Council Communication

Department: Community Development Cases #SAV-19-001 and #SUB-19-001 Property Owner/Applicant: Margarito and Celedonia Moreno 2403 South 19th Street Council Bluffs, IA 51501 Engineer/Surveyor: Ehrhart Griffin & Associates c/o Bill White 142 W Broadway, Suite 136 Council Bluffs, IA 51503	Resolution of Intent No. _____ Resolution to Dispose No. _____ Resolution No. _____	Set Public Hearing: 1/28/19 Public Hearing:2/11/19 Planning Commission: 1/8/19

Subject/Title

Request: Public hearing on the request of Margarito Moreno for the following:

1. Vacate and dispose of 24th Avenue right-of-way lying between South 18th Street and South 19th Street and abutting Blocks 21 and 36, Railroad Addition and Lot 6, Wyatt 2nd Subdivision; and
2. Final plat approval of a two-lot residential subdivision to be known as Moreno Addition, being a replat of Lots 1 through 6, 23 and 24, and the North 33 feet of Lots 11 and 12, and portions of the vacated alleys adjoining, all in Block 36, Railroad Addition, and a portion of the South ½ of vacated 24th Avenue adjoining.

Location: 24th Avenue, between South 19th Street and South 18th Street.
2403 South 19th Street.

Background/Discussion

The Community Development Department has received the following requests from Margarito Moreno: 1) to vacate and dispose of an unimproved section of 24th Avenue located between South 19th Street and South 18th Street; and 2) to execute a final plat for a two-lot minor subdivision to be known as Moreno Addition.

CASE #SAV-19-001: The subject 24th Avenue right-of-way is unimproved and measures 66 feet in width by 330 feet in length. If vacated, the applicant wishes to purchase his section of right-of-way to expand his residential lot and to maintain control over mowing and landscaping. The City has no plans to build a new street in the subject 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*. There are four property owners with land that abuts the subject right-of-way. The owners of these properties are as follows:

   North – Residential property owned by Jose and Victoria Zarate (2323 South 19th Street)
   Residential property owned by Skyler Dobernecker (2322 South 18th Street)
   South – Residential property owned by Margarito and Celedonia Moreno (2403 South 19th Street)
   Residential property owned by Frank and Judith Ruiz (2404 South 18th Street)

All abutting property owners were mailed petitions asking if they are in favor of/opposed to and/or willing to/not willing to acquire the portion of the right-of-way 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*. All abutting properties have frontage on either South 19th Street or South 18th Street and will not be landlocked or have their access negatively impacted if the subject right-of-way is vacated.

3. *To discourage the creation and eliminate or reduce existing dead-end alleys, streets or other rights-of-way*. This request will not create a dead-end right-of-way, as the request is to vacate the entirety of the 24th Avenue right-of-way lying between South 19th Street and South 18th 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:

    - The Permits and Inspections Division stated they have no comments on the vacation.
    - The Public Works Department stated they are not opposed to the vacation as proposed.
    - The Fire Department stated they have no comments on the vacation.
    - Council Bluffs Water Works stated they do not have a public water main or appurtenances in the subject right-of-way and they have no objections to the vacation.
    - MidAmerican Energy Company stated they do not object to the vacation provided they are granted an easement to operate and access existing facilities located within the section to be vacated. They noted their existing facilities include an existing distribution pole down guys on the South 18th Street side of 24th Avenue and a pole and overhead conductors on the South 19th Street side of 24th Avenue.

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 request is to vacate the entirety of the 24th Avenue right-of-way lying between South 19th Street and South 18th Street.

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.* All abutting property owners were notified about this vacation request. The following responses were received:

    - Margarito Moreno stated he is in favor of the request and willing to acquire the portion of right-of-way adjacent to his property for the sum of $1,543.97. Update: Mr. Moreno stated he is willing to acquire the portion of right-of-way adjacent to the property owned by Frank and Judith Ruiz, raising the total sum to $3,622.97.

- Skyler Dobernecker expressed interest in acquiring the portion of right-of-way adjacent to her property, but has requested more information on a drain located in said portion of right-of-way before deciding whether to acquire it or not. The Community Development Department contacted the Public Works Department for information on the drain. The Public Works Department stated they do not show any sewer (sanitary or storm) to the west of South 18th Street and are currently researching for more information on the drain. An easement would have to be retained for any utilities located in the subject right-of-way for access and maintenance purposes. Update: Ms. Dobernecker stated she is in favor of the request and willing to acquire the portion of right-of-way adjacent to her property for the sum of $654.34.
- There has been no reply from Jose and Victoria Zarate or Frank and Judith Ruiz regarding the vacation request. Update: After the Planning Commission meeting held on 1/8/2019, Mr. and Mrs. Zarate contacted the Community Development, stating they are in favor of the request and willing to acquire the portion of right-of-way adjacent to their property for the sum of $1,541.00. Mr. and Mrs. Ruiz stated they are in favor of the request but are not willing to acquire the portion of right-of-way adjacent to their property.

