their reasoning as to why the applicant is not legally obligated to purchase the Murphy Road right-of-way from the City. The applicant has requested the City vacate and dispose of their interest in Murphy Road as a roadway and has verbally agreed to establish an easement over the vacated right-of-way on the South Pointe Subdivision, Phase 2 final plat for utility access and maintenance purposes.

Recommendation

The Community Development Department recommends approval to vacate and dispose of the City's interest in the Murphy Road right-of-way, as legally described on Attachment 'C', as a roadway subject to an easement being retained over the right-of-way on the South Pointe Subdivision, Phase 2 final plat for utility access and maintenance purposes.

Public Hearing

Speakers in favor:

1. Tony Tauke. Stuart Tinley Law Firm, 310 West Kanesville Boulevard, Council Bluffs, IA 51503

Speakers against: None.

Planning Commission Recommendation

The Planning Commission recommends approval to vacate and dispose of the City's interest in the Murphy Road right-of-way, as legally described on Attachment 'C', as a roadway subject to an easement being retained over the right-of-way on the South Pointe Subdivision, Phase 2 final plat for utility access and maintenance purposes.

VOTE: AYE 9 NAY 0 ABSTAIN 0 ABSENT 0 VACANT 2 Motion: Carried

Attachments
Attachment A: Location and Zoning Map **Attachment B:** South Pointe Subdivision, Phase 2 final plat **Attachment C**: Murphy Road Right-of-way Exhibit **Attachment D**: Letter from A.W. "Tony" Tauke regarding the purchasing of Murphy Road ROW.
Surveyor: Johnathan M. Leisinger, L.S., HGM Associates Inc., 640 5th Avenue, Council Bluffs, Iowa 51501
Prepared by: Christopher N. Gibbons, AICP, Planning Coordinator