CASE #SUB-19-001: The proposed Moreno Addition is comprised of 1.09 acres and is located East of South 19th Street, between 23rd Avenue and 25th Avenue. Proposed Lot 1 will be retained by the applicant as his residential property. The applicant intends to market proposed Lot 2 as single family property for development.

There is one principal structure and three accessory structures on the existing parcel which the applicant owns: a detached, single-family dwelling, a shed and two garages. The house, the shed and one of the garages are located on proposed Lot 1. The second garage is located on proposed Lot 2.

Comments

1. The proposed subdivision is consistent with the purpose and intent of the Council Bluffs Municipal Subdivision and Zoning Ordinances.
2. Proposed Lot 1 is 33, 803 square feet in size (164.29 feet by 204.18 feet), while proposed Lot 2 is comprised of 13,869 square feet (66 feet by 210.14 feet). Both lots will comply with minimum R-2/Two Family Residential District lot size requirements.
3. Any structures proposed to be built/erected shall comply with R-2/Two Family Residential District site development standards.
4. As per Section 15.24.020, *Supplemental Use and Site Development Regulations, Accessory Uses* of the Council Bluffs Municipal Code (Zoning Ordinance), "unless otherwise permitted, only one principal structure or use is permitted per lot. Unless otherwise prohibited or restricted, a permitted principal use also allows uses, buildings and structures incidental to the permitted use, if located on the same site or building lot. The accessory use and/or structures or buildings shall not be established or erected prior to the establishment or construction of the principal permitted use of the building, structure or land and shall be subordinate, incidental to and compatible with the character of the principal permitted use." Therefore, the garage located on proposed Lot 2 must be demolished prior to the plat being executed by the City.
5. Proposed Lots 1 and 2 have direct access to South 19th Street.
6. The plat includes the 24th Avenue right-of-way proposed to be vacated. The applicant must purchase the portion of right-of-way adjacent to his property prior to the plat being executed by the City.
7. No new right-of-ways are proposed to be dedicated to the City because of this subdivision. Sidewalks are already constructed along all frontages for this subdivision. Any cost to remove, repair and/or relocate sidewalks for the development of this subdivision shall be at the sole cost of the applicant and not the City.
8. Proposed Lots 1 and 2 will be serviced with existing utilities in South 19th Street (e.g., sanitary/storm sewers, water, electricity, etc.).
9. All electric, cable and communication facilities shall be installed underground. All costs to construct, remove and/or relocate any utilities for the proposed subdivision shall be the responsibility of the applicant and not the City.

10. The Permits and Inspections Division stated they have no comments on the request.
11. The Fire Department stated they have no comments for the proposed final plat.
12. The Public Works Department stated a sanitary sewer is located in South 19th Street but there is not a lateral established to support proposed Lot 2. The owner/developer of proposed Lot 2 will be required to install a lateral to the main and obtain all necessary permits at the time of development.
13. Council Bluffs Water Works stated both lots in the proposed subdivision have water main frontage on South 19th Street.

14. MidAmerican Energy Company stated they do not object to the final plat. They also stated the customer or developer must contact MidAmerican Energy for costs and requirements to extend electric facilities to serve the proposed subdivision.
15. The plat does not indicate if any private restrictions and/or covenants will be established for the subdivision. The plat shall be updated to state if any private restrictions and/or covenants will be recorded. A copy of said private restrictions and/or covenants shall be provided to the City. If none are proposed, a note shall be stated on the final plat indicating none will be recorded.

The following technical corrections shall be made to the final plat prior to being executed by the City:

1. Increase the size of the plat map exhibit.
2. The standard dedication of public easements shall appear on the plat as provided here:

   As part of this platting, Margarito-Celedonia Moreno does hereby grant to the City of Council Bluffs, a municipal corporation of the State of Iowa, and its agents, contractors and assigns, a permanent nonexclusive easement for the purpose of conveying overland storm drainage and constructing, reconstructing, repairing, enlarging and maintaining storm sewers together with necessary appurtenances thereto in, on, over, and across the following described real estate: This easement shall be subject to the following terms and conditions:

   a. *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.*
   b. *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.*
   c. *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.*
   d. *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.*
   e. *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.*
   f. *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.*
   g. *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.*

3. Revise "I, Lea A. Voss, the Treasurer of Pottawattamie County, Iowa, hereby certify that the property that the person included in the Hills of Cedar Creek East Phase 1, is free from certified taxes and certified special assessments" to state "I, Lea A. Voss, the Treasurer of Pottawattamie County, Iowa, hereby certify that the

property that the person included in Moreno Addition, is free from certified taxes and certified special assessments."

4. Revise "In witness whereof we do hereunto set our hands, for: HCC Investments, LLC, an Iowa liability company" to state "In witness whereof we do hereunto set our hands, for: Margarito-Celedonia Moreno."
5. Change the road names "18th Street" and "19th Street" to "South 18th Street" and "South 19th Street," respectively, in the plat map exhibit and legal description.

Recommendation

The Community Development Department recommends the following:

1. Approval to vacate and dispose of 24th Avenue right-of-way lying between South 18th Street and South 19th Street and abutting Blocks 21 and 36, Railroad Addition and Lot 6, Wyatt 2nd Subdivision, subject to an easement being retained for utility access and maintenance purposes and all portions of the right of way being disposed of to an abutting property owner(s).

2. Final plat approval of a two-lot residential subdivision to be known as Moreno Addition, being a replat of Lots 1 through 6, 23 and 24, and the North 33 feet of Lots 11 and 12, and portions of the vacated alleys adjoining, all in Block 36, Railroad Addition, and a portion of the South ½ of vacated 24th Avenue adjoining, subject to the following conditions:

    a. The final plat shall be recorded within 90 days of City Council approval or the plat shall become null and void unless an extension of has been requested and granted by the Community Development Department Director; and
    b. Prior to executing the final plat, any corrections required by the Community Development Department and/or Public Works Department shall be incorporated into the final plat; and
    c. 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
    d. Prior to executing the final plat, the applicant shall be required to demolish the garage on proposed Lot 2; and
    e. Prior to executing the final plat, the applicant shall be required to purchase the portion of vacated 24th Avenue right-of-way adjacent to his property; and
    f. The applicant shall be required to install a lateral to the main to support proposed Lot 2, Moreno Addition, and obtain all necessary permits at the time of development; and
    g. All utilities shall be installed underground. Any cost to remove and/or relocate any utilities shall be the sole expense of the applicant and not the City; and
    h. The applicant shall provide a copy of any proposed covenants and/or private restrictions associated with the subdivision to the City, or place a note on the final plat indicating none will be recorded.

Public Hearing

Speakers in favor:

1. Margarito Moreno, 2403 South 19th Street, Council Bluffs, IA 51501

Speakers against: No one spoke in opposition.

Planning Commission Recommendation

The Planning Commission recommends the following:

1. Approval to vacate and dispose of 24th Avenue right-of-way lying between South 18th Street and South 19th Street and abutting Blocks 21 and 36, Railroad Addition and Lot 6, Wyatt 2nd Subdivision, subject to an easement

being retained for utility access and maintenance purposes and all portions of the right of way being disposed of to an abutting property owner(s).

2. Final plat approval of a two-lot residential subdivision to be known as Moreno Addition, being a replat of Lots 1 through 6, 23 and 24, and the North 33 feet of Lots 11 and 12, and portions of the vacated alleys adjoining, all in Block 36, Railroad Addition, and a portion of the South ½ of vacated 24th Avenue adjoining, subject to the following conditions:

a. The final plat shall be recorded within 90 days of City Council approval or the plat shall become null and void unless an extension of has been requested and granted by the Community Development Department Director; and
b. Prior to executing the final plat, any corrections required by the Community Development Department and/or Public Works Department shall be incorporated into the final plat; and
c. 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
d. Prior to executing the final plat, the applicant shall be required to demolish the garage on proposed Lot 2; and
e. Prior to executing the final plat, the applicant shall be required to purchase the portion of vacated 24th Avenue right-of-way adjacent to his property; and
f. The applicant shall be required to install a lateral to the main to support proposed Lot 2, Moreno Addition, and obtain all necessary permits at the time of development; and
g. All utilities shall be installed underground. Any cost to remove and/or relocate any utilities shall be the sole expense of the applicant and not the City; and
h. The applicant shall provide a copy of any proposed covenants and/or private restrictions associated with the subdivision to the City, or place a note on the final plat indicating none will be recorded.

VOTE: AYE 11 NAY 0 ABSTAIN 0 ABSENT 0 VACANT 0 Motion: Carried

Attachments

Attachment A: Location and Zoning Map
Attachment B: 24th Avenue Right-of-Way Exhibit
Attachment C: Moreno Addition Final Plat

Engineer: Bill White, Ehrhart Griffin & Associates, 142 W Broadway, Suite 136, Council Bluffs, IA 51503

Prepared by: Moises Monrroy, Planner, Community Development Department